

Legal Status of US Forces in Iraq From 2003-2008

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I. INTRODUCTION

Just before the end of President George W. Bush’s second term, the UN Security Council resolution authorizing US operations in Iraq as part of a Multi-National Force in accordance with international humanitarian law expired.¹ To

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¹ *Resolution No 1790*, UN Security Council, 5808th mtg, UN Doc S/ResES/1790 at 3-4 (2007). It should be noted that no UN resolution gave legitimacy to the US invasion of Iraq, which started with an intense bombardment of Baghdad on March 19, 2003, referred to as “shock and awe” as

ensure a legal basis for the continued US military presence and military operations in Iraq, the US and Iraqi governments negotiated a Status of Forces Agreement (SOFA),² as well as a “Strategic Framework Agreement for a Relationship of Friendship and Cooperation between the United States of America and the Republic of Iraq” (Framework Agreement).³ The details of these two documents are of great importance, as their stipulations will inform the crucial developments in the US-Iraqi relationship, including the eventual US withdrawal of combat troops from Iraq.

President Bush and Prime Minister Nouri al-Maliki signed the “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,” (Iraq SOFA) in Baghdad on December 14, 2008, just two weeks before the Security Resolution’s expiration.⁴ In its final form, the Iraq SOFA varies significantly from other US SOFA agreements in several ways. Primarily, the agreement regulates ongoing

described by Harlan K. Ullman and James P. Wade, *Shock And Awe: Achieving Rapid Dominance* (National Defense University, 1996); Sue Chan, *Iraq Faces Massive US Missile Barrage*, CBS News (Jan 24, 2003), online at <http://www.cbsnews.com/stories/2003/01/24/eveningnews/main/537928.shtml> (visited Apr 24, 2010). The Security Council did not endorse the Bush doctrine of pre-emptive self-defense.

- ² 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 (Dec 14, 2008) (“Iraq SOFA”); Stephen Farrell, *Security Agreement Déjà Vu*, NY Times (Nov 20, 2008), online at <http://baghdadbureau.blogs.nytimes.com/2008/11/20/security-agreement-deja-vu/?partner=rss&emc=rss> (visited Apr 24, 2010); see Jomana Karadshah and Arwa Damon, *Security Pact Ruins into Discord in Iraqi Parliament*, CNN.com (Nov 17, 2008), online at <http://www.cnn.com/2008/WORLD/meast/11/17/iraq.security/index.html> (visited Apr 24, 2010) (reporting that Iraqi lawmakers decried the US-Iraq security agreement); see also Karen DeYoung, *US, Iraq Scale Down Negotiations Over Forces*, Wash Post A1 (July 13, 2008); but see *Rubaie Denies Halt of Iraq-US Security Pact*, Alsumaria Iraq (July 15, 2008), online at <http://www.alsumaria.tv/en/Iraq-News1-20093-Rubaie-denies-halt-of-Iraq-US-security-act.html> (visited Apr 11, 2010). The Iraqi Cabinet approved the agreement on November 16, 2008 and the agreement was thereafter submitted to the Parliament. Parliamentary reaction to the agreement was mixed, with the Sadr party vocally opposing the plan and staging demonstrations to disrupt the voting process in Parliament. The agreement was finally reached on December 4, just prior to the December 31 sunset deadline of the UN Resolution that gave the US the fig-leaf cover of legitimacy to have a military presence in Iraq.
- ³ Strategic Framework Agreement for a Relationship of Friendship and Cooperation between the United States of America and the Republic of Iraq (“Framework Agreement”) (Nov 17, 2008).
- ⁴ See Press Release, White House, *President Bush and Iraq Prime Minister Maliki Sign the Strategic Framework Agreement and Security Agreement* (“Bush and Maliki Sign Agreements”) (Dec 14, 2008) online at <http://georgewbush-whitehouse.archives.gov/news/releases/2008/12/20081214-2.html> (visited Apr 24, 2010).

active military operations, with emphasis on Iraqi sovereignty and US accountability.⁵

As with the Iraq SOFA, the Framework Agreement proved quite distinct from other US “friendship” agreements, which traditionally deal with cultural and commercial concerns.⁶ In the Framework Agreement with Iraq, strategic issues are scattered throughout the document, as if to camouflage their presence among the more traditional cultural concerns. The Bush Administration likely structured the agreement that way to avoid having to submit it to the Senate, as it was required to do with the Iraq SOFA. The Framework Agreement overlaps with the Iraq SOFA with regard to strategic considerations. Both should be read *in pari materia*.

This Article describes and assesses these two agreements, as well as prior relevant legal instruments (US, Iraqi, and international), bearing upon the legal status and operations of US forces in Iraq. It also examines one issue which was not addressed by these agreements: US legal obligations in light of the “protected persons” status it gave to an estimated 3,400 Iranians who oppose the Iranian regime, and who have been living at Camp Ashraf in Diyala Province, Iraq, under US protection since 2003.

II. LEGAL AUTHORIZATION FOR THE DEPLOYMENT OF US FORCES IN IRAQ PRIOR TO THE IRAQ SOFA OF 2008

On October 31, 1998, the US Congress passed the Iraq Liberation Act in support of a democratic government to replace Saddam Hussein’s regime, laying the foundation for forceful regime change in that country.⁷ Then, after al-

⁵ See, for example, Dieter Fleck, ed, *The Handbook of the Law of Visiting Forces* 28 (Oxford 2001). Seven defense agreements to which the US is party have been concluded as treaties: Inter-American Treaty of Reciprocal Assistance (1947), 62 Stat 1681, TIAS No 1838 (“Rio Treaty”); North Atlantic Treaty (1949), 63 Stat 2241, TIAS No 1964; Mutual Defense Treaty, 3 UST 3947, TIAS No 2529 (1951) (Philippines); Mutual Defense Assistance Agreement, 2 UST 644, TIAS No 2217 (1951) (Australia and New Zealand); Southeast Asia Collective Defense Treaty (1954), 6 UST 81, TIAS No 3170; Treaty of Mutual Cooperation and Security (1960), 11 UST 1632, TIAS No 4509 (Japan); and Mutual Defense Treaty (1953), 5 UST 2368, TIAS No 3097 (Korea). One agreement was concluded as a Congressional-Executive agreement with express congressional approval: Compact of Free Association Act of 1985 (1986), 59 Stat 1031 (Marshall Islands/Federated States of Micronesia), codified at 48 USC § 1681.

⁶ See, for example, Treaty of Friendship, Commerce and Navigation (1853), 10 Stat 1005, TS 4 (Argentina); Treaty of Friendship, Establishment and Navigation (1961), 14 UST 1284, TIAS No 5432 (Belgium); Treaty of Friendship, Commerce, and Consular Rights (1925), 44 Stat 2379, TS 736 (Estonia); Treaty of Friendship, Commerce, and Navigation (1956), 8 UST 2217, TIAS No 3947 (Korea).

⁷ HR Res 4655: Iraq Liberation Act of 1998, 105th Cong, 2d Sess (Oct 31, 1998).

VIII. THE US DUTY UNDER INTERNATIONAL LAW TO ENSURE THE PROTECTION OF INDIVIDUALS CONFINED IN “CAMP ASHRAF” TO WHOM THE US HAS GRANTED “PROTECTED PERSONS” STATUS

None of the text of any of the agreements mentioned above addresses certain international legal obligations that the US has incurred during its period of occupation, namely those Iranian civilians to whom it has granted “protected persons” status, living at Camp Ashraf in Diyala Province.

Some 3,400 members of the People’s Mojahedin Organization of Iran (PMOI) reside at Camp Ashraf, Iraq. Since 2003, they had been protected by units of the Multinational Force-Iraq, and in 2004, they were officially declared to be “protected persons” under the Fourth Geneva Convention.¹⁶⁰ On May 10, 2003, then Major General (now General) Ray Odierno, who in September 2008 assumed command of all US forces in Iraq, announced a disarmament plan arranged between the PMOI located at Camp Ashraf in Diyala Province, Iraq, and US forces.¹⁶¹ General Odierno stated that the PMOI had agreed to “disarm and consolidate.” In 2004, the US Military granted members of the PMOI “protected persons” status under the Fourth Geneva Convention after the group agreed to voluntarily give up their weapons, and presented no resistance to incoming coalition forces.¹⁶² The group also signed an Agreement with MNF forces rejecting violence and terrorism.¹⁶³ The PMOI were afforded this status

¹⁶⁰ See Geneva Convention IV, part 3 (cited in note 22) (“Status and Treatment of Protected Persons”). In September 2003, this writer submitted to Secretary of Defense Donald Rumsfeld a memorandum entitled “Legal Opinion on the Legal Status under International Law of the Members of the People’s Mojahedins Organization of Iran Presently in the Territory of Iraq,” arguing that the people at Camp Ashraf are civilian “protected persons” under the Geneva Conventions. The DOD accepted this position and has acted accordingly since then, including providing them with security escort when leaving the confines of Ashraf City for such tasks as going to the bank or market. See Douglas Jehl, *US Sees No Basis to Prosecute Iranian Opposition ‘Terror’ Group Being Held in Iraq*, NY Times (July 27, 2004) (reporting that the deputy commanding general in Iraq said members of the People’s Mujahedeen of Iran have been deemed “protected persons” by the US military); see also Protocol I (cited in note 24); United Nations, Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (“Protocol II”), UN Doc A/32/144 (1977).

¹⁶¹ See Stephen Coates, *US Says Iran Opposition in Iraq Agrees to Disarm*, Agence France-Presse ¶ 3 (May 10, 2003).

¹⁶² See Michael Ware, *US Protects Iranian Opposition Group in Iraq*, CNN.com ¶¶ 8, 16 (Apr 6, 2007), online at <http://www.cnn.com/2007/WORLD/meast/04/05/protected.terrorists/index.html?eref=yahoo> (visited Apr 24, 2010). See also *Proclamation by the Commander, Multi-National Forces-Iraq, on the Signing of the “Agreement for the Individuals of the People’s Mujahedin Organization of Iran (PMOI)” at Ashraf, Iraq* (July 2, 2004).

¹⁶³ See Geoffrey D. Miller, Deputy Commanding General MNF-I, *Letter to the People of Ashraf* ¶ 2 (July 21, 2004) (“You have signed an Agreement rejecting violence and terrorism.”).

despite their possession of weapons, because they were not considered regular members of the armed forces of a party to a conflict, as intended under the Third Geneva Convention.¹⁶⁴ The US State Department conducted an extensive review into the PMOI and its members, which did not result in any charges being brought against the group or any of its members.¹⁶⁵

The Iraqi government and several political leaders have threatened to expel the PMOI, or to forcefully repatriate them to Iran.¹⁶⁶ These are clear indicators of the threat and dangers to which the individuals at Camp Ashraf are likely to be exposed if they return to Iran.¹⁶⁷ However, Diyala Province, where Camp Ashraf is located, can still be deemed under constructive US control. Whether or not it is under US control, the question of the continued US obligations to those it has designated “protected persons” remains.

Under Article 45 of the Fourth Geneva Convention, “in no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs.”¹⁶⁸ Having designated the PMOI “protected persons,” the US has a duty to abide by all the provisions of the Fourth Geneva Convention, including those regarding the transfer of custody. Regardless of the SOFA, the US would be obligated under this provision for the continued protection of “protected persons” under the Fourth Geneva Convention.

According to a recently released Bush Administration legal memo, Administration attorneys argued that “protected persons” status would not apply to al-Qaeda, and would be reserved primarily for citizens or residents of

¹⁶⁴ On September 12, 2008, this writer joined with attorney Steven Schneebaum in a letter to Defense Secretary Robert Gates, noting the continued obligations of the US to the “protected persons.” See also n 165.

¹⁶⁵ See Jehl, *US Sees No Basis to Prosecute*, NY Times ¶ 1 (cited in note 160) (“A 16-month review by the United States has found no basis to charge members[.]”).

¹⁶⁶ Paul Tait, *Iraq Says Working to Expel Iranian Rebel Group*, Reuters ¶ 1 (Mar 2, 2008), online at <http://www.reuters.com/article/idUSL0237737720080302> (visited Apr 24, 2010) (reporting that Iraq was trying to expel the Mujahadeen e-Khalq (“MEK”) group).

¹⁶⁷ The protected persons, who are members of the PMOI, were in opposition to Ayatollah Khomeini, whose Revolutionary Guard are believed to have killed some 30,000 members as they fled to Iraq. See Christina Lamb, *Khomeini fatwa 'led to killing of 30,000 in Iran'*, Sunday Telegraph, (Feb 4, 2001). They are also believed to have fought alongside Iraq in the Iraq-Iran war of 1980-88. Their return to Iran would mean certain death for some, and likely torture and imprisonment for others. They would fulfill the definition of “persecuted” under the 1951 Convention Relating to the Status of Refugees. See Convention Relating to the Status of Refugees (1951), 189 UNTS 150, Art 33 (“Prohibition of Expulsion or Return (“Refoulement”). See also Guy Goodwin-Gill, *The Refugee in International Law* (Oxford 3d ed 2007).

¹⁶⁸ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1950), Art 45, ¶ 4, 6 UST 3516, 75 UNTS 287.

the occupied territory.¹⁶⁹ Although the memo's main purpose was to exclude a certain segment of combatants from Geneva Conventions protections (and therefore subject to detainment at Guantanamo Bay, Cuba), the memo also has an impact on the PMOI, who were granted "protected persons" status by the US. Nationals of "neutral States are not per se excluded from 'protected person' status in occupied Iraq" and therefore the PMOI, who are officially citizens of Iran, could be protected.¹⁷⁰ According to the memo, the Geneva Conventions would apply as long as the US is considered an occupying power, and the US would be considered an "occupying power over any Iraqi territory that is 'actually . . . under the authority' of the United States."¹⁷¹ This could mean that the US feels its obligation to the PMOI will end once Diyala Province is turned back over to Iraq's government.

Two additional international obligations bind the US to protect the PMOI: the 1951 UN Convention Relating to the Status of Refugees¹⁷² and the 1967 Protocol to the Convention Relating to the Status of Refugees.¹⁷³ The 1951 Convention, which is incorporated in the 1967 Protocol, states that each party to the convention "shall accord to refugees lawfully in its territory, the right to choose their place of residence."¹⁷⁴ The Convention also explicitly prohibits repatriation that would amount to *refoulement*, "where [the refugee's] life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."¹⁷⁵

The second protection arises under the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).¹⁷⁶ CAT states that "no state party shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."¹⁷⁷ The US will need assurances from the Iraqi government that individuals currently under "protected persons" status will be considered relevant to these additional conventions.

¹⁶⁹ Office of Legal Counsel Memorandum Opinion for the Counsel to the President, "Protected Person" Status in Occupied Iraq Under the Fourth Geneva Convention ("Protected Person Memo"), Opinions of the Office of Legal Counsel in Volume 28 § 3(C) (Mar 18, 2004).

¹⁷⁰ Id, § 2(E).

¹⁷¹ Id, § 1.

¹⁷² Convention Relating to the Status of Refugees (cited in note 167).

¹⁷³ Protocol to the Convention Relating to the Status of Refugees (1967), 606 UNTS 267.

¹⁷⁴ Convention Relating to the Status of Refugees, Art 26 (cited in note 167).

¹⁷⁵ Id, Art 33(1).

¹⁷⁶ Resolution 39/46, UN General Assembly, 39th Sess (Dec 10, 1984), A/RES/39/46. ("Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment").

¹⁷⁷ Id, Art 3(1).

Failure to carry out its obligations under international law exposes the US to international liability. On December 21, 2001, the UN General Assembly, upon recommendation from the International Law Commission, adopted a resolution regarding the Responsibility of States for Internationally Wrongful Acts.¹⁷⁸ The Principles of State Responsibility hold states responsible not only for their actions, but also for their omissions of that which is “attributable to the State under international law; and constitutes a breach of an international obligation of the state.”¹⁷⁹ Article 12 defines the breach of an international obligation, stating, “[t]here is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.”¹⁸⁰ Therefore, the principles obligate the US to ensure that it fulfills its international responsibilities towards “protected persons.”

In a June 17, 2008 meeting of the Iraqi cabinet, the council of ministers stated:

The implementation of the necessary measures (*infra*) in respect of the terrorist Mojahedin-e Khalq Organization is approved in the following manner:

All the previous ratifications that had been approved previously that the Mojahedin-e Khalq Organization must be expelled as a terrorist organization from Iraq is hereby underscored:

The Mojahedin-e Khalq Organization that is present on Iraqi territory will come under the full control of the Iraqi government until it is expelled from Iraq. This organization will be treated according to the laws of Iraq;

Any cooperation with the terrorist Mojahedin-e Khalq Organization by any organization, party, institution or person, (whether Iraqi or alien) in Iraq is prohibited and anyone who cooperates with them will be subject to the laws of the war on terrorism and will be referred to the judicial system according to the said laws.

It is incumbent on the Multi-National Force-Iraq to abandon this organization and hand over to relevant Iraqi authorities all control points and issues that relate to the members of this organization.

Judicial lawsuits against those groups of members of the terrorist Mojahedin-e Khalq Organization who have committed crimes against the people of Iraq will be activated;

Coordination will be made between the Government of Iraq and the International Committee of the Red Cross to find fundamental solutions for

¹⁷⁸ *Resolution 56/83*, UN General Assembly, 56th Sess (Dec 12, 2001), UN Doc A/RES/56/83 (“Responsibility of States for internationally wrongful acts”).

¹⁷⁹ *Id.*, Arts 2(a)–(b).

¹⁸⁰ *Id.*, Art 12.

the problem of the presence of the said organization in Iraqi territory and the implementation of the decisions taken to expel them from Iraq.¹⁸¹

Should the International Committee of the Red Cross (ICRC) be involved, as the cabinet members have stated, it would have a duty to see to the safe transfer of protected persons to countries other than Iran, and also to countries who would not, in turn, hand over the individuals to Iran.¹⁸² In 2009, control over Camp Ashraf and the province in which it is located, was handed over to Iraqi forces.¹⁸³ The detainees within Ashraf and the Iraqi soldiers clashed on July 28 and 29, 2009, which resulted in six dead Iranian detainees. US officials claimed they were given no advance warning of the raid on the camp.¹⁸⁴ The Government of Iraq and the PMOI offered differing versions of the clashes. No clarification of the events has been forthcoming.

The Permanent Constitution of the Republic of Iraq, 2005, also provides protection against *refoulement* of refugees.¹⁸⁵ Even though Article 21(2) states that “[a] law shall regulate the right of political asylum in Iraq. No political refugee shall be surrendered to a foreign entity or returned forcibly to the country from which he fled,”¹⁸⁶ it also contains an exception for any persons “accused of” or “charged with” having committed “terrorist crimes.”¹⁸⁷ It is clear from the June 17, 2008 Iraqi cabinet decision that it intends to invoke this exception to Article 21. However, there are several reasons why this decision would not meet international standards for the denial of political asylum.

Article 21 of the Iraqi Constitution sets out the basic rules for extradition and the granting of political asylum.¹⁸⁸ In particular, it forbids extradition of Iraqi nationals to third states, and establishes that the right to asylum will be governed by legislation. It stipulates, however, that no one will be eligible for asylum if that person has been “accused of” (official translation) or “charged with” (correct translation) having committed “terrorist crimes.”¹⁸⁹

¹⁸¹ Ratification of the Council of Ministers, No. 216, Iraqi Cabinet, 27th Session (Jun 17, 2008).

¹⁸² International norms require only the safeguarding of individuals and family unity, not social and political unity, unless there are compelling reasons of justice otherwise. See Elizabeth Wilmshurst and Susan Breau, eds, *Perspectives on the ICRC Study on Customary International Humanitarian Law* (Cambridge 2007).

¹⁸³ See Timothy Williams, *Clashes at Iranian Exile Camp in Iraq*, NY Times A6, ¶ 5 (July 29, 2009).

¹⁸⁴ *Id.*, ¶ 3.

¹⁸⁵ See Iraq Const, Art 21(2) (cited in note 37).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*, Art 21(3).

¹⁸⁸ See *id.*, Art 21.

¹⁸⁹ *Id.*, Art 21(3). The PMOI was designated a “foreign terrorist organization” by the US State Department in 1997, but a Federal Court of Appeals ruled in July 2010 in favor of the PMOI, forcing the State Department to Reconsider the designation. See Glenn Kessler, *Court tells State*

There is every reason to believe that the Iraqi government, eager to satisfy the Iranian government, will interpret the language of Article 21(3) to deny asylum to the members of the PMOI and justify their repatriation to Iran and/or their involuntary expulsion from the country. Iran's history sadly, but unequivocally, demonstrates that should these people be forced to return, their lives would be in imminent danger.

The use of Article 21(3) of the Iraqi Constitution to justify the denial of members of PMOI currently in Iraq political asylum or refugee status if and when they apply for it, and their consequent repatriation or expulsion would be a violation of conventional and customary international law obligations that are binding and enforceable. In particular, provisions of the Refugee Convention and Protocol and the CAT absolutely forbid the *refoulement* of refugees or potential refugees to a place where they might be persecuted or tortured. Those provisions have become customary international law. In addition, the International Covenant on Civil and Political Rights also includes a prohibition of *refoulement*. These rules have become *jus cogens*, meaning that no derogation is ever acceptable, regardless of a state's adherence or non-adherence to any specific treaty.

International rules, moreover, require that any decision to repatriate a refugee necessitates a final and independent judicial determination that she or he has committed a serious crime in the country of refuge, and that his or her continued presence there poses an unacceptable threat to the order and security of that country. None of these elements is present with respect to the PMOI or the people of Ashraf. The cabinet references no findings or basis for the designation of the PMOI at Ashraf as a terrorist organization. Moreover, Paragraph 5 of the cabinet's statement seems to imply that lawsuits will commence against the PMOI with accusations of terrorism. However, this demonstrates that no judicial determination has been made against any member of the PMOI at Ashraf.

Using lawsuits against a group as the basis for designating them a terrorist organization before they have had the opportunity to present any evidence or arguments in their case is contrary to the constitutional right to due process of

Dept. to Reconsider Terrorist Label for Iran Opposition Group, Wash Post (Jul 17, 2010), online at <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/16/AR2010071605881.html> (visited Jul 26, 2010). An equivalent designation under English law has now been set aside by the courts, and the listing in the EU has also been successfully challenged. See John F. Burns, *Iranian Exiles Aren't Terrorist Group, British Court Says*, NY Times ¶ 1 (May 8, 2008), online at <http://www.nytimes.com/2008/05/08/world/europe/08britain.html?scp=4&sq=ashraf&st=cse> (visited Apr 24, 2010).

law.¹⁹⁰ No criminal cases have commenced, no one has been convicted of violating Iraq's national terrorism laws, and no one in Ashraf has been given the opportunity to present their cases in a public forum to a neutral fact-finder considering the dangers inherent in their return to Iran.¹⁹¹ The EU removed the PMOI from its terrorist list on January 27, 2009.¹⁹²

There is no mention in the SOFA of these "protected persons" currently in Iraqi territory, and it is unclear if these "protected persons" fall under the provisions set for detainees. It is possible that Article 22, Paragraph 4 may provide some protection for the PMOI by requiring the US to "provide to the Government of Iraq available information on all detainees who are being held by them."¹⁹³ However, there is no provision requiring Iraqi officials to follow US recommendations regarding detainees. Efforts by Iraq to return the Camp Ashraf "protected persons" continues and the position of the US in connection with its obligations toward them is uncertain.¹⁹⁴

The Framework Agreement includes a provision promising to "support and strengthen Iraq's democracy and its democratic institutions as defined and established in the Iraqi Constitution, and in so doing, enhance Iraq's capability to protect these institutions against all internal and external threats."¹⁹⁵ This provision can be seen as supportive language of Iraq's obligations for asylum and non-*refoulement* found within the constitution.¹⁹⁶

For all of these reasons, a reading of Article 21(3) of the Iraqi Constitution as justifying the denial of refugee status to, and expulsion of, the PMOI members from Iraq to Iran would be an egregious violation of fundamental norms of international law, which would and should draw the severe condemnation of the entire world community.

¹⁹⁰ Consider US Const, Amends V, XIV, § 1 (cited in note 44) (declaring that neither the federal government nor any state may deprive persons of "life, liberty, or property, without due process of law").

¹⁹¹ Article 186 of the Iranian Islamic Punishment Act (1997) declares the PMOI "*Mohareb*" (at enmity with God) and Article 190 of that Act states that the penalties for committing *Mohareb* are "killing," "hanging," and "amputation."

¹⁹² See Stephen Castle, *Europe Takes Terrorist Label Off Iranian Resistance Group*, NY Times ¶ 1 (Jan 27, 2009), online at <http://www.nytimes.com/2009/01/27/world/middleeast/27iran.html> (visited Apr 24, 2010).

¹⁹³ Iraq SOFA, Art 22(4) (cited in note 2).

¹⁹⁴ See generally Protected Person Memo (cited in note 169).

¹⁹⁵ Framework Agreement, § 2, ¶ 1 (cited in note 3).

¹⁹⁶ See Iraq Const, Art 21 (cited in note 37).

IX. CONCLUSION

The Iraq SOFA and the Framework Agreement represent a significant political and legal shift in US-Iraqi relations, particularly when compared to conditions immediately prior to and during the beginning of the US-led war and occupation in Iraq. Prime Minister Maliki and other Iraqi leaders, in participating in the negotiation of these agreements, were able to include strong legal parameters on US activities in Iraq in the coming years. In this sense, the agreements represent a symbolic, and perhaps literal, end to a period of US impunity in Iraq, placing new standards for accountability on US forces and imposing a date certain for US combat troop withdrawal. This does not mean a certain end to US military presence in Iraq. Strategic considerations such as the protection of the Gulf Federation Council states and Iraq from potential Iranian threats are among the obvious ones. US military presence in the region is not about to disappear in the foreseeable future. Instead, it is likely to be less auspicious.

Still unresolved by these agreements is the issue of the PMOI “protected persons” in Iraq. The longer the legal obligations of the US with regard to these “protected persons” remain ambiguous, the more tenuous the PMOI’s situation becomes. In March 2009, Iraqi forces besieged Camp Ashraf after Iraq National Security Adviser Mowaffaq al-Rubaie ordered the camp shut down.¹⁹⁷ The expulsion of the PMOI “protected persons” to Iran will likely lead to violations of international law and of the PMOI “protected persons” human rights, and that exposes the US to the consequences of international law breaches. However, uncertain US political relations with Iran may mean the Obama Administration will sacrifice the safety of the PMOI “protected persons” in order to enhance relations with that country and to avoid tensions in US-Iraq relations, which are dependent on the cooperation of the Maliki government, an Iranian Shia dominated coalition.

¹⁹⁷ See Tim Cocks, *Iraqi Army Besieges Iranian Exile Camp- Residents*, Reuters ¶ 1 (Mar 16, 2009), online at <http://www.reuters.com/article/featuredCrisis/idUSLF475178> (visited Apr 24, 2010).