



The Security Council and Iraq: Should the Council Renew the MNF Mandate for 2008?

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1. Background

In late 2007, the United States and the United Kingdom are expected to again present a resolution to the UN Security Council for the renewal of the controversial "Multinational Force" in Iraq (MNF). In September, the Iraqi foreign ministry announced that it would request a renewal for one year, beginning on January 1, 2008. This was reaffirmed in a joint communiqué issued by President Bush and Prime Minister al-Maliki on November 26, 2007. The communiqué affirms that the presence of foreign forces in the country, beginning in 2009 and for an extended period, will be negotiated bilaterally between Iraq and the United States.

This memo argues that the Council should **not** renew the mandate, because:

- The MNF is responsible for many serious violations of international law, which are contrary to the mandate and in violation of its rules.
- Under the military control of the MNF, Iraq has suffered from a steadily-worsening political and humanitarian crisis. Renewal of the mandate is likely to prolong the suffering and deepen the political crisis.
- A large majority of Iraqis see the MNF as a foreign occupying force that increases insecurity in the country and prevents national reconciliation, according to extensive polling data.
- A majority of the Iraqi parliament has called for a timetable for withdrawal of the MNF
- The UN's reputation is seriously tarnished by its association with (and mandate for) the MNF. The UN's present and future capacity for

humanitarian and political assistance in Iraq are badly damaged in this way.

The memo will also argue that:

- The Security Council should not accept any request for MNF renewal by an Iraqi official if it is not based on constitutionally-mandated consultation and ratification by the Iraqi parliament.

2. Evidence of Multiple MNF Violations of International Law

Dozens of reports by human rights organizations, scholars, journalists, government agencies and the United Nations have documented serious and repeated international law violations by the MNF in such areas as:

- internment and detention
- abuse and torture of detainees
- killing of civilians
- murder and atrocities
- use of indiscriminate and especially injurious weapons
- siege tactics
- massive displacement of civilians
- attacks on and destruction of cities
- interference with medical care, food relief and other humanitarian work
- failure to protect, and destruction of, Iraq's unique cultural heritage
- fraud, theft and other gross misuse of the Development Fund for Iraq
- and many other matters.

Considerable evidence is summarized in "War and Occupation in Iraq," a detailed and heavily-documented report by Global Policy Forum, published with many NGO partners in June 2007 and distributed to all Security Council delegations. The report sets out the facts and notes the very serious legal implications. In the sections of this memo that follow, we note a few issues that deserve particular attention, due to recent developments and new information.

The rights violations must be considered, not only in terms of applicable international law, but also in terms of Security Council resolutions that have provided the MNF mandate and renewed it. As UNAMI has noted in its most recent report, Resolution 1546 (June 2004) affirms in one of its preambular paragraphs "the importance of the rule of law" and "respect for human rights." And the letter from the Government of Iraq attached to Resolution 1723 (November 2006), the most recent mandate renewal, states that "The forces that make up MNF will remain committed to acting consistently with their obligations and rights under international law, including the law of armed conflict." So the MNF mandate requires adherence to law, but MNF practice violates the law.

We are unaware of any conflict in which the United Nations Security Council has given a mandate for a multinational force, in which that force has been responsible for such highly-visible, repeated and extremely serious violations of international law.

2a. Increasing Unlawful Detention by the MNF

As of the end of June 2007, after several months of the Baghdad Security Plan ("surge") operations, UNAMI reported 42,200 persons in custody, including 21,100 in the custody of the MNF. This is an increase of 6,600 in MNF custody in a six month period and it appears that the numbers continued to climb thereafter. Sources in the Iraqi government and in the ICRC have spoken about a total of 60,000 detainees, the great majority of whom are held unlawfully. While prisoner releases have been announced, more have been detained.

According to UNAMI, the MNF holds Iraqis in "prolonged detention without trial, with many security internees held for several years with minimal access to the evidence against them and without their defense counsel having access to such evidence." UNAMI says that large numbers of persons have been arrested simply because of their proximity to a security incident.

UNAMI points out that most of the MNF detainees are held in the large Camp Bucca prison camp facility. This facility is located in the southern Iraqi desert, where detainees are exposed to sandstorms, scorpions and extreme desert temperatures. Guards at Bucca have repeatedly opened fire on detainees who have protested their conditions.

UNAMI has raised concerns with the US embassy about MNF detention practices, but the embassy "challenged the notion that human rights law applies to security detentions under MNF authority in Iraq." As UNAMI has pointed out, there are also protections under international humanitarian law and the two bodies of law are complimentary. The US and the UK have insisted, however, that these

protections have limited application and that the MNF derive its rights to detain large numbers of persons indefinitely without charge from UN Security Council mandates under the rubric of "military necessity" and "imperative reasons of security." Jailing tens of thousands of persons without charge or trial cannot be reasonably defended in these terms. This interpretation of the mandates was rejected by Secretary General Kofi Annan and it has been deemed unacceptable by many others.

Iraqi ministers and judicial authorities have complained about the arbitrary and illegal detention policies being practiced by the MNF. According to UNAMI, the Head of Public Prosecution at the Higher Judicial Council of Iraq raised the situation of the Bucca internees at a press conference in the Ministry of Justice on 12 May and the Chief Justice of Iraq has established a judicial investigation committee to address the growing population of detainees being held by the MNF and Iraqi security forces. Many Iraqi figures have called for the speedy release of all those not charged with a crime but the MNF has ignored these concerns and it continues its massive detention policy.

2b. Impunity of the MNF and of "Private Military Contractors"

MNF forces claim to be exempt from Iraqi legal accountability under Security Council Resolution 1546 and its attached letters. Military contractors claim exemption under Order No. 17, issued in June 2004 by Paul Bremer, the head of the Coalition Provision Authority.

MNF military personnel have only been accountable under the military justice system of their own country. But studies by human rights organizations and major newspapers have shown that US and UK military personnel have rarely been punished for serious crimes such as murder and torture. The military justice systems often do not investigate crimes and when they do, the military personnel are rarely brought to a court martial. Punishments are few and mostly surprisingly light. Officers are only rarely held accountable. In the absence of serious accountability, MNF forces are not under legal pressure to have due regard for the welfare of Iraqi citizens, nor are they deterred from using excessive force. As US General Eldon Bargewell wrote in a Marine Corps report: "all levels of command [tend] to view civilian casualties, even in significant numbers, as routine and as the natural and intended result of insurgent tactics."

The US air-war in Iraq now involves more than 50 air strikes every day by fixed wing aircraft. Many dozens of additional air attacks are carried out by lethal helicopter gun-ships. The air war is taking a heavy toll in civilian casualties and destroying much Iraqi property. MNF forces also kill Iraqi civilians at checkpoints, in house searches, during ground-based military strikes, in sniper activities, during convoys, and in special forces operations.

MNF commanders also arm, train and finance irregular Iraqi forces such as police commandoes, militias, and tribal groups -- forces guilty of serious criminal conduct but for which the MNF takes no responsibility.

There is growing concern about the impunity of MNF-related contractors and especially the mercenaries or "private military contractors" who bear arms. These latter number at least 20,000 in Iraq, according to a Pentagon estimate cited in the Washington Post. They serve as bodyguards for high-ranking military officers, diplomats and civilian officials. They also serve in force protection units, or as facilities guards. These private soldiers have reportedly often been involved in violent incidents and they are known for their rapid escalation of force, sometimes in crowded streets and public place. But in spite of serious allegations of murder and atrocities, not a single private military contract employee has been brought to justice. A US law that would bring some of these personnel under the US military justice system has not been implemented.

On September 16, 2007, guards employed by the Blackwater company opened fire in a major traffic circle in Baghdad. They killed an estimated 17 Iraqis and wounded 27 more, even though there was apparently no clear threat. The Iraqi government and parliament are reportedly seeking to impose accountability on Blackwater and military contractors more generally, through a new law of criminal accountability and new licensing arrangements. But press reports suggest that the MNF has made every effort to block such measures, leaving the contractors unaccountable.

3. Massive Displacement, High Mortality, A Major Humanitarian Crisis

About 2.5 million refugees have fled Iraq and 2.2 million are internally displaced within the country. This represents an increase of about half a million in the past six months. One in five Iraqis have now been forced to leave their homes. Even though some Iraqi have recently returned home because they have been denied a visa renewal in their place of refuge or have run out of money, the overall displacement situation is deteriorating, according to a recent assessment by Refugees International.

Many of the country's professionals have fled, including nearly half the medical doctors. Excess Iraqi mortality is reliably estimated to range in the hundreds of thousands since March, 2003. The government's PDS food distribution system is increasingly failing and a large number of Iraqis are malnourished or "food insecure." The health care system is very seriously underperforming and understaffed. Electricity is available only a small part of every day. Poverty and unemployment are exceptionally high. Clean water and proper sewerage are so seriously lacking that a cholera epidemic broke out in mid-September and water-borne disease poses a serious continuing threat.

4. Iraqi Public Opinion and the MNF

Polling organizations have carried out many opinion surveys in Iraq since March 2003. The results of these polls, including those sponsored by the US and UK governments, show clearly that Iraqis are very critical of the foreign presence in their country. The trend of polling data is also very instructive. It shows increasingly negative judgments about the security situation, the economic condition, and the availability of key services such as education and electricity. In a BBC/ABC poll taken in August 2007, only 11% thought that security in the country had improved over the previous six months, while 61% thought that security had grown "worse" during the period. In the same poll, 79% opposed the presence of coalition forces in Iraq, compared to 51% in 2004. And 72% said the presence of US forces makes the security situation in the country "worse."

A large majority of Iraqis are opposed to MNF forces, widely seen as an "occupation" not a "liberation." Large majorities of Iraqis favor immediate or near-term withdrawal of the MNF and see such withdrawal as increasing overall security. In many polls, nearly two-thirds of Iraqis say they believe attacks on MNF forces are justified.

These opinions do not suggest that security in the country has "improved," as Washington is now claiming. Instead, they suggest that trends continue in a negative direction and that the further presence of the occupation forces will face strong and very broad popular opposition. Military force (even if mandated by the Security Council) cannot overcome through repressive tactics such broad public opposition.

5. The Iraqi Parliament and the MNF

In the fall of 2006, as the renewal of the MNF mandate approached, the Iraqi parliament asked the government to submit for parliamentary approval any request to the UN Security Council concerning the mandate. But the al-Maliki cabinet went ahead without any consultation or approval. It presented a letter to the Security Council asking for a renewal of the MNF mandate dated November 14, 2006.

Following those events, the Iraqi parliament took further steps on the question of the MNF. In April, a majority of parliamentarians signed a letter addressed to members of the Security Council, calling the 2006 mandate renewal "unilateral" and "unconstitutional." The parliamentarians also asked in the letter for a timetable for withdrawal of the MNF. On June 5, the parliament passed a law requiring the government to obtain parliamentary ratification prior to making any future request for renewal to the UN Security Council.

On December 4, the Iraqi cabinet announced that it would ask the Security Council to renew the MNF mandate for 2008. This request was decided after minimal consultation and without parliamentary ratification as the constitution requires. The cabinet spokesman said that cabinet action on the matter "did not need ratification." Ironically, the Bush-Maliki communiqué speaks of "Respecting and upholding the Constitution as the expression of the will of the Iraqi people and standing against any attempt to impede, suspend, or violate it." What can this mean, if the Prime Minister refuses to abide by a basic constitutional requirement and a law passed to affirm it?

If the Security Council accepts the request in the absence of legally-binding parliamentary consultation and ratification, it will set an extremely bad precedent and worsen Iraq's already serious political crisis.

6. MNF Conversion into a Long-Term Occupation/Protectorate

Previous cases of "robust" MNF mandates by the Security Council have usually ended in a relatively short period of time, with the withdrawal of MNF forces from the lands of conflict and the return of sovereignty and local rule. When MNF mandates have lasted longer, they have in most cases involved maintenance of peace, not active military operations. The MNF in Iraq, by contrast, has been operational with a very large force for well over four years, with an active counterinsurgency campaign throughout. The US is not currently planning to withdraw all its forces. Instead, Washington has announced that there will be a long-term US military presence in Iraq, including "enduring" military bases, as set forth in the Bush-al-Maliki communiqué of November 26. No previous MNF mandate has had such a profile or such an outcome.

US influence over the Iraqi government is similarly inconsistent with previous cases of MNF mandates. US influence in Iraq is enormous and it is well known that the Iraqi government has very limited sovereignty. The mammoth US embassy in Baghdad, the largest US diplomatic presence in any country, symbolizes this extraordinary influence, and it suggests the long-term political protectorate that is planned. Preferential treatment of US investments in Iraq has also been announced. This future US hegemony suggests a corresponding lack of influence of the UN and the international community, in promoting Iraqi self-rule, full sovereignty and economic independence.

The Security Council should not affirm the interests of a single powerful state, as opposed to the broader interests of the international community and the right of the Iraqi people to self-rule. By failing to insist on MNF withdrawal and real transition to local sovereignty, the Council appears to be acknowledging an unprecedented new type of open-ended political and economic protectorate, with virtually no international oversight or accountability.

7. Conclusion

There are many reasons for the UN Security Council to reject the renewal of the MNF in Iraq. The Council must take into account the violations of international law by the MNF and the opposition to the occupation by the great majority of the Iraqi people. The Council must also take account of the opposition of the Iraqi parliament and its call for MNF withdrawal, the tragic humanitarian crisis, and the great suffering of the people of Iraq. Most Iraqis believe that the MNF worsens their security, their well-being and their hope for a political future. The mandate is also a worldwide embarrassment to the UN and it clearly weakens the organization's capacity to do effective work in Iraq in the future. Further, the MNF in Iraq has a destabilizing effect on the entire Middle East region. It is time for the Security Council to take these realities into account and to end this regrettable episode in the UN's history.