

# Towards Enacting Legislation to Revoke Immunity for U.S. Forces in Iraq

Dr. Musaddaq Adel

College of Law – University of Baghdad



## Introduction

Complete national sovereignty is one of the most fundamental pillars upon which all nations rely, regardless of their political systems. It signifies the ability to manage both domestic and foreign affairs with freedom and independence, enabling nations to achieve their objectives and serve their citizens effectively.

Recognizing the importance of sovereignty, the majority of nations strive to enact explicit legal provisions that uphold this principle. In this context, the Constitution of the Republic of Iraq (2005) adheres to the same approach, as Article (1) states: "The Republic of Iraq is a single federal, independent, and fully sovereign state." Similarly, Article (5) of the Constitution asserts that "sovereignty resides in the law," while Article (8) obligates Iraq to respect its international commitments.

To address this subject and to legislate a law abolishing all immunities granted to U.S. forces stationed in Iraq, as a prelude to ending this illegitimate presence, we will divide our study into two main sections as follows:

### Section One: The Legal Position on the Strategic Framework Agreement and the Possibility of Its Revocation

The legal status and nature of U.S. forces currently operating in Iraq have changed over different periods, starting with the occupation of Iraq (March 20, 2003 – April 9, 2003). Initially, their presence during this period was based on their status as an occupying power, as recognized by international legitimacy through United Nations Security Council resolutions. This status later

changed after the Iraqi Parliament ratified the Security Agreement (SOFA) between Iraq and the United States under Law No. (51) of 2008. This followed the U.S. Congress's approval in late April 2007 of a supplementary agreement with Iraq that included a final withdrawal deadline for U.S. forces from Iraqi territories no later than December 31, 2011. Subsequently, the nature of these forces transitioned to a symbolic withdrawal on December 18, 2011, leaving behind 200 military advisors and 15,000 personnel at the U.S. Embassy in Baghdad. After (ISIS) occupied over a third of Iraq's territory in 2014, U.S. forces assumed the role of operating within the framework of the international coalition to combat ISIS. They exploited this role and the international cover to establish military bases and conduct operations against Iraqi security forces and the Popular Mobilization Forces (PMF). This ultimately led to the Iraqi Parliament's issuance of a resolution on January 5, 2020, calling for the expulsion of foreign forces from Iraqi territory and airspace, effectively terminating the work of the international coalition against ISIS.

To thoroughly examine the legal basis of the Strategic Framework Agreement, we will address it in the following subsections.

### **Subsection One: An Examination of the Legality of the Strategic Framework Agreement Between Iraq and the United States**

Despite the lack of consensus among political blocs and parties regarding a unified stance on U.S. forces and the nature of their relationship with Iraq, as they were perceived as occupying forces, negotiations ultimately culminated in the signing of the Strategic Framework Agreement between the Iraqi and U.S. sides on November 17, 2008. This was followed by the Iraqi Council of Ministers' approval of the Strategic Framework Agreement for a so-called permanent relationship of friendship and cooperation between Iraq and the United States in an extraordinary session held on November 6, 2008, with 27 votes in favor, one objection, and six members absent. Subsequently, the Iraqi Parliament ratified the agreement with a majority of

144 votes out of the 199 members present, while 35 members objected. The Presidential Council then approved the agreement on December 4, 2008.

The key question arising here is whether Iraq was exercising full sovereignty at the time, allowing it to validly enter into such an agreement.

Jurisprudential opinions on this matter are divided into two main perspectives:

### **1.The First Perspective:**

Proponents of this view, representing the minority opinion, argue that the agreement reflects a balance of rights and obligations. They emphasize that the agreement enshrines the principle of mutual respect for legal sovereignty between the two parties, acknowledges the sovereignty of each, addresses issues of vital interest to both parties, and reflects popular will through the parliamentary representatives who voted in favor of the agreement.

### **2.The Second Perspective:**

The majority view in political and legal jurisprudence denies the legitimacy of the agreement for several reasons, chief among them being the unequal nature of the parties involved. This imbalance resulted in disproportionate outcomes and unequal obligations, undermining the equitable foundation required for such agreements.

## **Section Two: Enacting a Law to Revoke Judicial Immunity Granted to U.S. Forces in Iraq**

After the Iraqi Parliament's failure to convene sessions to legislate a law for the removal of military forces from Iraqi territory and airspace—whether in 2020 or 2024—and the Iraqi government's inclination toward engaging in strategic dialogues with the United States, both during the tenure of Prime Minister Mustafa Al-Kadhimi and Prime Minister Mohammed Shia Al-Sudani, it has become necessary to explore legal solutions to expedite the withdrawal of U.S. military forces from Iraqi territory and airspace.

One of the most critical measures is to legislate a law that terminates the legal and judicial immunity granted to these forces under Iraqi law. To address this matter, we will examine the following subsections:

### **Subsection One: Iraqi Legislation Granting Immunity to U.S. Forces in Iraq**

Immunity for U.S. soldiers stationed in Iraq has been established through various legal provisions, despite constituting a blatant violation of Iraq's sovereignty and contravening Articles (1), (50), (78), (29), (67), (109), and (110/First) of the Constitution of the Republic of Iraq (2005).

The most notable legislation still in effect today is the now-dissolved Coalition Provisional Authority (CPA) Order No. (17) of 2003, issued by the CPA Administrator on June 27, 2003. This order placed the Coalition, foreign liaison missions, their personnel, and contractors under specific legislative sections (1 through 7), granting them broad immunities.

### **Subsection Two: Legal Mechanisms to Expedite U.S. Withdrawal from Iraq**

While legislating a law to revoke the immunity granted to occupying forces under CPA Order No. (17) of 2003 is a fundamental step toward achieving a comprehensive U.S. withdrawal from Iraq, several legislative and executive measures must be implemented in parallel. These steps can be summarized as follows:

#### **First: Legislative Mechanisms**

- Submission of a proposal by 10 members of Parliament to repeal **Law No. (52) of 2008**, which ratified the Strategic Framework Agreement for a Permanent Relationship of Friendship and Cooperation between the Republic of Iraq and the United States.
- Submission of a proposal by members of Parliament for a law to prosecute the United States for crimes committed in Iraq, including the assassination of Abu **Mahdi Al-Muhandis** and **General Qasem Soleimani** at Baghdad International Airport.

## Second: Executive Mechanisms

- The Iraqi government should submit a formal request and written communication via the Minister of Foreign Affairs to terminate the work of the international coalition to combat ISIS in Iraq.
- Take necessary military measures to regain full control of Iraqi airspace and eliminate U.S. influence over it.
- Ensure the government and the Commander-in-Chief of the Armed Forces enforce the parliamentary resolution issued on January 5, 2020, calling for the end of foreign military presence in Iraqi territory and airspace.
- Intensify diplomatic efforts by the Iraqi government and Ministry of Foreign Affairs in international forums to remove manifestations of U.S. armed presence in Baghdad.

## Conclusion

- 1.The Strategic Framework Agreement between Iraq and the United States, ratified by Parliament in 2008, was imposed on Iraq during a period when both the legislative and executive branches were under the de facto occupation of the United States.
- 2.The Strategic Framework Agreement was drafted by the U.S. side to serve American interests in Iraq, ensuring complete control over Iraq's strategic location.
- 3.It is evident that U.S. dominance in Iraq has been manifested through indirect influence on Iraq's political decision-making, hindering the legislation of laws to terminate the presence of the international coalition and foreign military forces in Iraqi territory and airspace.