



### **Under what arrangement is the US operating in Iraq?**

The US has been operating in Iraq under a United Nations Security Council mandate which has been renewed annually since 2003. However, Iraq's government requested that the UN mandate not be renewed again after its expiration at the end of 2008. The US and the Iraqi government consequently entered into negotiations to find an agreement which would formalize the economic, legal and security relations of the two nations.<sup>1</sup>

On November 16<sup>th</sup>, 2008, the Iraqi cabinet approved a security agreement which set a date for a complete US withdrawal by the end of 2011. The pact was subsequently approved by the Iraqi parliament. It also stipulates that American troops will be off Iraqi streets by mid-2009.<sup>2</sup>

### **What does the agreement entail?**

Status of Forces Agreements (SOFAs) "define the legal status of U.S. personnel and property in the territory of another nation. The purpose of such an agreement is to set forth rights and responsibilities between the United States and the host government on such matters as criminal and civil jurisdiction, the wearing of the uniform, the carrying of arms, tax and customs relief, entry and exit of personnel and property, and resolving damage claims."<sup>3</sup> There were concessions on both sides for an agreement to finally be reached. Some of the important negotiating points were the following:

- A US withdrawal from Iraq: US forces will be off the streets by the end of June, 2009, and out of the country by 2011.
- Legal status of US troops: US troops will have "immunity from Iraqi prosecution if they commit offenses when they are on duty and on U.S. bases. But they could be tried in Iraqi courts if they commit serious crimes when off duty or off military compounds."<sup>4</sup> Article 12 states: "Iraq has the primary right to exercise jurisdiction over members of the U.S. forces and members of the civilian element regarding major and premeditated crimes, according to item 8, when these crimes are committed outside installations and areas agreed upon and off duty."<sup>5</sup>
- Legal status of US contractors: Article 12 states that "Iraq has the primary right to exercise jurisdiction over private contractors which have contracts with the United States and their employees."<sup>6</sup>
- Detainees: Article 22 says that "it is not permitted for the U.S. forces to detain or arrest any person (except the detention or arrest of a member of the US forces or the civilian element) unless it is in accordance with an Iraqi decision issued under Iraqi law implementing Article Four."<sup>7</sup> If US troops make arrests they should hand over detainees to Iraqi forces within 24 hours.

There were concerns that the deal would not be backed by the Sunnis in parliament and that it would therefore lack a sense of national consensus. The Sunnis tried but failed to get concessions regarding the special tribunal which deals with crimes committed under Saddam Hussein, and laws against former members of Saddam's Baath party, which were all Sunnis.<sup>8</sup> However, in exchange for their support, Sunni legislators negotiated for the agreement to be put to the Iraqi people in a referendum. It will be held in July, 2009.

Shiite followers of cleric Muqtada al-Sadr opposed the deal, demanding that Americans leave the country immediately. Despite their attempts at disruption the pact passed with 149 of the 198 members of parliament present voting in favour.

## What post-SOFA challenges lie ahead?

The first challenge for Prime Minister Nouri Al-Maliki will be convincing the public to approve the SOFA in the July referendum. Suadad Al-Salhy, an Iraqi reporter working for the New York Times, found that most Iraqi MPs were not even aware of what was contained in the agreements before voting for them.<sup>9</sup> The government-run newspaper Al-Sabah, revealed on November 23, 2008, that 46% of Iraqis were in favour of the agreements, 34.5% were against, and 19.4% were undecided.<sup>10</sup> It is hard to gage whether most Iraqis were aware of what the agreements were, or if they were only in favour of an American withdrawal.

But while the Americans tout the success of the so-called “Surge,” it is difficult to predict exactly what will happen when the Americans leave. The sectarian violence that preceded the surge largely resulted in ethnic segregation between neighbourhoods so that Sunnis and Shias now often live in separate areas, sometimes even surrounded by concrete blast walls, and many refugees still refuse to return home. Checkpoints are set up throughout Iraq where armed men check identifications. Sunnis and Shias have become separated, and this may be one explanation behind the decrease in violence.

The Shia, the majority group in Iraq, has effectively taken control of the government. The Sunni, the traditional ruling class, are now in a weaker position. If the Americans leave, the situation could easily deteriorate into sectarian violence as Sunnis try to regain more power in government or the Shia attempt to marginalize them or eliminate them altogether.

In the meantime, American Special Forces can still obtain clearance to operate outside the SOFA. Conventional American forces can also violate the terms of the SOFA because there is no enforcement mechanism to hold them accountable.<sup>11</sup>

The United States has opened one of its largest and most expensive embassies ever in Baghdad. The embassy will house 1,200 employees.<sup>12</sup> Little is known about the massive compound and even after troops withdraw it could be perceived as a “spy den,” as was the American embassy in Tehran after the Islamic Revolution. Iraqis may view the presence of the compound as a continuation of American imperialism in their country. All in all, stability and true sovereignty are far from assured in next few years.

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<sup>1</sup> Bruno, Greg. “U.S. Security Agreements and Iraq.” Council on Foreign Relations. December 23, 2008.

<sup>2</sup> “Iraqi parliament backs US pullout.” BBC. November 27, 2008.

<sup>3</sup> “Status-of-Forces Agreement.” Global Security Org. <http://www.globalsecurity.org/military/facility/sofa.htm> [accessed 2008/12/11]

<sup>4</sup> Lennox Samuels. “A done deal.” Newsweek. November 27, 2008.

<sup>5</sup> “Articles of SOFA, Iraq-US pact allowing foreign troops 3 more years.” World Bulletin. [http://www.worldbulletin.net/news\\_detail.php?id=31966](http://www.worldbulletin.net/news_detail.php?id=31966)

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> “Iraqi parliament backs US pullout.” BBC. November 27, 2008.

<sup>9</sup> Al-Salhy, Suadad. “Analysis on the spot: SOFA, from inside parliament.” The New York Times. November 24, 2008.

<sup>10</sup> “Poll: 46% of Iraqis support security agreement.” Iraq Updates. November 23, 2008.

<sup>11</sup> Rosen, Nir. “The gathering storm.” The National. April 10, 2009.

<sup>12</sup> [http://news.bbc.co.uk/2/hi/middle\\_east/7811088.stm](http://news.bbc.co.uk/2/hi/middle_east/7811088.stm)