

# Legitimizing the Permanent Occupation of Iraq

By [Stephen Lendman](#)

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Theme: [US NATO War Agenda](#)

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Washington is currently negotiating two accords with the al-Maliki government to take effect after expiration of the UN's military mandate on December 31. One agreement is for a long-term "strategic framework" to establish "cooperation in the political, economic, cultural and security fields." Or according to the administration - to defend Iraq's "sovereignty and integrity of its territories, waters, and airspace."

The other is a so-called "status of forces agreement" (SOFA) to provide legitimacy for the US occupation beginning January 1, 2009. Following the 2003 invasion, the UN Security Council passed Resolution 1511. It officially recognized the "Coalition Provisional Authority (CPA)" and authorized a multinational force to bring "stability" to the country. Part of the agreement was for the mandate to be reauthorized each year. It's been done "at the request of the Iraqi government." By late 2007, al-Maliki asked for a mandate extension "for the last time" to officially end Iraq's international peace and security threat designation that's been in place since August 1990.

In November 2007, George Bush and al-Maliki signed a preliminary US - Iraq political, economic, and security agreement. Part of it is for an indefinite US military presence. Final completion was to be by July 31, 2008, but with the date fast approaching and widespread opposition, things may likely change.

For months, US plans generated considerable opposition - within and outside Iraq. Grand Ayatollah Ali al-Sistani objected. So has Iran and a majority of Iraqi parliamentarians who vowed to veto any agreement not approved by the country's Council of Representatives. On May 29, they further said that any US - Iraq bilateral agreement must "obligate the occupying American military forces to fully withdraw from Iraq." On May 28, Muqtada al-Sadr went further. He called for protests against the ("forces of darkness") SOFA and issued orders to:

- raise awareness of its terms;
- unite political opposition against it;
- participate in weekly protests;
- hold a national referendum or if denied gather millions of opposition signatures;
- form political and religious delegations in opposition;
- set a timetable for the occupation's end;
- inform the Iraqi government it has no right to sign an agreement; and

— to have the Hawza Shiite religious academy become more active and stand against an agreement that's clearly against the interests of the Iraqi people.

Within the US, some in Congress object that George Bush claims authority as commander-in-chief to constitutionally bypass lawmakers and deal unilaterally with the Iraqi government. Others like Yale Law School Professors Oona Hathaway and Bruce Ackerman concur and believe the agreement "moves far beyond" traditional accords and must be subject to congressional review.

In a February 15, 2008 Washington Post.com op-ed, they state "The Bush administration is so intent on securing its legacy in Iraq that it is once again ignoring the Constitution....it is well on its way toward (deepening America's) commitment without the congressional support the Constitution requires."

They cite examples:

— exempting civilian contractors from prosecution under Iraqi laws; it assures their immunity elsewhere as well; current federal law "only subjects contractors working in support of the Defense Department to prosecution in American courts for felonies in Iraq;" civilian security forces (like Blackwater Worldwide), the State Department, CIA and others will be in a "no-law" status, subject only to the will of the president; civilians may thus commit murders, rapes, robberies, other lawless acts and get away with them; "no (known) existing status of forces agreement....contains anything like this wide-ranging exemption;"

— exempting military personnel as well who can be court-martialed but rarely are;

— allowing the president to exceed his constitutional authority as commander-in-chief; he's only in charge of the military, "not all Americans working overseas;"

— even worse, most administration plans are secret and what's learned comes out in leaks; more on that below; and

— Congress held hearings on January 23 and February 8 - "on the legitimate scope of the Iraqi agreement;" the administration refused to testify.

Hathaway and Ackerman conclude by calling for a congressional resolution "declaring invalid any military agreement (going) beyond the traditional (SOFA) limits." No president may unilaterally bypass Congress. It's "especially wrong for a lame-duck (one) to make such a (controversial) commitment (that's) at the very center of the debate among the candidates vying to succeed him."

On July 4, Imam Sadreddin al-Kabandji (an aide to Grand Ayatollah Ali al-Sistani) issued a statement. It pressed the Baghdad government to hold a national referendum regarding US forces remaining in the country. Speaking for Iraq's supreme Shiite leader, he stated: "The Iraqi nation regards with concern the Iraqi-American treaty whose contents are not exactly known....The treaty (must be made public and) presented to the people and the clergy." It's unacceptable that the government is negotiating with the Americans "behind closed doors."

Status of Forces Agreements - An Explanation

The DOD's Defense Technical Information Center web site explains a SOFA as follows:

— “an agreement that defines the legal position of a ‘visiting’ military force deployed in the territory of a friendly state.” It delineates “the status of visiting military forces (and) may be bilateral or multilateral. Provisions pertaining to the status of visiting forces may be set forth in a separate agreement, or they may form a part of a more comprehensive agreement. These provisions describe how the authorities of a visiting force may control members of that force and the amenability of the force or its member to the local law or to the authority of local officials. To the extent that agreements delineate matters affecting the relations between a military force and civilian authorities and population, they may be considered as civil affairs agreements.”

In his 2004 book, *The Sorrows of Empire*, Chalmers Johnson said this about SOFAs:

“America’s foreign military enclaves, though structurally, legally, and conceptually different from colonies, are themselves something like microcolonies in that they are completely beyond the jurisdiction of the occupied nation. The US virtually always negotiates a ‘status of forces agreement’ (SOFA) with the ostensibly independent ‘host’ nation” - a modern day version of 19th century China’s “extraterritoriality” granting foreigners charged with crimes the “right” to be tried by his (or her) own government under his (or her) own national law.

SOFA experts Rachel Cornwell and Andrew Wells added:

“Most SOFAs are written so that national courts cannot exercise legal jurisdiction over US military personnel who commit crimes against local people, except in special cases where US military authorities agree to transfer jurisdiction.” As a result, when crimes occur, the military can simply whisk offenders out of the country before local authorities can react or at least before they’re arrested.

As of September 2001, the Pentagon acknowledged SOFA agreements with only 93 countries. The total number is unknown but much higher. Some are too embarrassing to reveal, and many or most are kept secret. Overseas military bases aren’t colonial outposts in the traditional sense. They’re run by the DOD, CIA, NSA, DIA, and other official or secret state agencies. In September 2001, the Pentagon acknowledged the existence of 725 foreign bases. Today the number likely tops 1000. Further, DOD’s (2001) Manpower Report indicated that over one-quarter of a million military personnel were deployed in 153 countries. Those numbers also are higher with Iraq and Afghanistan forces approaching 200,000 and no imminent signs of a pullback.

Depending on their location, families may or may not accompany their military spouses, and as Johnson explains: “except in Muslim countries (at least so far) these bases normally attract impressive arrays of bars, brothels, and the criminal elements that operate them near their main gates.” As a result, bases “unavoidably usurp, distort, or subvert whatever institutions of democratic government may exist with the host society.” It’s a “recipe for the endless series of ‘incidents’ that plague (SOFA) nations (and easy to understand why) local residents get very tired of sexual assaults, drunken driving” and more serious crimes and abuses over which they have no control or chance for redress.

Reverse things and imagine how outraged US citizens would be if another country garrisoned troops close by with all the resultant fallout: besides murder, rape and other

crimes, there's unacceptable noise, pollution, environmental destruction, appropriation of valued public real estate, and unaccountable soldiers getting drunk, causing damage, ignoring local customs, speeding and accosting local women when they're not raping or killing them.

It's one reason why we don't generally grant other nations basing rights here. So except for when foreign ships berth in our ports for short periods, US citizens never interact with another country's military or experience the fallout from it.

In his newest book, *Nemesis*, Johnson explains how SOFAs work. They're legal contractual "alliances" with other countries implementing mutually agreed on arrangements. They let us garrison US troops and civilian personnel - either on a new or existing facility. They're based on "common objectives" and "international threats to peace." In final form, they put US personnel as far as possible outside domestic law and spell out host country obligations to us. Except for our reciprocal NATO agreements, they also give our military and civilian personnel special privileges unavailable to ordinary citizens of host nations. Unlike western European countries with clout, most others are small, weak or occupied and have little muscle against our type bullying.

Then there are the above-cited SOFA problems. Is it surprising then that South Koreans, for example, object to our presence and a great deal more. A recent article reported tens of thousands on Seoul streets against President Lee Myung-bak in defiance of state repression threats. Their complaints are many and were triggered by the government's decision to allow potentially tainted US beef imports.

An earlier article relates to this one. It explained how angry South Koreans are about US military unaccountability for nearly six decades. Americans "defame our national sovereignty and commit many crimes, but we can't do anything about it except watch because of the unfair (SOFA)." Korean authorities have asked for remediating provisions. DOD granted virtually nothing. The same is true most elsewhere. Our reputation as a world-class bully is well deserved.

The Treaty of Mutual Cooperation and Security between the United States and Japan - A SOFA Example

It was signed on January 19, 1960 with language intended to be reassuring. For example:

- to settle international disputes peacefully;
- work for international peace and security;
- "refrain...from the threat or use of force against the territorial integrity or political independence of any state (or do anything) inconsistent with the purposes of the United Nations;" in the 1960s and 1970s, Southeast Asians were apparently exempted; today it's Iraqis, Afghans and others;
- strengthen free institutions and promote stability and well-being;
- eliminate conflict;
- to protect Japan's security and international peace in the Far East, America "is granted the use by its land, air and naval forces of facilities and areas in Japan" - to be governed by a "separate agreement" replacing the one signed

in February 1952 and thereafter amended; and

— many other reassurances in 10 articles about which the people of Okinawa object.

It's Japan's poorest and most southerly prefecture – a sort of equivalent of America's Puerto Rico. It's also a battleground pitting Okinawans against Washington and their own government in Tokyo. An expert on the region, Chalmers Johnson, puts it this way: “the Japanese-American SOFA....shield(s) (US) military felons from the application of Japanese law.” It's the same type “unequal treaty” imposed on Japan after Commodore Perry's 1853 armed incursion.

But it didn't deter Donald Rumsfeld in 2003. In meeting with Japanese officials, he “press(ed) anew for the Japanese government to relent on a long-standing US demand for fuller legal protections (for our forces) accused of crimes while serving in Japan.” Most often, it means committing them against Okinawans where the majority of them are based – plus their families and civilian DOD employees.

Okinawa is an extreme example because it's small and America uses 19% of its choicest real estate. Yet it's typical of what happens everywhere US forces are based in varying degrees. Johnson calls it “American military imperialism....easily reproduced in Germany, Italy, Kosovo, Kuwait, Qatar, Diego Garcia, and elsewhere, and more recently Afghanistan, Central Asia, and Iraq.”

It augurs ill for the continued occupation of Iraq as a war zone. Since August 1990, the 1991 Gulf war, 12 years of sanctions, and the current Iraq war, America has disdained Iraqi interests, its welfare, culture, religion and lives. The country is occupied against the will of its people. Resistance has been continuous and fierce; human suffering immense; the death, injury, displacement and illness tolls unimaginable. Reassuring Iraqis of our benign intentions henceforth is impossible. Continued conflict is guaranteed plus all the resultant fallout Okinawans and other host nations face.

Take what outrages Okinawans most after decades of occupation – the SOFA-related article 17 covering criminal justice. It states: “The custody of an accused member of the United States armed forces or the civilian component (shall) remain with the United States until he is charged.” It hamstring Japanese investigators and denies them exclusive access until or unless suspects are indicted in court. As a result, prosecutors are reluctant to press charges because they can't get evidence for trial.

Examples on the island are frequent, but one was particularly grievous. In September 1995, two marines abducted a 12-year old girl, beat and raped her, left her on a beach, and returned to their base in a rented car. In October, 85,000 Okinawans protested. They demanded redress after the US military refused to let local police take custody.

Imagine the situation in Iraq where US military, Blackwater, and other security forces are unaccountable. In the case of Blackwater, it's “the world's most powerful mercenary army,” has friends in high places, and employs “some of the most feared professional killers” anywhere. It operates outside the law, is protected by the Pentagon, and freely practices street violence. A SOFA will legalize it taking any possibility for redress off the table.

## **US - Iraq SOFA - Leaked Information**

In late June, the Arabic newspaper, Awan, leaked 20 pages of the draft proposal. The web site roadstoiraq.com highlighted parts of it and noted a color-coded way of citing what's agreed on, not yet agreed on, and major differences. Below is a brief account of what it says:

- attacking other countries from Iraq 'isn't' prohibited;
- provisions governing the presence and activities of US forces, private contractors and US employees are identified;
- activities agreed on include: "operations and training, transit, support and related activities, aerial refueling, maintenance of vehicles, ships and airplanes, providing suitable residences for employees and their workplaces, mobilizing forces and materials storage, and other goals and activities" to be later agreed on;
- the US and Iraq "desire" for provisions to be "temporary;"
- the agreement will support security and defense relations between the two countries "after the end of the transitional period....and peace will exist;"
- unnamed provisions "postponed for now until later development;"
- "detained members of the (US military) and civilian (contractors and employees shall be) delivered to the American forces;" the US military may also detain Iraqis;
- "the Iraqi government authorizes the civilian elements to use force against others in case of self-defense; there will be no issue of juridical prosecutions;"
- Iraq won't "invite a third country or international organization for logistic-support, training or (to aid) Iraqi security forces;" the Iraqi negotiator wants this provision removed;
- "both sides seek regular consultation" at the political and military levels on defense and security cooperation;
- issues of concern: Iraq's ability to secure its borders; training, supplying, establishing and developing Iraqi security forces' logistics, administration, and infrastructure; strengthening them as well; improving joint military cooperation, training, and exchange of expertise, academics, information and other military activities; and
- the US ambassador commented obliquely that the "executive agreement is under the president's authorization; any pledge (involving US forces) and spending American money requires an agreement authorized by Congress; in the current US internal political situation, Congress unlikely will agree with this (so) the executive agreement will establish a suitable situation that can be developed in the future;" he's saying the president will act unilaterally and do as he pleases; Congress and Iraqis will be powerless;

The above information is very sketchy, but the issues are clear. Iraq is occupied, and a state of war exists. The Iraqi president and parliament are impotent. The Bush administration will pressure or bypass Congress and implement what it wishes. Another possibility is getting the Security Council to extend the current mandate. Either way, a new president in 2009 will enforce it. The Iraqi people are entirely left out. Iraqi officials may insist on their rights, and Washington may nominally agree in principle. But past agreements show how this one will be managed. Language will be vague and deceptive so, in the end, it'll be business as usual.



Whatever Washington wants it will get. The Iraq government provides only fig leaf cover. The security accords are to provide international legitimacy once the UN mandate expires on December 31.

Indefinite occupation is planned and to be enforced by dozens of permanent military bases, including at least five mega-ones. On June 5, Patrick Cockburn reported in the London Independent that “Bush wants 50 military bases, control of Iraqi airspace and legal immunity for all American soldiers and contractors.” Regardless of the November election, US personnel are currently immune under Paul Bremer’s CPA Order 17, and a secret deal is being negotiated to make US occupation indefinite on Washington’s terms.

Besides permanent bases and immunity from Iraqi law (largely written by Washington), the deal gives US military forces a free hand. It lets them carry out operations inside Iraq, presumably anywhere in the region as well, and grants the right to arrest Iraqis. Cockburn states: this “will destabilise Iraq’s position in the Middle East and lay the basis for unending conflict in their country.” Deal or no deal, that’s assured as long as Iraq is occupied against the will of its people.

So far it continues because the country’s most influential (Shiite) religious leader hasn’t intervened. Should Grand Ayatollah Ali al-Sistani choose to, all bets are off. Iraq is largely Shia and al-Sistani greatly revered. In 2003, he forced US authorities to allow a referendum on a new constitution and a parliamentary election. He publicly opposes the SOFA unless four conditions are met according to a June 7 Iran Radio report cited on University of Michigan professor Juan Cole’s Informed Comment web site – “transparency, defending national governance, national consensus, and approving the agreement by the Iraqi parliament.”

The report (without attribution) also claimed Washington pledged \$3 billion in bribes to win over Iraqi lawmakers – or around \$11 million per parliamentarian and a tough offer to refuse if true. If they balk, the alternative may sway them – squeezing the country and officials in multiple ways, including blocking release of \$50 billion in Iraqi oil revenue assets. They’re from the earlier sanctions period and now on deposit at the New York Federal Reserve Bank.

Consider the latest, however, on a saga taking many twists and turns and no clear resolution in sight. In a July 7 news conference, al-Maliki surprised attendees. He said chances for a security pact are practically nil given the amount of internal opposition to it. Instead, he’ll seek a limited (“memorandum of understanding”) extension of the current mandate. And with no suggestion of numbers, he’ll also link it to a US force withdrawal timetable.

On July 8, al-Maliki’s National Security Advisor, Mowaffaq al-Rubaie, said Iraq is waiting “impatiently for the day when the last foreign soldier leaves” the country and wants firm dates for withdrawal. Getting them is another matter and statements mean little without actions. From the G-8 summit, George Bush’s response means plenty, and it shows what Iraqis are up against: “It is important to understand that these are not talks on a hard date for a withdrawal.”

Then there’s al-Sistani to be reckoned with, a man even Bush takes seriously. If he gets more vocal and means it, the coming months will prove interesting. Yet he’s caught on the horns of a dilemma. US support let Shias win majority control of parliament. On the other hand, Washington runs everything so control is only nominal. It remains to be seen if al-

Sistani comes around to that view and draws the line on the SOFA and other security measures. Maybe on the oil giveaway as well, a topic for a separate article.

*Stephen Lendman is a Research Associate of the Centre for Research on Globalization. He lives in Chicago and can be reached at [lendmanstephen@sbcglobal.net](mailto:lendmanstephen@sbcglobal.net).*

*Also visit his blog site at [sjlendman.blogspot.com](http://sjlendman.blogspot.com) and listen to The Global Research News Hour on [RepublicBroadcasting.org](http://RepublicBroadcasting.org) Mondays from 11AM - 1PM US Central time for cutting-edge discussions with distinguished guests. All programs are archived for easy listening.*

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### **About the author:**

Stephen Lendman lives in Chicago. He can be reached at [lendmanstephen@sbcglobal.net](mailto:lendmanstephen@sbcglobal.net). His new book as editor and contributor is titled "Flashpoint in Ukraine: US Drive for Hegemony Risks WW III."

<http://www.claritypress.com/LendmanIII.html> Visit his blog site at [sjlendman.blogspot.com](http://sjlendman.blogspot.com). Listen to cutting-edge discussions with distinguished guests on the Progressive Radio News Hour on the Progressive Radio Network. It airs three times weekly: live on Sundays at 1PM Central time plus two prerecorded archived programs.

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