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UNITED NATIONS CHAPTER VII MANDATES AND THE U.S.-IRAQ BILATERAL AGREEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS AND OVERSIGHT

OF THE

COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES

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UNITED NATIONS CHAPTER VII MANDATES AND THE U.S.–IRAQ BILATERAL AGREEMENT

THURSDAY, SEPTEMBER 17, 2009

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

The subcommittee met, pursuant to notice, at 10:09 a.m. in room 2172, Rayburn House Office Building, Hon. Bill Delahunt (chairman of the subcommittee) presiding.

Mr. DELAHUNT. The hearing will come to order. Recently I noted that my friend and colleague from Massachusetts who chairs the Senate Foreign Relations Committee—that is obviously Senator John Kerry—noted that Iraq had become the forgotten war.

Well, I agree. Iraq no longer commands daily headlines and here in Congress the debate now focuses on health care reform and there are multiple briefings and hearings on Afghanistan, but just because something is forgotten does not mean that it has gone away.

As former Secretary of State Colin Powell warned former President George W. Bush before the invasion of Iraq, you break it, you own it. He was right. This hearing is about the status of that ownership, our responsibility, if you will.

In December of last year, the United States and Iraq signed an agreement that is commonly known as the Status of Forces Agreement or SOFA being the acronym. I refer to it simply as the U.S.-Iraq Bilateral Agreement because it was much more, in my opinion, than a typical SOFA. This subcommittee had held a number of hearings as it was being negotiated, and I believe that those hearings influenced and improved the ultimate agreement that was signed by Prime Minister Maliki and President Bush.

I continue to have concerns about it, however, and one of those concerns is the subject of today's hearing. One purpose of the bilateral agreement was to replace the United Nations Security Council mandate for United States troops and other international forces in Iraq. This mandate was what is known as a Chapter VII mandate.

Chapter VII of the U.N. charter concerns, and I am quoting, "action with respect to threats to peace, breaches of the peace and acts of aggression." In effect, a Chapter VII mandate means that the international community via the Security Council has passed legally binding resolutions regarding the particular country irrespective of what that country's people or government might wish.

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Now, the U.S.-Iraq Bilateral Agreement effectively ended the Chapter VII mandate regarding international forces in Iraq. This was welcomed in Iraq as an acknowledgement of its sovereignty and national dignity. After all, a Chapter VII mandate essentially says that you are a ward of the international community, that you are not capable or trustworthy enough to run your own country, and for anyone, but especially a people as proud as the Iraqi people, this is profoundly insulting.

However, a number of other Chapter VII mandates still remain in force regarding Iraq. Most of them stem from the Saddam Hussein era. Article 25 of the bilateral agreement committed the United States to working with Iraq to address these remaining Chapter VII mandates and restoring Iraq to full sovereignty in the family of nations.

Unfortunately, this is not as easy as it sounds. These mandates cover a range of issues from border disputes to compensation claims, from the first Gulf War to the bank account which protects Iraq's oil revenue from lawsuits to now obsolete provisions regarding weapons of mass destruction. Depending on how they are defined, there are almost 20 different mandates. Many of them require Iraq to take certain steps, some of which they have not accomplished, for them to be eliminated.

Each of these mandates must be discussed, debated and voted on in the Security Council, and the reality of the Security Council is that Russia, China, France and the United Kingdom, as well as the United States, can veto any resolution for any reason. Thus, it is clear that this will require the expenditure of considerable political capital by the United States at the United Nations.

Some might say that we have enough on our plate. It is time to move forward and address other pressing issues. But let me suggest that we have given our word in a formal document and, as Secretary Powell observed, we have a moral obligation to the people of Iraq, and that simply cannot be denied.

I would also especially note, and I think this is particularly important, that while it might be off the front page in many ways, Iraq, its stability and its potential prosperity are essential in the Middle East and the entire region, and a stable Middle East is essential to our national security as well as world peace. So Iraq is as important as ever, albeit it may be forgotten by some.

So this hearing is an effort to find out what needs to be done to terminate these mandates. What are the mandates under discussion? What is the process for eliminating them? What do the Iraqis have to do to help us help them? How does this affect Iraq's internal politics and its relations with its neighbors? What are the prospects for a possible referendum in January if we do not eliminate at least some of these mandates? What are the implications for American forces remaining in Iraq?

This hearing and I think a most important briefing in which two distinguished parliamentarians from Iraq will come before this committee and give us their perspective will explore all of these issues.

But before I introduce this distinguished panel let me turn to my friend from California and the ranking member of this committee, Dana Rohrabacher, for any opening comments he might have.

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Mr. ROHRABACHER. Thank you very much, Mr. Chairman. Let me note that the chairman has taken special interest in the various legal and diplomatic agreements that have been made concerning the ongoing conflict in Iraq. The chairman was the first one to take notice of the Status of Forces Agreement.

It could be the reason he was the first one to take notice is the fact that Congress had been totally left out of the loop that we were going to have a Status of Forces Agreement and what the meaning of that was, so the chairman did make sure that we looked at that issue and demanded that Congress play its rightful role during the last administration as that agreement went forward.

So I am here to learn about where we stand now, now that decisions have been made that our troops will be withdrawing and are currently actually involved in withdrawing and what legal documents and agreements and mandates that we have. I am here to listen and to learn.

I do know one thing; that we all need to ponder what the whole Iraqi episode in American history means to us as people and as a nation. We have lost 4,300 of our young people. Well, some of them weren't young. Some of them were in their fifties probably I am sure or sixties.

Male VOICE. That is still young.

Mr. ROHRABACHER. Still young. But we lost 4,300 of our American people. Forty-three hundred died in Iraq. Forty-three hundred people.

And tens of thousands more wounded. Many of them will live lives for the rest of their life they will live in misery, perhaps without a leg, perhaps half of their face has been shot off, perhaps they won't be able to walk or have children. Thousands of Americans and 4,300 killed.

One trillion dollars of Treasury—American. One trillion dollars. Now, what does this all mean? What is it all about? That trillion dollars, I might add, had it not been spent for that purpose may well have prevented us from going into the magnitude of the economic crisis that we are facing today. Think of the price that we have paid. It is an incredible price, and we need to ponder what this all means to us as Americans, what commitments we will make in the future.

I believe that the decision to go into Iraq in the first place was a decision based on a benevolent intent, and I believe the benevolent intent was that the American people, all of us who participated in that decision, because we did as a Congress, believed that the dictatorship of Saddam Hussein was a vicious and bloody and evil, evil regime and that we were willing to commit ourselves and risk the price that we paid in order to free the people of Iraq from this dictatorship.

Again, we need to ponder to see if that is indeed the case. Was that worth it? We got rid of Saddam Hussein, and then of course more and more casualties, more and more treasure trying to prevent radical Islamicists from taking advantage of the chaos and the confusion of what happens after the transition after a dictatorship into some other kind of government.

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Was all of that worth it? What it is all about, and what are the remnants that are left behind that we have to deal with now? Today we are going to hear about the legal remnants and some of the agreements, and I am here, as I say, to learn about that because that is something we have to deal with as well. We have to deal with some of the relationships and some of the situations that existed before our intervention in that situation, and we now have to deal with that.

One of the I think major issues is Camp Ashraf where we have people who have committed themselves to pose the Islamic dictatorship in Iran, and we have a group of people who were permitted to stage themselves from Iraqi territory and they are now caught in a situation that had we not intervened wouldn't exist, so the fact is it is up to us to confront the issue of Camp Ashraf and what happens to those people.

I would hope that considering that we spent all of this money and all of this blood trying to establish a country that would be more democratic and have more concern for human rights that the Government of Iraq would operate with some of those values instead of with an iron fist and trying to exert its authority in situations like Camp Ashraf.

I would hope that the 43 prisoners that they have taken from Camp Ashraf will be treated well, which I doubt, but that their human rights will be respected and the human rights of those people will be respected. How the Government of Iraq acts from now on will determine for the people of the United States whether or not it was worth us to go in and spend the lives of our children and spend the treasure that we could have used in our own families here at home.

If it is a democratic government and they treat people with respect and human rights and they perhaps try to solve their own problems, respecting the rights of various peoples within Iraq—the Kurds, the Christians, other minorities—and as they treat each other, the Sunnis and the Shiites treat each other, that will determine whether or not the American people will look back and say yes, it was worth giving my son's life to see that that vicious dictatorship was removed.

If they make the wrong decisions in these areas, Mr. Chairman, I believe that there will be a deep resentment of the American people to the leaders and our Government who sent them there, but also to the people of Iraq who have not lived up to the opportunity that we paid such a dear price to give them.

With that, I am very interested in the testimony. Thank you for holding this hearing today.

Mr. DELAHUNT. Thank you. Thank you, Dana.

Well, let me begin by introducing our witnesses. They have become regulars before this particular subcommittee. They are all distinguished in their own right, and we welcome them back.

First we have Professor Mike Matheson. He is a member of the International Law factory—faculty rather, not factory; is that some sort of Freudian slip there—of the George Washington University Law School here in Washington. He served from 2003 to 2006 as the American member of the U.N. International Law Commission.

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From 1972 to 2000, he worked in the Legal Advisor's Office at the Department of State, including 2 years as Acting Legal Advisor of the Department. While at the State, he led efforts to create the International Criminal Tribunals for Yugoslavia and Rwanda and the U.N. Compensation Commission for Gulf War Claims, and he headed the U.S. delegation with the rank of Ambassador to the U.N. Negotiations on Conventional Weapons.

He has written a book on the U.N. Security Council in the post Cold War period and on international humanitarian law in recent conflicts, as well as multiple articles and other pieces.

I would note that Professor Matheson currently has a consulting contract with the State Department in the amount of $20,000 concerning the Kosovo case before the International Court of Justice. However, he is appearing here today in his own capacity and not as a representative of the United States Government.

Next we have Dr. Ken Katzman of the Congressional Research Service. He serves as a Senior Middle East Analyst for the U.S. Congress with a special emphasis on Iran, Iraq and the Persian Gulf States, Afghanistan and terrorist groups operating in the Middle East and South Asia. He is a busy guy these days.

He has also written numerous articles and various outside publications, including a book entitled The Warriors of Islam: Iran's Revolutionary Guard, and has given numerous official presentations and briefings at conferences worldwide.

And last, but certainly not least, Steve Rademaker. He currently serves as Senior Counsel for the BGR Consulting Group. He joined BGR in 2007 following a distinguished career in all three branches of government.

What is particularly interesting for the purposes of this hearing is that he served from 2005 to 2006 as a member of the College of Commissioners of the United Nations Monitoring, Verification and Inspection Commission, commonly known as UNMOVIC, which was a U.N. mandated operation regarding Iraq that has since been terminated.

He continues to serve on the U.N. Secretary General's Advisory Board in disarmament matters and has joined the U.N. Commission on the Prevention of Proliferation of Weapons of Mass Destruction and Terrorism.

In 2002, he became an Assistant Secretary of State, and from then until 2006 he headed at various times three bureaus of the Department of State, including the Bureau of Arms Control and the Bureau of International Security in Nonproliferation, and we have to note, of course, for the record that he has also held positions on the staff of the Committee of International Relations of the House of Representatives, including Deputy Staff Director and Chief Counsel.

We welcome you all. Steve, we welcome you back. Let us begin with Mike Matheson.

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STATEMENT OF MICHAEL J. MATHESON, ESQ., VISITING RESEARCH PROFESSOR OF LAW, THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

Mr. MATHESON. Thank you very much, Mr. Chairman. I have submitted a written statement. I suggest it be included in the record and that I give a summary at this point.

My statement attempts to describe where matters stand with respect to the various Chapter VII measures which are still in effect with respect to Iraq and particularly in light of the provisions of the United States-Iraq agreement from last year.

You have already noted that Article 25 of that agreement does recognize that the situation of Iraq is fundamentally different now than it was in 1991. It acknowledges that Iraq should return to the legal standing that it had before the Gulf War, and it pledges the United States to use its best efforts toward that objective.

The Security Council itself has agreed with this general objective, and in fact over the past few years it has itself taken a number of steps to revoke or to modify some of the more onerous Chapter VII measures that had been applied to Iraq after the Gulf War: In particular, a lifting of the trade and financial sanctions, an easing of U.N. control over Iraqi oil and gas revenues, and the expiration of the multinational force mandate.

Now, in July of this year the U.N. Secretary General issued a report which reported on where matters stood with respect to those measures that remained, and it noted that progress had been made on a number of points with respect to these matters. It supported the gradual restoration of Iraq to its prior status, but it also noted that there were some unresolved matters which still had to be dealt with.

Now, the first area of these unresolved matters relates to the compensation for the losses suffered by Kuwait and other countries during the Gulf War. As you know, in 1991 the Security Council created a U.N. Compensation Commission to provide compensation to the various victims of the Gulf War and to make payments for that purpose from Iraqi oil export revenues.

Ultimately the Commission awarded a total of about $52 billion to claimants of various nationalities, including Americans. To date, about $28 billion of that has been paid, which leaves about $24 billion representing unpaid claims by Kuwait for damage to the Kuwaiti environment and to the Kuwaiti oil industry.

Originally for this purpose deductions were being made from Iraqi oil exports to the tune of 30 percent. This was reduced in recent years to 5 percent, and Iraq has now proposed that it be reduced to 1 percent if not eliminated altogether. Since the remaining claims against the fund are Kuwaiti, hopefully this can be resolved by some kind of accommodation reached between Iraq and Kuwait.

One suggestion that apparently has been considered is that these unpaid amounts be used to fund investments in infrastructure projects in Iraq. In any event, Article 26 of the U.S.-Iraq agreement says that the United States is going to support Iraq in achieving a final resolution of these compensation issues.

The second area of unresolved issues relates to other Iraqi debts and assets. At the end of last year, the Security Council decided

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at Iraq's request to continue in effect a number of measures that had been put in place to handle Iraqi funds and assets: Specifically the deposit of Iraqi oil export funds into a development fund, which is now administered by Iraq, and the operation of an international advisory and monitoring board to monitor the accounting and use of those funds.

These funds and Iraqi oil assets generally are made immune from attachments by Security Council decisions with some exceptions. Now, in the Secretary General's July report it said that Iraq was now basically ready to assume these oversight responsibilities, but it did note that there were certain unresolved technical questions outstanding with respect to Iraqi internal controls and the deposit of certain funds into this development fund.

It is also important to resolve the large volume of claims against Iraq and debts of Iraq that date back to the Saddam regime. This includes claims of U.S. nationals, and this is necessary so that Iraq can resume its normal responsibility of a sovereign state for its assets and liabilities. Again, Article 26 of the U.S.-Iraq agreement says that the United States will assist Iraq in trying to resolve these matters as well.

Next is the area of weapons of mass destruction. As you know, after the Gulf War the U.N. Security Council required the elimination of Iraqi WMD and also imposed some significant constraints on Iraqi activities and Iraqi capabilities that might be used in the future for WMD purposes. This includes chemical and biological weapons. It includes long range ballistic missiles and, most importantly, it includes all nuclear items and activities except for certain limited medical and other purposes.

Now, at the time Iraq was required to accept a comprehensive and unusual regime of international inspections to verify its compliance with these provisions. In 2007, the Security Council decided that these extraordinary inspection regimes were no longer necessary.

But it did keep in effect the restrictions on Iraqi nuclear and other activities, and the resolutions say that these will continue until the Security Council determines that Iraq is in compliance with Council resolutions and the International Atomic Energy Administration or Agency decides that Iraq is in full compliance with nuclear safeguards agreements. Neither of these steps has yet occurred.

Apparently there is some further work required on technical issues, particularly with respect to possible future Iraqi peaceful nuclear activities, and I think probably there is also a policy, or perhaps it is a tactical question, about how the complete lifting of all of these restrictions at this point, how it would relate to United States and other nonproliferation objectives in the region, particularly with respect to Iran.

Then there are a series of other issues on which Chapter VII measures remain in effect. For example, after the Gulf War the Security Council created a Boundary Commission to resolve the Iraq-Kuwait border dispute which had been one of the ostensible causes for the Gulf War, and when that process of demarcation was completed the Council guaranteed the newly demarcated boundary. So

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the question arises as to whether it might be desirable to continue that guarantee of the boundary in force.

There are also a series of measures to locate and to repatriate the remains and the property of Kuwaiti and third country nationals who were missing during the Gulf War. The embargo on arms shipments to nongovernmental entities in Iraq remains. There are measures to facilitate the return of Iraqi cultural property and so on. The Secretary General's report this year identified a number of unresolved issues with respect to each of these items, so it may be necessary to continue these in effect until those remaining issues are resolved.

In conclusion, I think all parties are agreed on the principle that Iraq should be restored to the legal and international status that it enjoyed prior to the Gulf War, but, as you said, it is not quite so simple. Some measures apparently need to continue in effect for an interim period until technical questions are resolved. That includes, for example, the administration of the oil proceeds and their protection from attachment.

Some issues probably could only be eliminated when questions between Iraq and other states are resolved, and a good example of this is the compensation issue with respect to Kuwait. And it might be that the Council decides that certain other matters should be kept in force for a temporary period for policy reasons, and the WMD and the boundary questions may fall into that category.

What I would stress on the whole is that this process of orderly resolution of these remaining Chapter VII issues need not be taken as any kind of derogation from Iraqi sovereignty, nor should it be taken as any kind of statement that Iraq is not a full, equal state on a par with others in the international community.

The Security Council has used Chapter VII on many occasions in the past to deploy peacekeeping forces and other missions, and to take other measures, without derogating from the sovereignty of states that might be involved, and in fact all states have certain duties under Chapter VII, including the United States: For example, a duty to prosecute or extradite international terrorists found in our territory.

So my point would be that Iraq has already been relieved of the great burden of the onerous restrictions from the Saddam era, and there is no reason why the remaining issues can't be dealt with and resolved in an orderly manner with the objective of restoring Iraq to its full status prior to the Gulf War.

That is the end of my presentation. Of course, I would be glad to answer questions.

[The prepared statement of Mr. Matheson follows:]

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Statement of Professor Michael J. Matheson,
George Washington University Law School

Before the House Committee on Foreign Affairs,
Subcommittee on International Organizations, Human Rights and Oversight

September 17, 2009

Iraq's Status Under Chapter VII Decisions of the UN Security Council

I have been asked to comment on the current efforts to re-examine Iraq's status under the Chapter VII decisions of the UN Security Council, in light of the provisions of the November 2008 US-Iraq Security Agreement and of recent Security Council decisions.

Article 25 of the Security Agreement [1] provides:

> Recognizing also the dramatic and positive developments in Iraq, and noting that the situation in Iraq is fundamentally different than that which existed when the UN Security Council adopted Resolution 661 in 1990, and in particular that the threat to international peace and security posed by the Government of Iraq no longer exists, the Parties affirm in this regard that with the termination on December 31, 2008 of the Chapter VII mandate and authorization for the multinational force contained in Resolution 1790, Iraq should return to the legal and international standing that it enjoyed prior to the adoption of UN Security Council Resolution 661 (1990), and that the United States shall use its best efforts to help Iraq take the steps necessary to achieve this by December 31, 2008.

This did not actually occur by the end of 2008, but on December 22 the Security Council adopted Resolution 1859, which agreed with the same general objective.

In fact, the Security Council had already taken a number of steps after the removal of the regime of Saddam Hussein to revoke or modify many of

[1] Agreement Between the United States of America and the Republic of Iraq On the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq, 17 November 2008.

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the measures that it had adopted under Chapter VII of the UN Charter after the Iraqi invasion and occupation of Kuwait in 1990. This included: the termination of the restrictions on trade and financial transactions with Iraq; [2] the ending of UN control over proceeds from Iraqi oil and gas sales [3] and the transfer of those proceeds to a Development Fund held by Iraq; [4] the termination of the arms embargo against the Iraqi government; [5] and finally, the expiration of the mandate of the multinational force that had exercised control over Iraqi territory. [6] These steps have already substantially restored Iraq to the independent sovereign status it enjoyed prior to the Gulf War. However, Iraq remains subject to Chapter VII measures in a number of respects. It may be possible and desirable to phase out some of these measures in the near future; but others might continue to serve useful functions, at least for some period of time.

In Resolution 1859, the Council requested the UN Secretary-General to "report, after consultations with Iraq, on facts relevant to consideration by the Council of actions necessary for Iraq to achieve international standing equal to that which it held prior to the adoption of such resolutions . . . . " [7] The Secretary-General issued his report on July 27 of this year. [8] It notes the progress achieved on many points since 2003 and supports "gradually restoring Iraq to the international standing it enjoyed before 1990." [9] On the other hand, it describes a number of unresolved matters concerning the Council's previous actions under Chapter VII and suggests steps that might be taken to resolve them.

In a literal sense, each of the Chapter VII measures that are still in force could be ended at any time by action of the Security Council. However, this would not be sensible in any particular case until outstanding issues are resolved, and in some cases the Council may not wish to take such action for the time being. The following is a summary of these issues.

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[2] UNSC Res. 1483 (2003), para. 10.
[3] UNSC Res. 1483 (2003), paras. 12, 16.
[4] UNSC Res. 1546 (2004), para. 24.
[5] UNSC Res. 1546 (2004), para. 21.
[6] UNSC Res. 1790 (2007), para. 1-2.
[7] UNSC Res. 1859 (2008), para. 5.
[8] UN Doc. S/2009/385, 27 July 2009.
[9] *Id.*, p. 17.

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Compensation for Gulf War Losses

The Iraqi invasion and occupation of Kuwait caused immense human and financial losses. Among other things, more than a million foreign workers were forced to leave Iraq and Kuwait; many foreign nationals were imprisoned, killed, or injured; immense damage was done to the Kuwaiti economy and Kuwaiti property; many foreign nationals and corporations suffered contract and property losses; and Iraqi forces caused vast damage to Kuwaiti oil fields and widespread environmental damage. Providing compensation for these losses was a priority objective of the international community to meet urgent humanitarian needs, to assist Kuwait and other states in recovering from this catastrophe, and to help in restoring stability to the region. [10]

To meet these objectives, the Security Council created an ambitious and innovative regime to assess the damage, adjudicate claims, and provide compensation to those affected. The Council decided that Iraq would be liable "for any direct loss, damage – including environmental damage and the depletion of natural resources – or injury to foreign Governments, nationals and corporations as a result of its unlawful invasion and occupation of Kuwait;" it created the UN Compensation Commission to adjudicate claims and decide on priorities for payment; and it decided that 30% of Iraqi oil export revenues would be used for payment of these claims. [11]

Iraq initially attempted in various ways to impede this effort, but in the end the program resulted in the successful adjudication of more than 2.6 million claims (including substantial sums for American claimants), the awarding of compensation in excess of $52 billion, and the actual payment to date of nearly $28 billion to claimants. In particular, compensation was promptly paid to the hundreds of thousands of individuals who were most in need of such relief. However, due to the very large volume of awards, much of the compensation due has not yet been paid; to date, this amounts to about $24 billion for damage to the environment and oil sector of Kuwait. [12]

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[10] *See* Michael J. Matheson, Council Unbound: The Growth of UN Decision Making on Conflict and Postconflict Issues after the Cold War (U.S. Institute of Peace 2006), p. 168-82.

[11] UNSC Res. 687 (1991), paras. 16-19; Res. 705 (1991).

[12] The July 29 report of the Secretary-General reported payments totaling $27.1 billion to date; at the end of July further payments were made in excess of $400 million.

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In light of the removal of the regime of Saddam Hussein, the Security Council has reduced the deduction from Iraqi oil export revenues to 5%, [13] but significant amounts continue to flow into the Compensation Fund from this source. In December 2007 the Iraqi Government asked the Council to review the matter "with a view to reducing that percentage as much as possible". It argued that the continuing deduction "creates a financial burden for Iraq at a time when it is in dire need of those funds to rebuild its infrastructure", and that recent increases in the price of oil had inflated the value of the deduction. [14] Iraqis have also argued that they should not have to continue bearing the burden of the misdeeds of the previous regime in which they had no part. In 2009, Iraq asked that payments be reduced to 1% if not eliminated altogether; Kuwait, however, asked that payments continue at the 5% level. [15]

Hopefully this is a matter on which Iraq and Kuwait might reach some mutually acceptable accommodation, given the fact that each has an important long-term interest in good relations with the other. Apparently Iraq and Kuwait have had preliminary discussions on this matter, including the possibility of investment of the unpaid amounts in projects in Iraq. [16] Article 26 of the Security Agreement promises that the United States will "support Iraq" in achieving a "comprehensive and final resolution" of such reparation claims.

Other Iraqi Debts and Assets

In December 2008 the Security Council decided – at the request of Iraq – to continue in force for another year the arrangements it had earlier adopted for the orderly handling and use of Iraqi oil revenues. Specifically, proceeds from the sale of Iraqi oil and gas are deposited into the Development Fund for Iraq that is now under Iraqi administration, and an International Advisory and Monitoring Board monitors the accounting and use of those proceeds. [17] Iraqi oil and gas assets and proceeds, as well as the Development Fund itself, are immune from attachment by creditors (except for damages occurring as a result of ecological accidents after May 2003 or contractual obligations entered into after June 2004); and all states are

[13] UNSC Res. 1483 (2003), para. 21.
[14] Letter from Prime Minister al-Maliki to the President of the Security Council, December 7, 2007.
[15] *See* UN Doc. S/2009/385, 27 July 2009, p. 3-4.
[16] *See id.*, p. 4.
[17] *See* UNSC Res. 1483 (2003), para. 20; Res. 1859 (2008), paras. 1-2.

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required to take any steps under their domestic legal systems that are necessary to ensure this protection. [18] The Security Agreement notes that the United States has already done this. [19] (To date, this has been done by executive order.) States are also required to freeze and transfer to the Development Fund all financial assets of the Saddam Hussein regime. [20]

In requesting the extension of these arrangements, Iraq said:

> Iraq has inherited debts and claims from the previous regime and has made great progress in settling them. However, much remains to be done, and our efforts to settle those claims and debts will require some time. Temporary support from the international community will continue to be required during the coming phase. Therefore, we hope that the international community will continue current protections and arrangements . . . until such time as the Government of Iraq is able to take the measures necessary to settle those debts and claims inherited from the previous regime. . . .
>
> The Government of Iraq believes that the provisions . . . relating to the deposit of proceeds into the Development Fund for Iraq will help to ensure that proceeds from Iraq's natural resources will be used for the benefit of the Iraqi people, as will the role played by the International Advisory and Monitoring Board. The Iraqi Government recognizes that the Development Fund for Iraq plays an important role in helping Iraq to reassure donors and creditors that Iraq is administering its resources and debts in a responsible manner in the service of the Iraqi people. . . . [21]

According to the July 2009 UN report, an Iraqi entity called the Committee of Financial Experts is now ready to assume oversight responsibilities for the Development Fund, but more needs to be done to strengthen internal controls over oil sales, financial management and corruption. Furthermore, there apparently are still substantial sums that have not yet been transferred into the Development Fund because of unresolved

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[18] *See* UNSC Res. 1483 (2003), para. 22; Res. 1546 (2004), para. 27.

[19] Agreement Between the United States of America and the Republic of Iraq On the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq. 17 November 2008, Art. 26.

[20] UNSC Res. 1483 (2003), para. 23. There is an exception for assets that "are themselves the subject of a prior judicial, administrative, or arbitral lien or judgement."

[21] Letter dated 7 December 2008 from the Prime Minister of Iraq to the President of the Security Council.

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questions about deliveries, letters of credit and other matters. [22] In a further report in August 2009, the Secretary-General said that as the Security Council prepares to discuss the possible transfer of oversight responsibilities, "it will be important to ensure that a proper succession mechanism and process be considered." [23]

Beyond this, it will be desirable to resolve the outstanding Iraqi debts and claims against Iraq as soon as possible (including claims by U.S. nationals resulting from the actions of the previous regime), so that Iraq can return to normal responsibility for its assets and its liabilities. For example, apparently Iraq has made considerable progress in settling commercial claims, although the process is not yet complete. Article 26 of the 2008 U.S.-Iraq Agreement committed the United States to assist in this:

> To enable Iraq to continue to develop its national economy through the rehabilitation of its economic infrastructure, as well as providing necessary essential services to the Iraqi people, and to continue to safeguard Iraq's revenues from oil and gas and other Iraqi resources and its financial and economic assets located abroad, including the Development Fund for Iraq, the United States shall ensure maximum efforts to . . . support Iraq to obtain forgiveness of international debt resulting from the policies of the former regime.

Weapons of Mass Destruction

Resolution 687 also imposed significant constraints on Iraqi acquisition and possession of items that might be used for a program for weapons of mass destruction (WMD). Iraq was required to accept the elimination of the following and not to acquire or develop them in the future:

> -- "all chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities related thereto;"
>
> -- "all ballistic missiles with a range greater than one hundred and fifty kilometres, and related major parts and repair and production facilities;" and

[22] *See* UN Doc. S/2009/385, 27 July 2009, p. 11-14.
[23] UN Doc. S/2009/430, 24 August 2009, p. 3.

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-- "nuclear weapons or nuclear-weapon-usable material or any subsystems or components or any research, development, support or manufacturing facilities related to the above".

Resolution 707 went even further, requiring Iraq to halt "all nuclear activities of any kind, except for isotopes for medical, agricultural or industrial purposes" until: (1) the Council determined that Iraq was in full compliance with Resolution 707 and paragraphs 12 and 13 of Resolution 687 (both of which relate to Iraq's nuclear program), and (2) the International Atomic Energy Agency (IAEA) had determined that Iraq was in full compliance with its nuclear safeguards agreement. (Neither of these preconditions has yet been met).

In addition, Iraq was required to accept comprehensive on-site inspections to verify its compliance with these constraints, to be carried out by the International Atomic Energy Agency (IAEA) in the case of nuclear materials, and a newly-created agency – the UN Special Commission (UNSCOM) – for the other items. [24] UNSCOM was later replaced by the UN Monitoring, Verification and Inspection Commission (UNMOVIC).

IAEA and UNMOVIC resumed their inspection functions after the removal of Saddam Hussein, but in June 2007 the United States and the United Kingdom advised the Council that all appropriate steps had been taken to eliminate the prohibited systems and activities, and the Council determined that these international inspections were no longer necessary to verify Iraqi compliance and terminated these broad inspection mandates. However, the Council expressly reaffirmed Iraq's disarmament obligations under the previous resolutions to refrain from acquiring or developing the various prohibited items. [25]

Iraq is party to certain agreements that constrain some of these prohibited items, such as the Nuclear Non-Proliferation Treaty, the Biological Weapons Convention, and the Chemical Weapons Convention. On the other hand, the restrictions of the Security Council decisions that remain in effect impose stricter constraints on Iraq than its current obligations under international treaties in some respects. In particular:

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[24] UNSC Res. 687 (1991), par. 7-14.
[25] UNSC Res. 1762 (2007).

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-- The Nuclear Non-Proliferation Treaty allows a non-nuclear-weapon state party to acquire or develop nuclear materials and facilities – including nuclear-weapons usable material, provided that such materials are not being used for weapons purposes and that the state party accepts IAEA safeguards and inspections to verify this. [26]

-- Iraq has no treaty obligations with respect to long-range ballistic missiles and related parts and facilities.

-- Iraq might in the future withdraw unilaterally from any of its various treaty commitments, but could not unilaterally terminate its obligations under the Council's decisions.

It may well be that Iraq is not considered likely to develop or acquire WMD items. On the other hand, there may be a need for further work on technical issues related to possible Iraqi peaceful nuclear activities; and beyond that, consideration might be given to whether relieving Iraq of these constraints at this time enhances or detracts from our non-proliferation objectives with respect to other states in the region, particularly Iran.

Other Issues

There are other matters on which Iraq continues to be the subject of measures taken by the Council under Chapter VII. The dispute over the Iraq-Kuwait boundary was one of the ostensible causes of the Gulf War, and following the war, the Council acted under Chapter VII to create an Iraq-Kuwait Boundary Commission for its demarcation, and later to guarantee the demarcated boundary. [27] Apparently there is still work to be done with respect to the maintenance of the boundary markers. [28] Beyond that, it would be undesirable for there to be any doubt about the enduring validity of that demarcation, which suggests that it might be desirable for the Council's guarantee of the boundary to continue in force.

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[26] Treaty on the Non-Proliferation of Nuclear Weapons, Art. III. In addition, as noted above, Resolution 707 prohibited almost all Iraqi nuclear activities until it was determined that Iraq was in full compliance with these requirements and its nuclear safeguards agreement.

[27] UNSC Res. 687, paras. 2-4 (1991); Res. 833 (1993).

[28] *See* UN Doc. S/2009/385, 27 July 2009, p. 4-5.

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Also remaining in force under Chapter VII are: the Council's requirement to continue efforts to locate, identify and repatriate Kuwaiti and third-state remains, persons, archives and property still missing from the Gulf War; [29] the embargo on arms shipments to non-governmental entities; [30] and the requirement for steps to facilitate the return of Iraqi cultural property. [31] There are apparently still unresolved issues with respect to each of these matters. [32] It may be desirable to continue these provisions in force as well until they are resolved.

Conclusion

All parties seem to agree on the general principle that Iraq should be restored to the international and legal status it enjoyed prior to the Gulf War. However, the matter is not quite so simple. Some measures have been continued for an interim period – such as the administration of Iraqi oil and gas proceeds and their protection from attachment – and it is not entirely clear how soon these measures can be terminated. Some measures could only be eliminated when issues between Iraq and other states are satisfactorily resolved – such as Iraqi responsibility for compensation for Gulf War losses. Other measures might be desirable for a longer period – such as restrictions on Iraqi WMD and the boundary guarantee.

These issues were not resolved by the termination of the Chapter VII mandate of the multinational force at the end of last year, nor are they obviated by the perception that the Iraqi Government no longer presents a threat to international peace and security. Some measures are for Iraq's own benefit – such as the protection of Iraqi assets from attachment. Each would have to be dealt with on its merits before Iraq could literally be removed from Chapter VII measures and restored to its previous legal position in all respects.

Furthermore, Chapter VII measures need not represent an unacceptable derogation from the sovereignty of the states to which they apply. For example, the Council has used Chapter VII to deploy peacekeeping forces in many states without compromising their international status; and all states are subject to certain Chapter VII requirements, such as

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[29] UNSC Res. 1483 (2003), para. 6.
[30] UNSC Res. 1546 (2004), para. 21.
[31] UNSC Res. 1483 (2003), para. 7.
[32] *See* UN Doc. S/2009/385, 27 July 2009, p. 6-8, 15-16.

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the requirement to act against international terrorists who may be found in their territory. Nor does the adoption of Chapter VII measures necessarily require a determination that the government of the state in question is a threat to international peace – only that there is such a threat from some quarter that requires action. Therefore, if it were thought desirable to continue some Chapter VII actions in force with respect to Iraq, this need not necessarily be seen as any derogation of Iraqi sovereignty or any barrier to its resumption of normal rights and responsibilities within the international community.

Mr. DELAHUNT. Thank you, Mr. Matheson.
Next we will go to Dr. Katzman.

STATEMENT OF KENNETH KATZMAN, PH.D., SPECIALIST IN MIDDLE EAST AFFAIRS, CONGRESSIONAL RESEARCH SERVICE

Mr. KATZMAN. Thank you, Mr. Chairman, for having me back; Mr. Rohrabacher, for asking me to appear today.

Mr. DELAHUNT. Can you hit the button, Ken?

Mr. KATZMAN. Thank you very much for asking me to appear.

My primary responsibilities at CRS are on Iraqi politics, culture, history, United States policy toward Iraq rather than specifically the legalities of the U.S.-Iraq agreement or the United Nations. I will summarize my comments and ask that the remainder be submitted for the record. Thank you very much.

In evaluating the implementation of the U.S.-Iraq Security Agreement, including these provisions committing the United States to support lifting the remaining Chapter VII resolutions mandate, it is useful I think to assess where Iraqi politics stand, and that I think addresses the broader questions in several opening statements about where the U.S. mission stands, the implications of the United States decision to intervene in Iraq in 2003.

In general, Iraq's political system can be characterized by peaceful competition rather than violence. However, sectarianism and ethnic and factional in-fighting continue to simmer, and many Iraqi views and positions are colored by efforts to outflank, outmaneuver and constrain rival factions.

These tendencies will only grow in the run up to the January 16, 2010, national elections in Iraq, which may also concurrently include a vote, a referendum on the U.S.-Iraq agreement subject to that would have to be approved by the National Assembly to have the referendum. That decision has not been taken yet.

Compounding the factional tensions is the perception that Prime Minister Maliki is in a strong position politically. This is largely a result of the strong showing of his Da'wa Party in the January 31, 2009, provincial elections. His showing in those elections was in turn a product of his benefitting from an improved security situation, his positions in favor of strong central government as opposed

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to local tendencies or regionalism and his March 2008 move against Shiite militias who were virtually controlling Basra and Umm Qasr Port.

Although Maliki's coalition was the clear winner in these elections, the subsequent efforts to form provincial administrations demonstrated that he still needs to bargain with rival factions, including that of the radical young Shiite cleric, Moqtuda Al Sadr, who is studying Islamic theology in Iran with the intention of trying to improve his standing in the clerical hierarchy.

Possibly as a result of his strength in position, Maliki is seen by rivals as increasingly authoritarian. He is widely assessed by United States and Iraqi experts as attempting to gain control of the security services and build new security organs loyal to him personally rather than to institutions. Some have accused him of purging security officials he perceived as insufficiently loyal.

He has also reportedly been using security forces to politically intimidate opponents, including in Diyala Province, for example. Four thousand Special Operations Commandos, part of the Iraqi Security Forces, the official forces of Iraq, report to Maliki's Office of the Commander in Chief and not to the Defense or Interior Ministries. Some of Maliki's opponents and critics say these political tactics mimic the steps taken by Saddam Hussein when he was rising to power to centralize his rule.

Maliki has also used the U.S.-Iraq agreement for his own political interest to some extent. Contributing toward the perception of him as a strong leader was his insistence on certain concessions from the United States in the negotiations on the security agreement. First and foremost was his demand that the agreement include a firm timetable for the United States to withdraw from Iraq. That was included in the security agreement, and President Obama has delineated a draw down plan that comports with the agreement.

There is a specific stipulation in the security agreement which Maliki had wanted that by June 30 of this year the United States would withdraw forces from Iraq's cities. U.S. military leaders had advised Maliki that there are certain areas of Iraq, particularly Mosul in the north and Sadr City, the Sadris neighborhood of Baghdad, a very large neighborhood, where U.S. forces should remain beyond June 30.

Maliki refused and disagreed with that, and the U.S., in order to fulfill its commitments under the security agreement, agreed to pull U.S. forces out of Mosul and Sadr City by June 30, and that was accomplished. There was also a demand purportedly urged by the Iranians in the security agreement that there is a provision that facilities in Iraq cannot be used by the United States to attack other countries, particularly Iran, and that was a demand that was included also in the security agreement.

On the other hand, Maliki's political position is not unassailable, and it is argued that he might sink or swim with perceptions of changing security situations. His position could potentially weaken, even dramatically, if the security situation deteriorates, and there was some thinking that he was very much embarrassed by major bombings on August 19 which killed about a hundred Iraqis and severely damaged the Finance and Foreign Ministries.

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Because Maliki still is politically strong, there are various coalitions that are forming to try to best him in the January 16, 2010, national elections for a new Parliament, and of course the Parliament determines the next government. Maliki would like to continue as Prime Minister after those elections.

A major development came just a few weeks ago when an Iraq National Alliance formed, which is a coalition of some former allies of Maliki, particularly the Supreme Council, the Islamic Supreme Council of Iraq, a fairly pro Iranian party; the Sadrist Movement; Fadilah Party, which is a small Shia Party mainly in Basra; and allies of Ahmad Chalabi Iraq National Congress. Ahmad Chalabi was part of the new coalition, as well as former Prime Minister Ibrahim al-Jafari, who was from the same party from Maliki, but Maliki ousted him as Da'wa leader and now Jafari wants to get him back, so to speak.

So these various coalitions are forming, and some question why former Prime Minister Iyad al-Allawi, who will be part of the briefing after this hearing, did not join the new alliance. He has been generally a critic of Maliki and has even been mentioned over the past few years as agitating to replace Maliki, but because of Allawi's rivalry with Ahmad Chalabi many experts attribute that to the fact that Allawi is not part of this new coalition.

Maliki is negotiating with a lot of different parties to get his own block to countervail against this new block that has formed. One person he is allegedly purportedly talking to is Saleh Mutlaq, who is going to be part of the briefing after this hearing, other Sunnis. And some would say this is a positive because now we have Shias allying with Sunnis in some cases. That was not the case during the civil war period, 2006–2007, so we now have cross-sectarian alliances forming.

The main problem I think in Iraqi politics is the Arab-Kurdish dispute that is not getting any better. There have been some near clashes up in the north. A very, very pro era party won the provincial elections in the north and would like to push the Kurds out of disputed villages in Nineveh Province. Mosul is the capital of Nineveh. That is a huge problem. General Odierno has now recommended a plan to have some confidence building measures involving U.S. force.

Just to start concluding, the security agreement gives Maliki the opportunity to burnish his Iraqi debt, nationalist credentials. By allowing a Cabinet vote on the referendum he shows that he is taking other views into account. It is likely, however, the Maliki—he signed the agreement. It is unlikely I think that he will try to agitate either for a referendum necessarily or, if there is a referendum, for it to be voted down since Maliki did sign onto it and he is to some extent co-opted by it.

It is unlikely he would agitate to vote down the referendum. If the referendum is held and voted down, U.S. troops might be required to withdraw by January 2011 rather than the December 2011 under the existing security agreement, and President Obama's draw down plan meets that timeframe.

I would just conclude by saying the Iraq-Kuwait issue is a major issue. Obviously Kuwait wants all its reparations funds. The main claims that they are still owed are for the damage to the oil fields

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that was done by Saddam's invasion. Iraq wants to stop paying this compensation, the reparations that cost Iraq $660 million from January to June of this year, so it is about $110 million per month that Iraq is paying for this compensation. Iraq views that as funds that could be used better for economic development. Kuwait of course wants full reparations.

I would say President Obama, in his meeting with Maliki on July 22, made a clear statement supporting the Iraqi position saying the Iraqi people should not be held to account for what Saddam did, but the Kuwaitis so far are not backing down, and this is an irritant in Iraq-Kuwait relations.

Thank you very much.

[The prepared statement of Mr. Katzman follows:]

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Congressional Research Service

Statement of Kenneth Katzman
Specialist in Middle Eastern Affairs
Congressional Research Service

before

The Subcommittee on International Organizations, Human Rights, and Oversight of the House Foreign Affairs Committee

Hearing: "Unfinished Business: United Nations Chapter VII Mandates and the US-Iraq Bilateral Agreement."

September 17, 2009

Thank you, Mr. Chairman, and Mr. Rohrabacher, for asking me to appear at today's hearing, as well as for past invitations. I will be discussing the Iraqi political context of the ongoing implementation of the U.S.-Iraq Security Agreement ("the Security Agreement"), which took effect on January 1, 2009, including Iraqi and Kuwaiti views on the potential termination of remaining Chapter VII mandates on Iraq. I will summarize my comments and ask that the remainder of my statement be submitted for the record.

I would note that my responsibilities at CRS include analysis of U.S. policy toward Iraq, U.S.-Iraq relations, 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, international or U.S. law pertaining to U.S. forces in Iraq, or international law pertaining to U.N. Chapter VII mandates.

Overview of Iraqi Politics

In evaluating the implementation of the U.S.-Iraq Security Agreement, including the provisions committing the United States to support the lifting of remaining Chapter VII resolutions, it is useful to assess where Iraqi politics stand. Iraqi politics will almost certainly determine whether Iraq votes on an early termination of the Security Agreement, and, if so, how the population will vote. Iraqi and regional politics will likely also play a major role in determining whether the Chapter VII U.N. mandates that remain in force, almost two decades after Iraq's August 1990 invasion of Kuwait, will be closed out before all tasks stipulated in those U.N. Resolutions are completed.

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In general, Iraq's political system can be increasingly characterized by peaceful competition rather than violence. However, sectarianism and ethnic and factional infighting continue to simmer, and many Iraqi views and positions are colored by efforts to outflank, outmaneuver, and constrain rival factions. These tendencies will only grow in the run-up to the January 2010 elections.

Compounding the factional tensions is the perception that Prime Minister Nuri al-Maliki is in a strong position politically. This is a result of the strong showing of Maliki's "State of Law Coalition" list, dominated by his Da'wa (Islamic Call) Party in the January 31, 2009 provincial elections. His showing in those elections was, in turn, a product of his benefitting from an improved security situation, his position in favor of strong central government, and his March 2008 move against Shiite militias who were in virtual control of Basra and Umm Qasr port.[1] With 28 out of the 57 total seats, the Maliki slate won effective control of the Baghdad provincial council. His party also emerged very strong in most of the Shiite provinces of the south, including Basra, where it won an outright majority (20 out of 35 seats). Although Maliki's coalition was the clear winner in the provincial elections, the subsequent efforts to form provincial administrations demonstrated that he still needed to bargain with rival factions, including that of young Shiite cleric Moqtada Al Sadr, and even with some Sunni factions.

Possibly as a result of his strengthened position and his drive to ensure that he holds power after the January 16, 2010 national elections, Maliki is seen by rivals as increasingly authoritarian. Maliki is widely assessed, by U.S. and Iraqi experts, as attempting to gain control of the security services and to build new security organs loyal to him personally rather than to the security institutions. Some have accused him of purging security officials he perceives as insufficiently loyal or supportive.[2] He has also reportedly been using the security forces to politically intimidate his opponents. One politician in Diyala Province, for example, was arrested in May 2009 on orders from Maliki.[3] Iraq's 4,000 special operations forces do not report to the Defense Ministry or to the Interior Ministry; they are under the authority of Maliki's Office of the Commander-in-Chief. (Iraq's Prime Minister, not its President, is commander-in-chief of the armed forces.) Some of Maliki's opponents and critics say these political tactics mimic the steps taken by Saddam Hussein to centralize his rule.[4]

During the negotiations on the U.S.-Iraq Security Agreement during 2008, Maliki viewed the agreement as crucial to preserving his close relationship with the United States and, in his view, an implicit U.S. commitment to his political success. However, he also used the Security Agreement for his own political interests, to some extent. Contributing to a perception of Maliki as a strong leader was his insistence, during negotiations on the Agreement, on concessions from the United States. U.S. negotiators, wanting to protect U.S. forces while also demonstrating the Iraqi government to be sovereign and in control, agreed to these concessions and they are in the final document.

First and foremost was Maliki's demand that the agreement include a formal timetable for a U.S. withdrawal. The Bush Administration had long opposed some efforts in Congress to set a timetable for the U.S. withdrawal, but accepted that principle as the security situation in Iraq began to calm in late 2007/early 2008. President Obama, on February 27, 2009, outlined a U.S. troop draw-down plan that comports with the major drawdown timetable provisions of the Security Agreement – i.e., that U.S. forces would cease patrolling Iraqi cities by June 30, 2009, and that all U.S. forces would depart from Iraq by December 31, 2011.

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[1] In March 2008, Maliki sent Iraqi security forces against Shiite militias in "Operation Charge of the Knights."

[2] Allam, Hannah. "Maliki Accused of Purging Rivals Before Iraqi Election." *Philadelphia Inquirer*, September 9, 2009.

[3] Shadid, Anthony. "In Iraq, A Different Struggle for Power." *Washington Post*, June 25, 2009.

[4] CRS conversations with Kurdish representatives in Washington, D.C. September 2009.

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At the same time, demonstrating that to some extent Maliki might be beholden to or attentive to Iran's positions, Maliki insisted that the final draft include a provision that U.S. forces would not use facilities in Iraq to attack other countries. Including the provision helped Maliki obtain Iran's acquiescence to the Security Agreement; some U.S. officials said that Iran was attempting to influence Iraqi politicians not to approve the agreement at all.[5]

Since the agreement took effect, Maliki -- partly in an effort to portray himself as a strong leader who is willing to stand up even to the close ally, the United States -- has insisted on strict enforcement of these timelines. He has taken this insistence to the point where he refused U.S. advice to retain some U.S. combat forces in Mosul beyond the June 30, 2009 date, stipulated in the Agreement, for withdrawing U.S. combat troops from Iraq's cities.[6] U.S. military leaders had also reportedly urged the Iraqis to allow small numbers of U.S. forces to remain in locations in the restive "Sadr City" neighborhood of Baghdad, but that, too, was rebuffed. When the United States fully implemented that June 30, 2009 pullback, Maliki hailed this interim milestone as a "victory" and declared it a national holiday.

Maliki's Vulnerabilities as Opposition Gathers

On the other hand, Maliki's political position in Iraq is not unassailable, and it could be argued that he might "sink or swim" with changing perceptions of the security situation. His position could potentially weaken, even dramatically, if the security situation deteriorates as the United States draws its troops down in Iraq. The performance of the Iraqi Security Forces (ISF) will be crucial to his prospects. If the ISF is able to handle the security challenges they are assuming from the United States, Maliki might be able to retain his strong pre-eminence. If the ISF is unable to handle security, then Maliki's insistence on strict adherence to the Security Agreement's withdrawal timetables could end up as Maliki's political undoing. In that vein, the August 19, 2009 bombings in Baghdad that severely damaged two key ministries, which presumably are heavily guarded, and which killed about 100 Iraqis, were politically significant because they shook Maliki's confidence and demonstrated that perceptions of political strength can be tested unexpectedly. Iraq placed blame on members of Saddam Hussein's Baath Party, based in and harbored by Syria, and the bombings led to a diplomatic dispute between the two neighbors that resulted in their withdrawal of their ambassadors from each other's capitals.

Still, because Maliki remains politically strong for now, new coalitions are already forming possibly to try to unseat him as Prime Minister, or at least to weaken him politically. The major opportunity to do so is the January 16, 2010 national elections that are to determine Iraq's national leadership for the subsequent four years. In advance of that contest, Iraqi factions are negotiating alliances that might outflank Maliki. The major effort in this direction was the late August formation of the "Iraqi National Alliance" (INA) consisting of ISCI, the Sadrist movement, the Fadilah (Virtue)Party, allies of Ahmad Chalabi's Iraqi National Congress, and followers of former Prime Minister Ibrahim al-Jafari. Maliki's Da'wa did not join on the grounds that the organizers of the group, mainly ISCI, did not promise that the bloc would propose him as Prime Minister if it wins in January 2010. The bloc was announced three days before the death in Tehran of ISCI leader Abd al-Aziz al-Hakim, and it is unclear the degree to which his son and new ISCI leader Ammar al-Hakim, who is about 38 years old, was the architect of this bloc. Some reports say the organizer of the bloc was ISCI stalwart Humman al-Hammoudi, who is a cleric and probably would not be put forward as Prime Minister if this new faction is victorious.[7] However, many

[5] Londono, Ernesto. "Iran Interfering in U.S.-Iraq Security Pact, General Says." *Washington Post*, October 13, 2008.

[6] "Odierno: "U.S. Committed to June 30 Pullback." *Associated Press*, June 17, 2009.

[7] CRS conversation with Steven Lee Myers, New York Times reporter in Baghdad. August 29, 2009.

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observers believe that, if this new coalition were to prevail in the elections, the most likely choice for Prime Minister would be senior ISCI figure Adel Abd al-Mahdi, who currently serves as a deputy President.

Not all the groups in this bloc are critics of the U.S.-Iraq Security Agreement. Sadr, as is well known, was highly critical and his followers in the National Assembly all voted against it in the November 2008 parliamentary vote on the final pact. *Fadhila* Party members, which number about 15 in the National Assembly, boycotted the vote. However, ISCI has generally supported the U.S. presence in Iraq and supported the Agreement.

Some question why former Prime Minister Iyad al-Allawi, a witness on the second panel of this hearing, did not join the new alliance. He has been a Maliki critic and has even been mentioned over the past few years as a figure who was agitating to replace or oust Maliki. Observers speculate that his Iraq National Accord bloc did not join the new coalition because of Allawi's longstanding rivalry with Ahmad Chalabi to be pre-eminent anti-Saddam leader. Chalabi is purportedly a key organizer of the new bloc.

By all accounts, Maliki is well aware that his opponents are organizing against him. He is trying to put together a countervailing bloc that might include several Sunni factions. For example, he is reportedly in talks with tribal leaders in Anbar Province and other mainly Sunni provinces, linked to the "Awakening" tribal movement that expelled Al Qaeda in Iraq from these areas.[8] He also has purportedly had talks about alliance with one of the witnesses on the second panel, Saleh al-Mutlak, who heads the Iraq National Dialogue Front. Many of these Sunni factions at first opposed the U.S.-Iraq Security Agreement, perceiving it as a vehicle for U.S. combat troops to remain in Iraq to perform combat missions against Sunni insurgents. At the time, however, most Sunni blocs in the National Assembly voted for the Security Agreement because U.S. troops were perceived as protecting Sunnis from excessive security measures undertaken by Maliki and his Shiite allies – measures that were seen as intended to ensure Shiite dominance of the post-Saddam political structure.

Maliki's discussions with Sunni factions might not necessarily bear fruit. There are indications that the leader of the Accord Front, a large Sunni bloc, deputy President Tariq al-Hashimi, is attempting to put together a separate Sunni-based bloc. Many Sunnis resent Maliki for his refusal to fully integrate the "Sons of Iraq" (tribal fighters that allied with the United States against Al Qaeda in Iraq) into the ISF. Some of the 90,000 Sons of Iraq are resentful that only 5,000 have been integrated into the ISF (of 20,000 promised), and that the remainder have not yet been given the civilian government jobs they were promised.[9] Others complain that their payments have been delayed, which the government claims is due to cash shortfalls resulting from the sharp fall in oil prices in late 2008, although the June 2009 DoD "Measuring Stability" report says the payment process is now proceeding smoothly. (Iraq is expecting a budget deficit of about $16 billion in 2009.)

The infighting between Maliki and his critics has also had the effect of stalling movement on remaining crucial legislation. Such legislation includes national hydrocarbon laws that will set terms for foreign oil investment and a formula for sharing national oil revenues. Some note that efforts to rein in official corruption are failing because no comprehensive anti-corruption law has been passed. Also not adopted are laws on the environment, consumer protections, intellectual property rights, building codes, and a new national flag. The national hydrocarbon laws are stalled by the differences, discussed further below,

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[8] Dagher, Sam. "In Anbar Province, New Leadership, But Old Problems Persist." *New York Times*, September 13, 2009.

[9] Defense Department "Measuring Stability and Security in Iraq." June 2009.

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between the central government and the Kurds, in a political environment in which no Iraqi Arab leader wants to be seen as offering major concessions to the Kurds.

Maliki's outreach to Sunni Arabs to strengthen his position has created additional frictions between him and the Kurds. In particular, a hardline Sunni Arab faction called Al Hadba'a wrested control of the Nineveh provincial council from the Kurds in the January 2009 provincial elections. Nineveh contains numerous territories inhabited by Kurds and which have been a source of growing tension between the Kurdistan Regional Government (KRG) and the central government in Baghdad. Kurds and Arabs in the province narrowly avoided clashes in May 2009 and again in June 2009 when Kurdish security forces prevented the new governor of the province and other Iraqi Arab security officials from entering territory where Kurds live. Any new clashes between Arabs and Kurds in the north could undermine Maliki's image as a strong national leader, and could cause many Iraqis to question whether the December 2011 pullout deadline in the Security Agreement can be met.

Maliki is, according to some observers, also in talks with a Kurdish faction, called Change (Gorran), that won an unexpectedly high 25 seats (out of 111) in the Kurdistan national assembly in the July 25, 2009 Kurdistan Regional Government (KRG) elections. Gorran is a breakaway faction of the Patriotic Union of Kurdistan (PUK), and its strength embarrassed the PUK and weakened it relative to the KDP. The KRG President Masoud Barzani, leader of the KDP, easily won re-election against weak opposition. Gorran believes in lowering the level of confrontation with Baghdad and its allying with Maliki could allow Maliki to outflank the two established Kurdish parties in negotiations over the various KRG-Baghdad disputes.

In advance of the major legislative elections set for January 16, 2010, at which Maliki's position will directly be up for review, it is highly unlikely that Maliki will make concessions to the Kurds on territorial issues, particularly that of the status of Kirkuk. A U.N. Assistance Mission – Iraq (UNAMI) report circulated to Iraqi leaders in April 2009 reportedly recommended a form of joint Baghdad-Kurdish control of Kirkuk,[10] but this report has not to date jump-started substantive negotiations on an agreed settlement. This compounds the tension over control of the disputed areas of Nineveh Province, discussed above.

Major Security Issues

The Obama Administration is facing a security environment in Iraq vastly improved over that which prevailed during 2005-2007, although still not completely peaceful or without potential to deteriorate significantly. The security progress during 2008 and 2009 is almost universally attributed to the 2007 "troop surge" – an infusion of an additional 28,000 U.S. troops coupled with a more systematic counter-insurgency strategy. However, some also attribute the progress to internal Iraqi factors, such as popular Sunni Arab rejection of Al Qaeda in Iraq tactics. The surge has been credited with returning most cities to normal daily life and with reducing sectarian killings more than 90% from levels of the same time period in 2007. [11]

Based on the security progress, on February 27, 2009, President Obama outlined U.S. plans to draw down U.S. troops in accordance with his previously stated intentions and the U.S.-Iraq Security Agreement. According to President Obama's withdrawal plan, all U.S. combat troops are to depart by August 31, 2010, leaving a "residual presence" of about 35,000–50,000 primarily to train and advise the ISF and to

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[10] Defense Department "Measuring Stability and Security in Iraq." June 2009.

[11] DoD Measuring Stability report. June 2009.

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perform counter-terrorism missions against Al Qaeda in Iraq, the insurgent group composed mainly of foreign fighters. The U.S. forces would remain there until the end of 2011 at which time the Security Agreement requires all U.S. forces to be out of Iraq. As noted, U.S. forces met the interim step, in line with the Security Agreement, to pull combat troops out of cities by June 30, 2009.

Meeting this interim goal gave the Iraqi public the impression that the United States intends to scrupulously adhere to the agreement. In so doing, the United States undermines the arguments of the Sadrists and other factions that the United States intends to remain in Iraq despite the Security Agreement.

The subsequent drawdown is to be "back-loaded." At the time of the June 30, 2009 redeployment from the cities, the size of the U.S. military presence stood at about 130,000. General Odierno has said the force will be about 120,000 in Iraq by September 2009.[12] After that time, the remaining 70,000 + combat troops are to leave after the Iraqi national elections on January 30, 2010. Then, the "residual" force of trainers and mentors are to come out between August 2010 and December 2011.

However, there is wide speculation that the U.S. drawdown is increasing the fragility of the security situation. Particularly worrisome to some U.S. officials has been a recent rise in the frequency of major bombings – "high profile attacks" (HPAs). The Finance and Foreign Ministry attacks on August 19, which shook Baghdad, were mentioned above. Many additional recent attacks have been conducted in Nineveh Province, where Al Qaeda in Iraq is said to retain a substantial presence, in disputed Kirkuk, and in Baghdad. Some believe AQ-I is targeting Shiite civilians in Baghdad, possibly in an effort to reignite sectarian violence, although without success in achieving that objective. Others believe that the insurgency in Iraq never really went away, but has lain low to wait out the U.S. withdrawal. That theory will be tested as U.S. troops draw down from Iraq.

The top U.S. commander in Iraq, General Raymond Odierno, said on June 30, 2009 that the pace of subsequent draw-down could be altered in response to developments in Iraq but he did not indicate that U.S. forces would be added if security deteriorates.[13] Whether U.S. troops need to stay in Iraq beyond 2011 to prevent a major unraveling could be determined by the progress of the ISF. General Odierno stated, in interviews conducted in conjunction with the U.S. redeployment out of Iraqi cities, that the United States judges the ISF as likely to be able to handle its increasing security responsibilities as the United States draws down.[14] Some outside observers remain skeptical of the ISF's capabilities, however, and believe the force is vulnerable to fracture or defeat if left totally on its own.

The U.S.-Iraq Agreement and Residual U.N. Issues

Iraqi politics has heightened debate within Iraq over the U.S.-Iraq Security Agreement. As noted above, some factions opposed the Agreement when it was first approved by the Iraqi National Assembly. As part of a compromise to achieve Assembly passage of the Agreement, Maliki agreed to a parliamentary vote on the Agreement at a future time. The legislation approving the Agreement stipulated that there would be a national referendum on the Agreement by July 31, 2009.

With no Iraqi faction actively agitating for the referendum, the national vote was not held on July 31, 2009. However, on August 17, 2009, the Iraqi cabinet approved draft legislation to hold the referendum

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[12] Press conference by General Odierno from Baghdad. June 30, 2009. http://www.cfr.org/publication/19737/press_conference_with_gen_ray_odierno_on_unif_forces_in_iraq_june_2009.html

[13] Ibid.

[14] Ibid.

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concurrent with the national elections to be held on January 16, 2010. If that referendum is held, and the pact is voted down, U.S. troops would be required to complete a withdrawal by January 16, 2011, about one year earlier than now planned. At a House Foreign Affairs Committee hearing on September 10, 2009, U.S. Ambassador to Iraq Christopher Hill said he did not believe the National Assembly would act on the draft legislation on the grounds that there is a perception in Iraq that the United States is fulfilling its terms.[15] The National Assembly returned from its recess on September 9, 2009 but no action has been taken, to date, on the draft.

The Security Agreement gives Maliki several opportunities to burnish his Iraqi nationalist credentials and outflank his political opponents. By allowing a cabinet vote on Security Agreement referendum draft bill, he demonstrates to rivals that he is willing to take Iraqi views into account on the Agreement. At the same time, Maliki is attempting to hold the United States to its pledge, under the Agreement, to help Iraq regain its full sovereignty from Saddam-era Chapter VII Resolutions that still upset many Iraqis. Many Iraqis view the Chapter VII Resolutions as an intrusion and limitation on post-Saddam Iraqi sovereignty, and as holding the Iraqis subject to Saddam's transgressions. Because Iraqi Sunni Arabs were Saddam Hussein's base of support in Iraq, many Sunni Arabs in Iraq today perceive themselves as receiving "blame" from other Iraqis for placing Iraq under Chapter VII supervision originally and for the hardships Iraq still faces from the U.N. Security Council.

Maliki's July 2009 visit to the United States focused on closing U.N. issues left over from the Saddam era. The U.S.-Iraq Security Agreement replaced the Chapter VII U.N.-mandate for an international force to help secure Iraq, which expired as of December 31, 2008. However, the expiration of the mandate did not end all provisions of U.N. Security Council resolutions that have been in effect since Saddam Hussein's invasion of Kuwait in August 1990.

Article 25 of the Security Agreement commits the United States to "us[ing] its best efforts to help Iraq take the steps necessary to" return Iraq to the legal and international standing it enjoyed prior to that Iraqi invasion of Kuwait.[16] Almost all of these provisions were adopted under Chapter VII of the U.N. Charter, which refers to peace and security issues. Paragraph 5 of U.N. Security Council Resolution 1859 (December 22, 2008), which is discussed further below, provides for a review of all outstanding U.N. Security Council resolutions that stem from the Iraqi invasion of Kuwait in August 1990.

In debate over that Resolution released in U.N. transcripts, the United States supported that review. However, Kuwaiti leaders, in letters to the U.N. Secretary General, have insisted that unresolved issues remain open, whereas Iraq is pressing for an early closing of these issues even if not fully resolved. As discussed below, a key difference between the two involves whether to continue reparations to Kuwait from the 1990 Iraqi invasion – reparations that cost Iraq $660 million in 2009 (January – June 2009), according to a report of the Secretary General on Resolution 1859 ("The 1859 Report.").[17]

Iraq views this continuing reparations process as unnecessarily siphoning funds off from its oil revenues which could otherwise be used for economic development for its people. Kuwait argues it should be fully compensated for the effects of the Saddam invasion. However, many observers feel that Kuwait is fully reconstructed and remains wealthy, and should offer to end the reparations process in the interests of

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[15] Testimony of Ambassador Hill before the House Foreign Affairs Committee. September 10, 2009.

[16] Text of the "Strategic Framework Agreement for a Relationship of Friendship and Cooperation Between the United States of America and the Republic of Iraq."

[17] U.N. Security Council. Report of the Secretary General Pursuant to Paragraph 5 of Resolution 1859 (2008). July 27 2009. S/2009/385

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regional harmony and good relations with post-Saddam Iraq. The United States considers Kuwait a close ally, and remains dependent on Kuwait for facilities and logistical assistance as it withdraws from Iraq. However, the United States has sided with Iraq on this issue; after a meeting with visiting Prime Minister Maliki on July 22, 2009, President Obama said "It, I think, would be a mistake for Iraq to continue to be burdened by the sins of a deposed dictator."[18] The Amir of Kuwait, Shaykh Sabah al Ahmad al Jabir Al Sabah, visited the United States and met with President Obama on August 3, 2009, but did not directly criticize the U.S. position. The visit came a few weeks after the Maliki visit, but the official statements by President Obama and the Amir after the meeting made no mention of the Chapter VII issue. Still, observers said this was almost certainly discussed at the meeting and during the remainder of the Amir's U.S. visit.[19]

Specific Outstanding Issues

The following addresses the major outstanding issues of the Chapter VII mandates on Iraq, and discusses Iraqi and Kuwaiti and other views. Some of the information is derived from the July 27, 2009 "1859 Report," referenced above:

Sanctions Committee. Security Council Resolution 661 (August 6, 1990) established a U.N. Committee overseeing sanctions on Iraq, which at that time consisted of a comprehensive, worldwide embargo on Iraq. The Iraq "Sanctions Committee" was abolished in November 2003 by Security Council Resolution 1483 (May 22, 2003) – in concert with the lifting of the embargo and a return to normal trading relations with Iraq -- and was replaced by a new committee authorized by Resolution 1518 (November 24, 2003) limited in scope to identifying and ensure the freezing of Iraqi assets taken out of Iraq by Saddam and his political allies.

Disarmament and Weapons Inspections. U.N. Security Council Resolution 687 (April 3, 1991, four days after the end of hostilities in the Gulf War) demanded Iraq dismantle and "render harmless" its weapons of mass destruction (WMD) programs, and set up a United Nations-led inspections and dismantlement program. The U.N. inspection and disarmament program was formally terminated by U.N. Security Council Resolution 1762 of June 29, 2007 following an exhaustive U.S.-led post-Saddam search of Iraqi WMD. However, Resolution 687 and related Chapter VII resolutions still apply insofar as they require that Iraq adhere to all international conventions and treaties related to developing WMD, and continue to require Iraq halt all nuclear activities with certain exceptions (medical, agricultural purposes) and these restrictions continue to apply to the post-Saddam government. The "1859 Report" indicates Iraq's general compliance with these requirements, and mentions that Iraq's constitution commits Iraq to non production of nuclear, chemical, and biological weapons. [20]

No Iraqi leader is openly agitating for an abrogation of Iraq's pledges and the launching of any new WMD programs. However, the advance of Iran's nuclear program, coupled with the development of civilian nuclear programs in UAE and in other parts of the Middle East, could create pressure over time for Iraq to rethink this pledge.

Some of Iraq's Sunn Arab neighbors would view with alarm any Iraqi effort to do so. These governments, particularly Saudi Arabia, still have not fully accepted the fact that Iraq is now dominated

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[18] Iraq's War on Debt. Middle East Economic Digest, August 21-27, 2009.

[19] CRS conversations with observers in Kuwait and in the United States. August 2009.

[20] 1859 Report. pp.8-11.

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politically by Shiite Muslims. Saudi Arabia would likely view any Iraqi effort to rebuild WMD as a threat and as part of a looming alliance with Shiite Iran to overturn the existing Sunni-dominated power structure in the Arab world.

Iraq-Kuwait Observer Mission and Demilitarized Zone. Many of the provisions of Resolution 687 applied to Iraq and Kuwait. Resolution 687 set up a U.N. mission observing the Iraq-Kuwait border, and a related demilitarized zone in Iraq and Kuwait. The observer mission and demilitarized zone were terminated by Resolution 1490 of July 3, 2003.

Iraq-Kuwait Border. Resolution 687 directed the U.N. Secretary-General to demarcate the Iraq-Kuwait border. Resolutions 773 and 833 accepted U.N. demarcation of new land and sea borders, respectively. The new land border angered many Iraqis because it deprived Iraq of part of Umm Qasr port and a strip of the Rumaylah oil field, which straddles the border. Perhaps because of Iraq's upset at the new demarcation, there is a remaining dispute between Iraq and Kuwait over the costs of maintaining the pillars marking the border. Many Iraqis perceive a "double penalty," of not only having to cede some territory to Kuwait but also being asked to pay to help maintain the new border marking system.[21] The "1859 Report," referenced above, expresses optimism that "the Governments of Iraq and Kuwait should be in a position to establish an effective joint mechanism, such as a boundary commission, to carry out maintenance of the boundary bilaterally in the future.

Kuwaiti Detainees and Property. U.N. Security Council Resolution 686 and 687 required Iraq to return all property seized from Kuwait and to identify the fate of 605 Kuwaitis missing from the 1991 Gulf war. That process achieved only halting progress under Saddam and U.N. Security Council Resolution 1284 set up a U.N. coordinator to clear up these issues. A Russian diplomat, Yuli Vorontsov was appointed in 2000 as the coordinator but he was succeeded in April 2008 by another Russian diplomat, Gennady Tarasov. The remains of 236 Kuwaitis have been identified, and Kuwait's national archives have still not been located (although some Kuwaiti records were returned recently) but Iraq is pressing to end the coordinator's mission. The "1859 Report" (page 8) encourages Iraq to help determine the fate of the remaining Kuwaiti and other nationals but, in an apparent nod to Iraq's position, says that "... it is possible that not all remains and properties will be found and that the search will have to come to an end."

Compensation Payments. As noted above, this is the most sensitive of the outstanding issues to the Iraqis, because this issue directly detracts from the amount of financial resources for the government of Iraq. Resolution 687 set up a process to compensate victims of the Iraqi invasion -- individuals, governments, and corporations. The payments have been funded by mandated deductions from Iraqi oil revenues, paid into a U.N. Compensation Fund. The initial amount, set in 1991, was 30%, but this was reduced to 25% by Resolution 1284. That figure was reduced to 5% of Iraq's revenues by Resolution 1483 of May 22, 2003. Those deductions are ongoing, and Kuwait is still owed about $25 billion in accordance with U.N. Compensation awards made. Those awards are mostly from the damage done to Kuwait oil fields by the Iraqis as they retreated from Kuwait in 1991. Based on "1859 Report," cited above, the Iraqi revenues deducted during January – July 2009 amounted to about $660 million.

Iraqi leaders, in a December 7, 2008 letter to the U.N. Security Council, are pushing for a further reduction of the oil revenue deduction to pay compensation to 1%, from the current 5%, if not an outright end to the process. The Iraqi government argues that the payments represent a financial burden at a time that Iraq needs the funds to rebuild its infrastructure.

[21] CRS conversations with various Iraqi representatives in Washington, D.C. August – September 2009.

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Monitoring of Iraqi Funds. The continued international monitoring of Iraq's oil revenues represents, for many Iraqis, a sign of continued international limitations on Iraq's sovereignty. Maliki is pressing strongly for an end to this outside monitoring as part of his efforts to portray himself as an Iraqi nationalist.

Resolution 1483, referenced above, set up a "Development Fund for Iraq" (DFI) to receive the proceeds of Iraqi oil sales. During 1995-2003, those proceeds were being paid into the U.N. Escrow Account to fund a monitored "Oil for Food Program" that enabled Iraq to sell oil and purchase necessities provided to its people. The DFI, in accordance with Resolution 1483 and its successor resolutions, is audited by an International Advisory and Monitoring Board (IAMB). Iraqis oppose such monitoring as an infringement on its sovereignty and U.N. Security Council Resolution 1859 (December 22, 2008) extends the IAMB authority only until December 31, 2009. In April 2009, the IAMB stated that Iraqi auditing bodies are "ready and capable to succeed the IAMB and conduct competent and independent oversight of the DFI." However, the IAMB warned that Iraq still lacks oil production metering equipment necessary for precise control of inventory and accounting. The "1859 Report," cited above, says that, at the end of 2009, the Security Council is likely to discuss whether to cede this oversight function to an Iraqi body called the "Iraqi Committee of Financial Experts."

U.N. Assistance Mission – Iraq. Several U.N. resolutions assign a role for the United Nations in post-Saddam reconstruction and governance. Resolution 1483 (cited above) provided for a U.N. special representative to Iraq, and "called on" governments to contribute forces for stabilization. Resolution 1500 (August 14, 2003) established U.N. Assistance Mission for Iraq (UNAMI), the mandate of which has been regularly extended since. Iraqi leaders do not criticize UNAMI's humanitarian coordinating and other work, per se. However, UNAMI represents the continuing U.N. role in Iraq and many of the nationalistic Iraqi factions believe that Iraq can and should manage all of its own affairs without U.N. interference.

Human Rights Issues. U.N. Security Council Resolution 688, of April 5, 1991, demanded Iraq end the repression of its own people. Iraq now has a different regime than the one addressed by this Resolution, and it is not clear whether this Resolution still applies. The Resolution was not enacted under Chapter VII of the U.N. charter and therefore, even if it still applies and even if Iraq were deemed in violation, it is not clear that any international penalties would necessarily be imposed.

Still, Maliki and his allies assert that Iraq is meeting its international obligations, including on human rights, and that there is no need for specific international scrutiny of Iraq on this issue. State Department reports on international human rights practices, issued each year, note numerous human rights abuses in Iraq but generally attribute these to the general security difficulties and problems enforcing rule of law, rather than deliberate abuses by the government. However, Maliki's political opponents might argue that the Resolution still applies and these opponents could use any violations to discredit Maliki and his government.

Thank you for your time and attention and I look forward to your questions.

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Mr. DELAHUNT. Well, thank you.
Steve Rademaker. Steve?

STATEMENT OF STEPHEN G. RADEMAKER, ESQ., SENIOR COUNSEL, BGR GROUP (FORMER ASSISTANT SECRETARY OF STATE FOR INTERNATIONAL SECURITY AND NONPROLIFERATION)

Mr. RADEMAKER. Mr. Chairman, Congressman Rohrabacher, members of the subcommittee, it is a great pleasure for me to testify today before you on the continued application to Iraq of United Nations mandates imposed pursuant to Chapter VII of the U.N. charter.

I did want to note at the outset for the record that I am a registered lobbyist for the Kurdistan Regional Government of Iraq. I believe, however, that I was not invited to appear here today as a spokesman for the Kurdistan Regional Government, but rather in my personal capacity, so anything that I say today will represent my own personal views and not necessarily those of the Kurdistan Regional Government or anyone else.

As you know, I was a late addition to this panel, and therefore I have not studied this issue to the same degree as my distinguished co-panelists. I do, however, share the view that, as a general proposition, the struggling democracy that is today's Iraq should, to the maximum extent possible, be treated as a normal, sovereign nation.

Restrictions that were imposed by the international community on Saddam Hussein's regime need to be reassessed in the vastly improved situation that prevails today. I therefore support the Bush administration's undertaking in Article 25 of the U.S.-Iraq Security Agreement to use its best efforts to help Iraq take the steps necessary to regain its previous international legal standing.

I believe that the main contribution I can make to today's hearing is to share with the members of the subcommittee my own experience as an official of the Bush administration in seeking to free Iraq from one of the Chapter VII mandates that remained in place even after the removal of Saddam Hussein.

From 2005 to 2006, I represented the United States as a member of the College of Commissioners of the United Nations Monitoring, Verification and Inspection Commission, which was known as UNMOVIC. This Commission was established in 1999 as the successor to a similar U.N. entity, the United Nations Special Commission, or UNSCOM, that was established by the Security Council upon the conclusion of the first Persian Gulf War in 1991. Both entities were charged, along with the International Atomic Energy Agency, with inspecting and dismantling Iraq's weapons of mass destruction and long range missile programs.

I think the key point to bear in mind is that UNMOVIC was financed using Iraqi funds, funds which were held in the U.N. maintained Oil for Food Program account. This meant that UNMOVIC operated at no cost to the United Nations and therefore there was no natural constraint on the size of its budget or staff. During my time as an UNMOVIC Commissioner, the organization's budget was in excess of $10 million per year, which was substantially less

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than in previous years, but still a lot of money for an organization that had no real work left to do.

Shortly after I was appointed as a Commissioner for UNMOVIC I came to the conclusion that UNMOVIC was no longer necessary and should be abolished, and I spent the remainder of my time on the College of Commissioners seeking to build a consensus in favor of eliminating the organization. I have to tell you, though, that this proved to be very challenging, and I quickly discovered that there were a number of competing agendas at work, and because no country other than Iraq was paying for UNMOVIC, there was almost no pressure to restrain those agendas.

One such agenda was that of the management and staff of UNMOVIC. To be blunt, this was a collection of people who had very good paying jobs that they wanted to keep, and as a result they spent a great deal of time coming up with rationales for preserving the existence of the organization. They were very good at identifying unfinished tasks that they proposed to finish, both inside of Iraq and outside of Iraq.

They also were very quick to propose new missions for the organization, missions in most cases completely unrelated to Iraq. At various times they proposed that UNMOVIC could become a U.N. inspections mechanism for Iran. They proposed that it could become a standby weapons of mass destruction inspection mechanism attached to the U.N. Secretariat to be deployed on short notice anywhere in the world where it might be needed.

At one point they suggested that they should become an inspections mechanism for the Biological Weapons Convention. At another point they suggested that they could take over responsibility for running Iraq's export control system, which was something that Iraq and all countries were required under U.N. Resolution 1540 to establish.

I suppose it is not surprising that the employees of the organization would have as an agenda preserving their jobs, but I was surprised to discover that there was a lot of sympathy for this among some of my fellow Commissioners. The rationale or the explanation that my fellow Commissioners would provide varied. In the case of a number of the Commissioners from less developed countries, I think the bottom line was that they were eager to ensure the nationals from their countries who had jobs at UNMOVIC were able to keep their jobs. It was that simple.

Beyond this, there were Commissioners from a number of G8 countries—in other words, large industrialized countries, allies of the United States—who were ideologically committed to the idea that the United Nations should have some sort of weapons of mass destruction inspections capability.

And since UNMOVIC afforded that capability, they were reflectively attached to the notion that UNMOVIC should be kept in business and used in the future however it might be convenient for the U.N. Frankly, for them the rationale made no difference. They just favored the preservation of UNMOVIC even if in the near term it had nothing to do.

Then there was Russia. Russia had a very different agenda. It was determined, as best I would tell, to use UNMOVIC to underscore that the Bush administration had invaded Iraq on the basis

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of faulty intelligence about Iraqi weapons of mass destructions programs, so Russia took the position that it could only agree to abolish UNMOVIC if the organization were given about a year to write a final report on Iraq's weapons of mass destruction programs.

And in their conception, this report was to be essentially a U.N. review of the so-called Duelfer Report, which was a U.S. Government-sponsored report on Iraqi weapons of mass destruction, and the Russians insisted that the UNMOVIC inspectors be given access to all the information that the Duelfer Commission had had access to as they prepared their review of the Duelfer Report.

To me it was remarkable that none of these agendas had anything to do with the best interests of the Iraqi people, and very few of the agendas had any serious relationship to UNMOVIC's original mandate, which was to identify and dismantle weapons of mass destruction programs in Iraq. I was not able during my time as a Commissioner to make much headway against these agendas.

Fortunately, after I left the College, after I left the State Department, I was succeeded by two very able public servants, Frank Record and then Robert Witajewski, both of whom shared my commitment to abolishing UNMOVIC. Mr. Record should be well known to many in this room because, like me, he spent much of his career on the professional staff of this committee. Mr. Witajewski is a now retired career Foreign Service Officer who distinguished himself in this and many other endeavors over a period of more than two decades at the State Department.

Messrs. Record and Witajewski continued to pursue the abolition of UNMOVIC during their service on the College of Commissioners, and with the passage of time they encountered less resistance to the idea. The United Kingdom and France eventually joined them in providing leadership on this issue, and eventually even Russia came around.

Once consensus was achieved among the P5 members of the U.N. Security Council it became possible for the Security Council to act to abolish UNMOVIC, and that finally happened in June 2007 with the adoption of Security Council Resolution 1762.

The main lesson I would draw from this experience for the remaining Chapter VII mandates that we are discussing today is that we need to look or we need to expect institutional resistance to change in these mandates, and we should look skeptically at rationalizations that may be offered for continuing to treat Iraq differently than other countries.

With that, Mr. Chairman, I will conclude my remarks, and I stand prepared to respond to any questions you or the other members may have. Thank you.

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STATEMENT OF STEPHEN G. RADEMAKER
Senior Counsel, BGR Group

"United Nations Chapter VII Mandates and the U.S.-Iraq Bilateral Agreement"

Subcommittee on International Organizations, Human Rights, and Oversight
Committee on Foreign Affairs
U.S. House of Representatives

September 17, 2009

Mr. Chairman, Congressman Rohrabacher, Members of the Subcommittee, it is a great pleasure for me to appear before you to testify on the continued application to Iraq of United Nations mandates imposed pursuant to Chapter VII of the United Nations Charter.

As you know, I was a late addition to this panel and therefore I have not been able to study this issue to the same degree as my distinguished co-panelists. I do, however, share the view that, as a general proposition, the struggling democracy that is today's Iraq should, to the maximum extent possible, be treated as a normal, sovereign nation. Restrictions that were imposed by the international community on Saddam Hussein's regime need to be reassessed in the vastly improved situation that prevails today. I therefore support the Bush Administration's undertaking in Article 25 of the U.S.-Iraq Security Agreement to "use its best efforts to help Iraq take the steps necessary" to regain its previous international legal standing.

I recognize that there are some very delicate issues, such as the degree to which the United Nations should remain involved in ensuring that Iraq fully compensates Kuwait for the damages inflicted by Saddam Hussein's 1990 invasion of Kuwait. This is an issue that ultimately should be worked out to the satisfaction of both governments, taking account of the need for justice and the importance to both countries of consolidating democracy in Iraq. Hopefully the U.S. Government can act as a facilitator to help both countries find common ground.

I believe the main contribution I can make to today's hearing is to share with the Subcommittee my experience as an official of the Bush Administration in seeking to free Iraq from one of the Chapter VII mandates that remained in place even after the removal of Saddam Hussein.

From 2005 to 2006, I represented the United States as a member of the College of Commissioners of the United Nations Monitoring, Verification, and Inspection Commission (UNMOVIC). This Commission was established in 1999 as the successor to a similar U.N. entity, the United Nations Special Commission (UNSCOM) that was established by the Security Council upon the conclusion of the first Persian Gulf War in 1991. Both entities were charged,

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along with the International Atomic Energy Agency (IAEA), with inspecting and dismantling Iraq's weapons of mass destruction (WMD) and long-range missile programs.

UNMOVIC was financed using Iraqi funds in the U.N.-maintained oil-for-food account. This meant that UNMOVIC operated at no cost to the United Nations, and therefore there was no natural constraint on the size of its budget or staff. During my time as an UNMOVIC Commissioner, the organization's budget was in excess of $10 million per year, which was substantially less than in previous years, but still a lot for an organization that had no real work left to do.

Shortly after I was appointed by U.N. Secretary-General Kofi Annan as a Commissioner, I came to the conclusion that UNMOVIC was no longer necessary and should be abolished. During the remainder of my time as a member of the College, I sought to build a consensus for eliminating the organization. This proved to be very challenging. I quickly discovered that there were a number of competing agendas at work, and because no country but Iraq was paying for UNMOVIC, there was almost no pressure to restrain these agendas.

One such agenda was that of the management and staff of UNMOVIC. To be blunt, they had good-paying jobs that they wanted to keep. As a result, they were forever finding unfinished tasks for the organization to complete, both inside and outside of Iraq. They were also very creative about proposing new missions for UNMOVIC. At various times they proposed that it could become a U.N. inspections mechanism for Iran; that it could become a standby WMD inspections mechanism attached to the U.N. Secretariat, available for deployment anywhere in the world when needed; that it could become an inspections mechanism for the Biological Weapons Convention; and that it could take over responsibility for administering Iraq's export control system, something that Iraq (and all other countries) were required to establish under U.N. Security Council Resolution 1540.

Surprisingly, I discovered that there was much sympathy for this view among some of my fellow Commissioners. Many Commissioners from less-developed countries, for example, were eager to ensure that nationals from their countries that were then employed by UNMOVIC remained employed.

Beyond this, I found that Commissioners from several G-8 countries were ideologically committed to the concept of a U.N. inspections capability for weapons of mass destruction, and therefore reflexively committed to preserving the organization. For these Commissioners the rationale made no difference; they seemed favored the preservation of UNMOVIC even if it had absolutely nothing to do.

Russia had a different agenda. It was determined to use UNMOVIC to underscore that the Bush Administration had invaded Iraq on the basis of faulty intelligence about Iraqi WMD programs. Therefore Russia took the position that it could only support abolishing UNMOVIC if the organization were given roughly a year to write a final report. In Russia's conception, this

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report essentially was to be a review by UNMOVIC of the Duelfer Report prepared by U.S. Government experts, in which UNMOVIC's experts were to be given unfettered access to all of the information that the U.S. Government experts had considered in preparing the Duelfer Report.

None of these other agendas had the best interest of the Iraqi people at heart. Nor did they bear any serious relationship to UNMOVIC's original mandate of identifying and dismantling WMD programs in Iraq.

I was unable during my time as a Commissioner to make much headway against these agendas. Fortunately, after I left the College I was succeeded by two very able public servants, Frank Record, and then Robert Witajewski, both of whom shared my commitment to abolishing UNMOVIC. Mr. Record should be well-known to many in this room because, like me, he spent much of his career on the professional staff of this Committee. Mr. Witajewski is a now-retired career Foreign Service officer who distinguished himself in this and many other positions over a period of more than two decades.

Messrs. Record and Witajewski continued to pursue the abolition of UNMOVIC during their service on the College of Commissioners, and with the passage of time, encountered less resistance to the idea. The United Kingdom and France joined them in providing leadership on this issue, and eventually even Russia came around. Once consensus was achieved within the P-5, it became possible for the Security Council to act. Finally in June of 2007, with the adoption of U.N. Security Council Resolution 1762, UNMOVIC was abolished. I am pleased to say that the Iraqi money that other countries were happy to spend unnecessarily to finance UNMOVIC even after its mission was accomplished is no longer being squandered.

The main lesson I would draw from this experience for the remaining Chapter VII mandates on Iraq is that we need to expect institutional resistance to change, and must look skeptically at rationalizations for continuing to treat Iraq differently than other countries.

Mr. Chairman, I would be pleased to respond to any questions.

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Mr. DELAHUNT. Thank you, Mr. Rademaker.

I also want to note the presence of our colleague from Minnesota, Keith Ellison, an individual with great interest in issues involving the Middle East and obviously clearly what is transpiring in Iraq.

I want to thank you, Mr. Matheson, for really enumerating what are the outstanding issues, the outstanding items, if you will, that still fall under the Chapter VII mandate. From your vantage point—and this is to everybody on the panel. Let me begin with you. What kind of progress is being made in terms of the discussions and the negotiations that are going on? Would you give it a satisfactory?

Obviously we are going to have an opportunity to hear from two distinguished parliamentarians from Iraq, but in terms of the process itself what is the current status? What are the most difficult issues, the most thorny issues, and is there a timeframe which is reasonable to assume that most of particularly the more difficult issues can be resolved?

Mr. MATHESON. Well, I think it varies depending upon which area you are talking about. There are some areas in which the outstanding issues seem to be technical in question—for example, in the accounting for deposits into this development fund and the Iraqi accounting controls and so on—which hopefully might be resolved simply by a greater, more concentrated effort by Iraqis and others to resolve the technical questions.

Some involve more substantial interests; for example, the compensation question issue, which obviously is a question of whether the burden of these unpaid claims will lay upon the new Iraq regime or will be borne by Kuwait. They are hopeful Iraq and Kuwait could negotiate a resolution of that, but obviously that involves some serious substantive interests on both sides.

Mr. DELAHUNT. Are those discussions ongoing?

Mr. MATHESON. Well, the Secretary General's report suggests that there have been discussions and it expresses some kind of very guarded optimism about the possibilities, but I don't know whether to endorse that.

Mr. DELAHUNT. Ken Katzman, do you have knowledge of the discussions and how they are proceeding?

Mr. KATZMAN. Well, the report that is referenced, there is a tantalizing statement in that report about a possible compromise under which Iraq would not any longer be paying compensation, but the monies—instead of being compensation, it would be an Iraqi investment in Kuwait instead of paying money into this reparations fund.

The same money would go, but it would be an investment that Iraq could eventually earn a profit on, and Iraq would still have equity.

Mr. DELAHUNT. Again, and I know negotiations obviously are not necessarily transparent, nor should they be, but is anyone on the panel aware of the American or the U.S. involvement in terms of encouraging those negotiations?

Mr. KATZMAN. Well, I would just add the Emir of Kuwait was here a few weeks ago, and this wasn't reflected in the official communiqué. It was a very brief communiqué after his meeting

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with President Obama, but in my discussions around town clearly this was discussed.

Some compromises along these lines of investment, reducing the compensation amount, the percentage. These are all under active discussion is my understanding.

Mr. DELAHUNT. Well, I think we can welcome that discussions are going on and there appears to be significant or some American involvement because clearly according to the bilateral agreement we do have that obligation to assist Iraq and help the parties reach an agreement.

I would like to go for a moment to the referendum issue, and clearly it would appear whether there is a referendum has not been decided by the Council of Representatives. And I think it was you, Dr. Katzman, who indicated that that probably will not be decided until things sort out politically in terms of the forthcoming election.

Would the referendum and the elections in January be held simultaneously?

Mr. KATZMAN. That is what the Iraqi Cabinet has decided. Now it is for the Parliament to decide whether to endorse that or not have a referendum at all or have it some different time.

Mr. DELAHUNT. I think what is fascinating is I hear you describe the shifting alliances. It is beginning to sound like a democracy, particularly when coalitions that are nonsectarian-based are coming together for obviously their own self-interest, but I daresay that that is a much more preferable situation and something that might be familiar here in this particular institution as well.

As I said earlier in my own remarks, and let me just throw this at you. I think it is really important for the United States not only to assist in terms of meeting its obligations under the bilateral agreement, but to continue to stay engaged. I think it is clear that the elections that will be held in January are of critical importance in terms of what occurs not only in Iraq subsequently, but in the entire region.

Let me pose to all of you, and this is not directly on issue, but the possibility of the United Nations with American support, with United States support, a substantial monitoring presence and effort in terms of those elections to reassure the Iraqi people of the integrity of the electoral process.

Clearly what has occurred in Afghanistan is profoundly disturbing and is potentially destabilizing in Afghanistan. I had a conversation in fact yesterday—he is not here now—with our colleague and friend from Indiana, Mr. Burton, and I haven't had a chance yet to talk to Mr. Rohrabacher, about the United States and this Congress pressing the administration and the United States to provide for a substantial presence to provide for security in terms of the electoral process as it develops and hopefully culminates in a free and fair and fully engaged citizenry going to the polls in January.

You know, I think that is something that we should do. I have discussed with Mr. Burton, and I will obviously with Mr. Rohrabacher, sending a letter to the administration to that effect and conveying to the appropriate United Nations officials how significant that is. Care to comment, Ken Katzman?

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Mr. KATZMAN. I would just comment that General Odierno's draw down plan envisions—well, President Obama's plan is to draw down to approximately 50,000 United States forces by August next year. There are right now approximately 120,000 United States forces in Iraq.

The current understanding is the U.S. will stay roughly at that level until the election, so there will be about 120,000 U.S. forces——

Mr. DELAHUNT. What do you think about deploying them——

Mr. KATZMAN [continuing]. And withdraw the 70,000 right after the election.

Mr. DELAHUNT. What about deploying those forces to ensure the security of polling places and hopefully enhancing, if you will, the confidence of the Iraqi people in the integrity of those elections?

Mr. KATZMAN. Yes. The U.S. military I don't believe is——

Mr. DELAHUNT. I don't believe we have that authority under the bilateral agreement.

Mr. KATZMAN. The agreement. Well, in previous elections the Iraqis were in the front line on security for elections with the United States available if there were a problem.

Under the United States-Iraq pact there is not an exception for the elections for the United States to redeploy into the Iraqi cities, so I suspect it will be roughly the same where the United States is sort of over the horizon, but available if a problem occurs.

Mr. DELAHUNT. But again I think my own sense is that there is so much riding on these particular elections, at least from my perspective, particularly given what we observed occurring in Afghanistan where the election results are very much in doubt.

Maybe pressing both our own administration, as well as the Maliki government, to ensure that there is a more fully engaged and visible presence of American military in a backup role obviously respecting the sovereignty of Iraq because what I see occurring is if there is not an election that has the confidence of the Iraqi people there is the potential for deterioration in terms of what clearly is a very fragile situation.

While elections certainly are not the essence, if you will, of democracy, you have to have them to get to the point where you have institutions that are viable and mature. Any comment?

[No response.]

Mr. DELAHUNT. None? Seeing that, I am going to recognize my friend from California.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman, and again thank you for calling this hearing.

Again, let me note that you were one of the first Members of Congress to focus on these types of agreements, the Status of Forces Agreement, and to draw the attention of the Congress to the importance of what was being done, those treaties and agreements that were being made during the last administration.

I also congratulate our panel. I thought Mr. Matheson gave us a very good understanding of the outstanding issues and Mr. Katzman, of course, gave us what he always does when he testifies, a very I would say detailed account of where we stand at the moment and how the political issues stand in Iraq and how they affect these outstanding issues.

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Of course, Mr. Rademaker, let me just note that your testimony was very enlightening because it gives us an insight into some of the unseen challenges that we must overcome in order to solve and to deal with the outstanding issues, so all in all this panel really was a top notch panel. Thank you all for participating.

A couple of specific questions and points. Let me just note in terms of the Iraqi debt to Kuwait, which seems to be one of these outstanding issues. I think that when we confront the issue we must understand that Kuwait was a country that was destroyed—destroyed—by the invasion of Iraq. The Iraqi invasion of Kuwait caused the equivalent of millions of lives lost in the United States.

If we would have an analogous situation to our population size and what happened in Kuwait, it would have been the equivalent of the killing of millions of Americans and the destruction of all of our major assets, not to mention all the buildings that were gutted, the treasure that was looted. It would be the equivalent of hundreds of thousands of POWs that would have been taken from the United States and murdered while in captivity.

I think there is a totally legitimate debt that is owed to the people of Kuwait, and we should not in our efforts to try to just close the loop and bring an end to loose ends and to tie everything together and then move on. We must not do that at the expense of a very honest and legitimate debt that is owed to the people of Kuwait. They suffered tremendously and needlessly. We have visited, those of us who visited that, and saw the destruction. We are talking about wealth and part of a compensation.

Let us just put it this way. When the Iraqi troops withdrew the destruction of the amount of oil that was burned and destroyed and infrastructure that was destroyed was just an overwhelming percentage of their national economy, so let us not discount that.

I don't know. Perhaps maybe the solution lies not in having the Iraqis now in vest in projects in Kuwait from which the Iraqis would eventually profit. Maybe the opposite should be looked at.

Maybe we should look at a situation where the Kuwaitis agree that the money that they are being repaid could be spent in Iraq, and then the compensation, then the profit eventually would go to the Kuwaitis while at the same time building Iraqi infrastructure. Maybe that is the solution rather than just suggesting that we in some way diminish the amount of compensation the Kuwaiti people will receive for what they suffered.

I think it is philosophical, and let me just ask the panel. This is not a very detailed philosophical analysis here. When we look at a debt like this we have a people, Iraq. The people of Iraq were not in control of their government. This was not a democratic government that planned this invasion.

How much morally and legally do the people of one country have when they are controlled by a dictatorship that commits them to certain actions that end up causing this type of destruction? Is that a moral obligation and a legal obligation of one people to repay what their dictatorship has brought upon them, even though if it had been a democracy at the time Iraq probably would not have invaded Kuwait?

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Mr. MATHESON. Well, I think the legal answer is straightforward. Yes, Iraq is still liable for those amounts of damage, particularly since the Security Council under Chapter VII ruled it so.

But that doesn't answer all your questions. Obviously both sides have equities here. The new Iraqi Government and the Iraqi people have a certain legitimacy in saying why should we be held responsible for Saddam's sins. On the other hand, as you point out, the Kuwaiti people were not responsible for that either, so should they bear the burden?

In the long run, I think probably there is a need for some kind of pragmatic solution for this. As a matter of fact, if the current situation goes on it would take 15 or 20 years for these amounts to be repaid in any event. So Kuwait has an interest in a long-term satisfactory relationship with Iraq. So does Iraq with Kuwait. So logically there should be some kind of a mutual accommodation.

What you just suggested, as I understand it, is a specific thing which has been under consideration and that might be reasonable, but we are talking about $24 billion, which even today is not a small amount, so obviously this is a matter that has to be negotiated out with some kind of mutual understanding and pragmatic attitude.

Mr. KATZMAN. Just briefly, I think one of the considerations that some of the international partners are looking at is some Iraqis are getting resentful of the compensation process, and this goes back even to Saddam's invasion of Kuwait. There is a lot of resentment between Iraq and Kuwait.

A lot of Iraqis view Kuwait as wealthy and sort of getting very wealthy without a lot of work, needing to work hard, and there is this resentment. I think what some international partners want to try to do is avoid a situation where the Iraqis feel they are sort of continuing to get a bill for Kuwait's wealth.

Mr. ROHRABACHER. Well, let us note this. That is a good point, and that is a good understanding of the sentiments in Iraq toward this, but let us note the rebuilding of Kuwait was not an easy matter.

The Kuwaitis, their country was devastated and destroyed. Rebuilding that infrastructure took an enormous amount of effort and money to rebuild in Kuwait. Now, they are rich now because they went through that process.

I could understand where people would just look at the situation as it is now, but let us not forget that struggle of rebuilding that country. That would be the equivalent of people who would come into our major cities and destroy all of our major cities, et cetera.

Mr. Rademaker, your thoughts on that point?

Mr. RADEMAKER. Yes. Thank you, Mr. Rohrabacher. Just a few thoughts.

I agree with what my co-panelists have said. I think there is no question under international law about the responsibility of Iraq for the damage that was inflicted on the Government and people of Kuwait. I think there may be a question, though, that should be asked about the timing for payment of that debt.

I think we should all be mindful, and I think the Kuwaitis should be mindful, of what may be an analogy earlier in the last century. You know, the historical judgment is that one of the prime

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contributors to Hitler's rise to power in Germany was the insistence of France in particular on the repayment of onerous war reparations that basically crippled the German economy and created a situation where someone like Adolf Hitler could come to power. I don't think it would be in Kuwait's interest or anyone else's interest for the payment of these reparations to be so onerous that a similar situation might be created in Iraq.

Let me point out a further analogy involving Germany, which is that to this very day 60 years—more than 60 years—after the end of World War II Germany is still paying reparations to the state of Israel basically because of Nazi Germany's treatment of the Jewish people. Again, it is similar to Saddam Hussein in the sense that it was not exactly a democratic decision in Germany to launch the Holocaust—it was a decision made by a dictatorship—but now, 60 years later, Germany is still in the business of paying reparations.

Let me just make one further comment, a personal reaction I have to this whole issue, though, and that is to point out that to the extent it is claimed that this is an issue of Iraq's ability to develop itself, a constraint on the resources available to the Iraqi Government, and a complaint that in the past year they lost $600 million that was basically revenue from oil exports that otherwise would have been available to them to develop their economy, yes, they lost $600 million.

On the other hand, they lost billions—probably tens of billions—of dollars in oil revenue that they would have generated had they taken some pretty obvious steps to get their house in order, to attract foreign investment into their oil industry.

You know, to the extent there is a complaint that Iraq needs more money and shouldn't have to pay these reparations, there are some things they could do such as passing an oil law to make it possible for them to generate a lot more money than they are losing in making reparations.

Mr. ROHRABACHER. Thank you for that point, and let us note that as we analyze what is not only moral, but practical—legal, moral and practical—in terms of how to go about analyzing what we do with the debt and the policies, the economic policies there, let us note that I believe it is 3 trillion barrels of oil in reserve in Iraq.

Three trillion. I think that is the figure. Mr. Katzman, is that what I have heard?

Mr. KATZMAN. I have to check, sir.

Mr. ROHRABACHER. It is not near that?

Mr. KATZMAN. That is high.

Mr. ROHRABACHER. That is high? That was in testimony that was given to us I think in the full committee. Was it here or was it the full committee? I remember that testimony at 3 trillion.

Let us say it is 2 trillion barrels worth of oil. Whatever their reserves are, it is overwhelming. It is huge. It is one of the countries with a small population that has one of the biggest oil reserves in the world, whatever exactly what it is.

So let us note that I think Iraq has the second largest oil reserves in the world, whatever that number is, and that is trillions of dollars one way or the other. So we need to keep that in mind, and I think the point Mr. Rademaker makes is that, yes, even

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though some of the timing of repaying some of these debts or dealing with the outstanding issues that are left might be costly, this is a society if they do what is right they will be able to meet that challenge.

One last area, Mr. Chairman, of questions I would like to ask Mr. Rademaker about that, and maybe the panel could come in as well. Where does it stand? Where do we stand? We know Mr. Rademaker is representing the Kurdish Regional Government, so let us put that in perspective.

I personally believe that the Kurds have demonstrated a certain friendship toward the United States that has not been demonstrated by other people in Iraq, and we have repaid that friendship and loyalty while our troops were there by not having a consulate. We don't even have a consulate in Erbil, in the Kurdish regional area, when 12 other countries do.

What do you see, and then I will ask the panel what they see, as the leftover situation that we have to deal with and will it be dealt with in terms of allowing the Kurds to be able to understand that they will have some modicum of security once our troops leave?

If you could just have a couple minutes on each one. I don't want to prolong it here.

Mr. RADEMAKER. I think, Mr. Rohrabacher, you were initially directing that question to me, and let me just respond briefly because I think Mr. Katzman probably can give us the most authoritative blow-by-blow description of the situation, but I do think there is general recognition that one of the biggest challenges facing the United States during its remaining time in Iraq is to prevent conflict between the Kurdish people in Northern Iraq and the rest of the country.

General Odierno and the other U.S. commanders are very much focused on that problem. That is at the security level. I think there are also things at the diplomatic level that Ambassador Hill is committed to trying to work on in order to improve that relationship and hopefully lay the ground for peaceful, stable relations within Iraq after the——

Mr. ROHRABACHER. A one word answer. Are you optimistic or pessimistic that we are going to be able to come to a situation where that challenge is met?

Mr. RADEMAKER. I think the jury is still out, and I guess I am concerned.

Mr. ROHRABACHER. Okay. Mr. Matheson?

Mr. MATHESON. I would defer to Mr. Katzman.

Mr. ROHRABACHER. Mr. Katzman?

Mr. KATZMAN. I would say the evidence would suggest pessimism on this issue.

Now, the United Nations assistance mission in Iraq circulated in July a compromise plan on how to resolve the main issue is the territorial issue. The Kurds believe there are certain sections of Northern Iraq that are under the Central Government that should be part of their Kurdish Regional Government, and this has been the core of the dispute.

The U.N. is trying to have a compromise. They have circulated a plan. The various parties have said they will use it as a base to

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start from, but it really has not jump started any real serious compromise.

Mr. ROHRABACHER. So we need to change something in the status quo in order to have a more optimistic assessment that we have a chance to succeed here, so we need some changes in the reality area.

Thank you very much, Mr. Chairman. Thank you to the panel.

Mr. DELAHUNT. Thank you, Mr. Rohrabacher.

Let me go to the distinguished gentleman from Indiana, the ranking member, senior Republican on the committee dealing with the Middle East.

Mr. BURTON. Mr. Chairman, thank you for allowing me to sit in here. I appreciate that.

I think the only questions that I have dealt with the—and I am not sure you are the ones I ought to be talking to. Perhaps we should be discussing this at the briefing that is going to follow, but I would like to get your views as experts on the long-term stability of Iraq, especially in view of the fact that Iran is next door and they are still involved in some of the nefarious activities over there and whether or not Iraq is going to be able to, with its own military and its own peace force, defend the new democracy that they have there.

There have been a number of people with whom I have talked who have some serious reservations and doubts about whether or not Iraq will be able to survive if we pull out by I think—when is it—next June and whether or not we ought to adjust that timetable, although Mr. Maliki I understand is pretty firm in his desire to have us leave by that time.

So I would just like to get your assessment of that if you think you are qualified to make that assessment. I know it is a prognostication, but I would just like to know what you have to say.

Mr. KATZMAN. Yes. Thank you. I will start off on that. According to the U.S. military and the U.S. State Department, Iran has lost some influence in the past year. Most pro Iranian parties did not do well in the January 2009 provincial elections, and the Shia militias in the south that Iran was supporting have been diminished by Iraqi military operations and a general sort of rejection of the population of Iraq to armed factions operating outside of government control.

However, counterbalancing that, the leading parties in the Iraqi Government structure are pro Iranian parties, and they were started by the same ideology really that spawned the Islamic Revolution in Iran. Ayatollah Khomeini was in exile in Najaf, Iraq, in the 1960s, and a lot of his ideology about Islamic government, Shiite Islamic government, are the ideology basically of the ruling parties of Iraq right now, so there is a very close symbiotic relationship between the Iraqi Government and the Iranian Government at this point.

Mr. BURTON. Do you think that because they have that relationship there is a danger that that whole area could be controlled by more radical elements down the road?

Mr. KATZMAN. Well, anything is possible, but what we are seeing, what we have seen recently, is there is an Iraqi nationalism, and the Iraqi public, even the Shias in the south, do not want to be told

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what to do by Iran or dictated to or have their affairs controlled by Iran, so I think that gives some reason for hope that Iran will not sort of take over Iraq, if that is the implication.

But still, you know, Maliki is doing a lot of things Iran would like to see. That doesn't mean Iran is telling him to do it and he answers, but the two think alike on many issues. Absolutely.

Mr. BURTON. Any other comments?

[No response.]

Mr. BURTON. If not, Mr. Chairman, what I will do is wait until we have the briefing and talk to them about it as well.

Mr. DELAHUNT. Thank you, Mr. Burton.

The distinguished gentleman from Texas, Mr. Poe?

Mr. POE. Thank you, Mr. Chairman. I direct my questions first to Mr. Katzman, and the rest of you can chime in if you wish. I want to zero in on Camp Ashraf.

I want to know what the Iranians really want to do with those folks in Camp Ashraf. What are their long-range intentions and what is the United States first doing about it, and, second, under the Geneva Convention how does the rest of the world view that situation? I personally am concerned about what happens to them based upon the fact of what has already happened to them.

Dr. Katzman, if you would address that issue I would appreciate it.

Mr. KATZMAN. Well, the Ashraf situation is obviously a very difficult situation because the population of Ashraf were basically invited in by Saddam Hussein.

There was a certain alignment with Saddam Hussein against Iran at the time, and then the United States overthrew Saddam Hussein and now the Government of Iraq is not aligned with this group that is in Ashraf and is more aligned with the Government of Iran, so Maliki and the Government of Iran see eye-to-eye really that the population of Ashraf needs to go elsewhere.

Now, that said, Iraq has agreed under our agreement and under international law to certain stipulations under international law that there are limits to what the Iraqi Government can do about the Ashraf situation. They cannot just simply send them back to Iran. There is a process to try to find other places for members of the Ashraf to go.

Mr. POE. Well, why send them to other places? Why can't they stay in Camp Ashraf?

Mr. KATZMAN. Well, Iraq is now a sovereign country, and the view is that the Iraqi Government has a right to decide whether this group can stay or not stay.

Mr. POE. And so what is your opinion? Do you think the Iraqi Government will move them to a place where the current Government of Iran will have influence over the camp? I mean, if you were a resident of Camp Ashraf, what do you think is going to happen to you?

Mr. KATZMAN. If I were a resident of Camp Ashraf I would be one pretty nervous person, sir. Yes, sir.

Mr. POE. Okay. So what are we doing to make sure that—I mean, other than saying the Iraqi Government has agreed under international law and they have told us they are going to be good

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guys and treat the Iranians in Camp Ashraf nicely, how do we see this playing out? Tell me how this is going to play out.

I understand the politics over the years has changed, but what do you think is going to happen to these folks?

Mr. KATZMAN. It is very difficult to say. You know, again at CRS we don't really opine on one way or the other, but if indeed the United States completes a draw down at 2011, December 2011, then the Iraqi Government could take various decisions. Presumably the Iraqi Government is going to meet its obligations that it has pledged to.

Mr. DELAHUNT. Would the gentleman yield?

Mr. POE. Certainly.

Mr. DELAHUNT. Iraq is a signatory presumably to the Convention Against Torture, and dealing with those particular provisions if there is reason to believe or it is more likely that sending an individual to a country, even if it is a country of home origin, where there is a more than likely chance of torture or inhumane and degrading treatment, wouldn't the Convention, the treaty, obligate the Iraqi Government to find another nation that would receive those that express concern? Am I correct in that statement, Mr. Katzman?

Mr. KATZMAN. Yes.

Mr. DELAHUNT. So I think that by international treaty are we going to accept the assurances put forth by the Iraqi Government? In many respects that is why the elections, and I want to get back to that, are so critical in terms of their integrity, and I am sure these are issues that will be debated in this nascent democracy.

In fact, we are having a similar problem in terms of relocating detainees that have been cleared for release from Guantanamo. I am sure some of you are aware that Mr. Rohrabacher and I have had a number of hearings on 22 Chinese Muslims from Northwestern China who are Uighurs and where because of our obligations under the Convention Against Torture and given the history of the Chinese Communist Government vis-à-vis the Uighurs we find ourselves in a position where we cannot legally by virtue of that treaty and I would suggest morally return them to Communist China where there is a likelihood that they would be tortured and even maybe killed. So these are tough issues that have to be worked out.

I yield back.

Mr. POE. Thank you, Mr. Chairman.

So, Dr. Katzman, if you were a resident at Ashraf you would be nervous about your future. What is your opinion of not the Iraqi Government, but the Iraqi people's kind of sense about Camp Ashraf? Can you kind of give me something what the people are thinking?

Mr. KATZMAN. I would say basically the Shiite Muslims are probably almost certainly more opposed to the Ashraf staying there, and Sunni Arabs are considered somewhat more welcoming and less inclined to try to ask them to leave.

Mr. POE. All right. Either one of the other two witnesses want to weigh in on that?

Mr. ROHRABACHER. Would the gentleman yield for a moment?

Mr. POE. Of course.

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Mr. ROHRABACHER. Seeing that we do have someone who is representing the Kurdish Regional Government here on our panel, might I suggest that one alternative that perhaps hasn't been examined is the possibility of moving Camp Ashraf into the Kurdish regional area rather than where it is and that might be acceptable as compared to leaving them where they are at or repatriating them to Iran?

Just a thought. The regional government might think about that and perhaps make an offer in that regard.

Mr. RADEMAKER. Mr. Rohrabacher, this is the first time I have heard such a suggestion. I will pass it on to others who might be interested.

It is true that the Kurdish region has served as something of a refuge for other groups in Iraq that have worried for their safety in the southern regions of the country. I think there is a practical dimension here with Camp Ashraf, which is that whoever finds themselves with these people in their midst will probably have a serious diplomatic problem with Iran, and I think that is true for the government in Baghdad today, and it would be true of any government that——

Mr. ROHRABACHER. It may be easier. The Shiite population of the Kurdish regional area is what?

Mr. RADEMAKER. I can't give you the exact percentages. It is relatively small.

Mr. ROHRABACHER. All right. Thank you very much.

Mr. Katzman, would you like to comment on that?

Mr. KATZMAN. Sir, the Kurds blame the Ashraf residents for cooperation in Saddam's repression of the Kurds after the 1991 war when there was a Kurdish uprising. They blame the group for helping Saddam put down the Kurdish uprising, so I would say the chances of them accepting that are very, very slim to none.

Mr. ROHRABACHER. Well, thank you for putting that in a historical perspective.

Mr. POE. Reclaiming my time, I do yield back to the chairman.

Mr. DELAHUNT. Well, I thank the gentleman for that rather interesting discussion.

Let me thank the panel for their testimony. It was, as always, informative. The formal hearing of today's proceedings has ended, but we are not finished because shortly we will welcome and are honored to have with us two of our fellow legislators from the Iraqi Parliament known as the Council of Representatives, former Prime Minister Ayad Allawi and Saleh al Mutlaq, the leader of the National Dialogue Front.

So we will recess for 3 or 4 minutes and then reconvene for the briefing.

[Whereupon, at 11:43 a.m., the subcommittee was adjourned.]

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APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

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SUBCOMMITTEE HEARING AND BRIEFING NOTICE
COMMITTEE ON FOREIGN AFFAIRS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

SUBCOMMITTEE ON
INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS AND OVERSIGHT

William D. Delahunt (D-MA), Chairman

September 16, 2009

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend the following OPEN hearing and briefing of the Subcommittee on International Organizations, Human Rights and Oversight, to be held in Room 2172 of the Rayburn House Office Building:

DATE: Thursday, September 17, 2009

TIME: 10:00 a.m.

SUBJECT: United Nations Chapter VII Mandates and the U.S.-Iraq Bilateral Agreement

WITNESSES:
Kenneth Katzman, Ph.D.
Specialist in Middle East Affairs
Congressional Research Service

Michael J. Matheson, Esq.
Visiting Research Professor of Law
The George Washington University Law School

Stephen G. Rademaker, Esq.
Senior Counsel
BGR Group
(Former Assistant Secretary of State for International Security and Nonproliferation)

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee as noted above

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COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON *IOHRO* **MEETING**

Day *Thursday* **Date** *Sept. 17th* **Room** *2172 RHOB*

Starting Time *10:11 A.M.* **Ending Time** *11:46 A.M.*

Recesses [ ] (____ to ____)

Presiding Member(s) *Bill Delahunt*

CHECK ALL OF THE FOLLOWING TIIAT APPLY:

Open Session [✓]
Executive (closed) Session [ ]
Televised [✓]

Electronically Recorded (taped) [✓]
Stenographic Record [✓]

TITLE OF HEARING or BILLS FOR MARKUP: *(Include bill number(s) and title(s) of legislation.)*

United Nations Chapter VII Mandates and the U.S.-Iraqi Bilateral Agreement

SUBCOMMITTEE MEMBERS PRESENT:

Bill Delahunt, Dana Rohrabacher, Keith Ellison, Ted Poe

NON-SUBCOMMITTEE MEMBERS PRESENT: *(Mark with an * if they are not Members of HIRC.)*

Dan Burton

HEARING WITNESSES: Same as meeting notice attached? Yes [✓] **No** [ ]
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*

ACTIONS TAKEN DURING THE MARKUP: *(Attach copies of legislation and amendments.)*

RECORDED VOTES TAKEN (FOR MARKUP): *(Attach final vote tally sheet listing each member.)*

Subject	Yeas	Nays	Present	Not Voting

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED _____

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UNITED NATIONS CHAPTER VII MANDATES AND THE U.S.-IRAQ BILATERAL AGREEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS AND OVERSIGHT

OF THE

COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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SEPTEMBER 17, 2009

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