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## Jus Post Bellum in Iraq: The Development of Emerging Norms for Economic Reform in Post Conflict Countries

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**JUS POST BELLUM IN IRAQ: THE DEVELOPMENT  
OF EMERGING NORMS FOR ECONOMIC  
REFORM IN POST CONFLICT COUNTRIES**

*Christina C. Benson*<sup>1</sup>

**ABSTRACT:**

Finally emerging from decades of conflict and isolation, Iraq has endured three devastating wars, the demise of the Saddam Hussein regime, the end of international economic sanctions, and the protracted process of approving a constitution and forming a new democratically elected government. The nation’s emergence from war, and efforts to build the foundations of stable governance and economic growth, provides a fascinating case study for analyzing new international norms promoting the “rule of law” in post-conflict countries.

This paper addresses arguments that early legal and economic reforms implemented by the Coalition Provisional Authority (CPA) and the Iraqi Interim Government (IIG) in Iraq during 2003-2005 may have violated the principle of “conservation” in international humanitarian law. The paper further examines whether a new doctrine of “*jus post bellum*” is emerging, and the extent to which the United Nations and international economic organizations are permitted to support economic reforms as part of a larger effort to engage in peace building and to establish a “rule of law” in post-conflict countries.

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The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law.

—U.S. President Dwight D. Eisenhower<sup>2</sup>

We’ve persevered because of a belief we share with the Iraqi people - a belief that out of the ashes of war, a new beginning could be born in this cradle of civilization. Through this remarkable chapter in the history of the United States and Iraq, we have met our responsibility. Now, it’s time to turn the page.

—U.S. President Barack Obama<sup>3</sup>

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<sup>2</sup> President Dwight D. Eisenhower, President, Address to the Nation Establishing Law Day (May 5, 1958).

<sup>3</sup> Barack Obama, President, Address to the Nation on the End of Combat Operations in Iraq (Aug. 31, 2010) (transcript available at <https://my.barackobama.com/page/content/iraqremarks/>).

## INTRODUCTION

The Mesopotamian valley between the Tigris and Euphrates rivers once served as a cradle of civilization, and grew into a crossroads of commerce and culture at the intersection of strategic international trade routes.<sup>4</sup> Today, Iraq stands at a geographic, historic, and economic crossroads. Finally emerging from decades of conflict and isolation, the country has endured three devastating wars, the demise of the Saddam Hussein regime, the end of international economic sanctions, and the protracted process of approving a constitution and forming a new democratically elected government.<sup>5</sup> Iraq still faces massive challenges for rebuilding its legal and economic institutions and infrastructure internally, while re-engaging with regional and multilateral trading partners externally. The nation's emergence from war, and efforts to build the foundations of stable governance and economic growth, provides a fascinating case study for analyzing new international norms espoused by the United Nations and international economic organizations promoting the "rule of law" in post-conflict countries.

This paper specifically addresses economic reforms implemented in Iraq following the invasion by coalition troops in May 2003, the ousting of the Saddam Hussein regime, and the period of occupation by coalition forces.<sup>6</sup> More specifically, this paper responds to arguments that the scope of early legal and economic reforms implemented by the Coalition Provisional Authority (CPA) in Iraq may have violated the principle of "conservation" in international humanitarian law, and examines the changing role of the United Nations and international economic organizations in developing new norms for implementing economic reforms as part of a multilateral peace building process aimed at establishing the "rule of law" in post-conflict countries.<sup>7</sup>

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<sup>4</sup> See, e.g., *History of Mesopotamia*, ENCYCLOPEDIA BRITANNICA ONLINE ACADEMIC ED., <http://www.britannica.com/EBchecked/topic/376828/history-of-Mesopotamia> (last visited Sept. 14, 2012).

<sup>5</sup> See generally *Iraq*, ENCYCLOPEDIA BRITANNICA ONLINE ACADEMIC ED., <http://www.britannica.com/EBchecked/topic/293631/Iraq> (last visited Sept. 14, 2012) (describing the history of Iraq after the 1958 revolution).

<sup>6</sup> At the time of the invasion, the coalition forces were primarily made up of U.S. troops, with a significant contingent from the United Kingdom, and much smaller numbers from Australia and Poland. See, e.g., Michael B. Callaghan, *Numbers Don't Lie: World Against U.S.*, TORONTO STAR, Mar. 22, 2003, at H07.

<sup>7</sup> See Herbert Docena, *Free Market by Force: The Making and Un-Making of a Neo-Liberal Iraq*, 1 INT'L J. CONTEMP. IRAQI STUD. 123, 125 (2007); Gregory H. Fox, *The Occupation of Iraq*, 36 GEO. J. INT'L L. 195, 199 (2005); Wolfram Lacher, *Iraq: Exception to, or Epitome of, Contemporary Post-Conflict Reconstruction?*, 14 INT'L PEACEKEEPING 237, 237 n.2 (2007).

Part I of the paper briefly describes the early legal and economic reforms implemented by the CPA and the Iraqi Interim Government (IIG) during 2003-05, prior to the period when Iraq held a referendum approving a permanent Constitution and electing a new sovereign Government of Iraq. Part II outlines the principle of “conservation” and other relevant aspects of international humanitarian law that are traditionally applicable during periods of post-war occupation, and evaluates whether the CPA and IIG reforms may have violated these principles. Finally, Part III argues that new international norms for “jus post bellum” are emerging, as the United Nations and other international organizations have shifted their focus from “peacekeeping” to promoting the “rule of law” in post-conflict countries.

It is important to note at the outset that this paper does *not* seek to address issues relating to whether the original invasion of Iraq can be justified under principles of international law, or whether the war in Iraq was conducted in a manner consistent with international law. In other words, this paper does not address the justice of the war itself under international law (“*jus ad bellum*”), nor does it consider the justice of how the invasion and war were conducted prior to occupation by the Coalition Provisional Authority (“*jus in bellum*”),<sup>8</sup> as these issues are beyond the scope of this paper, and already have been extensively addressed in prior academic literature.<sup>9</sup> Rather, the focus of this paper is on the justice of developments during the post-war period of occupation (“*jus post bellum*”),<sup>10</sup> after the CPA took control of

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<sup>8</sup> *E.g.*, Brian Orend, *War*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <http://www.plato.stanford.edu/entries/war> (last updated July 28, 2005).

<sup>9</sup> For example, there are a number of articles specifically debating whether this U.S. invasion of Iraq was justified under applicable standards of international law. See Barry Collins, *The Invasion of Iraq and the Mythology of International Law*, 2 INT’L J. CONTEMP. IRAQI STUD. 307 (2008); Sean D. Murphy, *Assessing the Legality of Invading Iraq*, 92 GEO. L.J. 173 (2004); John C. Yoo, *International Law and the War in Iraq*, 97 AM. J. INT’L L. 563 (2003) (arguing that the invasion was legally justified given applicable UN resolutions). There are also numerous recent books and articles addressing the so-called “Bush Doctrine” and evaluating U.S. foreign policy in Iraq more generally under principles of international law. See M. Cherif Bassiouni, *Legal Status of US Forces in Iraq from 2003-2008*, 11 CHI. J. INT’L L. 1 (2010); Peter G. Danchin, *International Law, Human Rights and the Transformative Occupation of Iraq*, in INTERNATIONAL LAW, HUMAN RIGHTS AND THE TRANSFORMATIVE OCCUPATION OF IRAQ 64 (Bret Bowden et al. eds., 2009); Wayne Sandholtz, *The Iraq War and International Law*, in ROUTLEDGE HANDBOOK OF INTERNATIONAL LAW 222 (David Armstrong ed., 2009); William H. Taft IV & Todd F. Buchwald, *Preemption, Iraq, and International Law*, 97 AM. J. INT’L LAW 557 (2009); Hakan Tunç, *Preemption in the Bush Doctrine: A Reappraisal*, 5 FOREIGN POL’Y ANALYSIS 1 (2009); MARC WELLER, IRAQ AND THE USE OF FORCE IN INTERNATIONAL LAW 10 (2010).

<sup>10</sup> Orend, *supra* note 8.

the country and up until such time as a nominally representative sovereign government could be elected. Determining whether activities carried out during the post-war period of occupation are consistent with international law requires an analysis that is separate and distinct from the legal merits of the invasion of Iraq and the conduct of military operations.

### I. EARLY ECONOMIC AND LEGISLATIVE REFORMS IMPLEMENTED BY THE COALITION PROVISIONAL AUTHORITY

It would be an understatement to say that the Iraqi government was in a state of flux for many years following the initial invasion by U.S.-led coalition forces in the spring of 2003. Critics have been quick to point out that the substantial transformation of Iraq from a centrally planned to a market-based economy was one of the primary goals of U.S. administration and CPA policy from the outset of the invasion by Coalition forces.<sup>11</sup> The nation's political, legal, economic, and security systems were thrown into chaos following the demise of the Saddam Hussein regime, which made re-establishing security, restoring a sense of order, and repairing a shattered economy a CPA priority.<sup>12</sup> On the economic side, critics have naturally questioned whether the occupying powers sought to implement free market reforms in order to promote economic growth, opportunity, and self-sufficiency for a newly emerging sovereign country, or whether they merely intended to open the door for Western corporate interests to exploit Iraqi oil resources.<sup>13</sup> To place these post-war developments in context, and to evaluate their legitimacy under international law, it is helpful to begin with a timeline.

#### A. *Timeline of the Invasion, Occupation, and Transfer Of Power In Iraq*

Before considering whether economic reforms implemented from 2003 to 2005 were consistent with international law, it is helpful to first provide a timeline of events to establish the relevant period during which Iraq could be deemed "occupied" by foreign forces. The attached **Appendix A** provides a detailed timeline of key events re-

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<sup>11</sup> See, e.g., Neil King Jr., *Bush Officials Draft a Broad Plan For Free-Market Economy in Iraq*, WALL ST. J., May 1, 2003, at A1.

<sup>12</sup> See generally Rebecca Santana & Robert H. Reid, *Iraq: A War of Muddled Goals, Painful Sacrifice*, ARMY TIMES (Dec. 10, 2011), <http://www.armytimes.com/news/2011/12/ap-iraq-a-war-of-muddled-goals-painful-sacrifice-121011/> (describing the issues facing coalition forces following the demise of Saddam Hussein's regime).

<sup>13</sup> See, e.g., King, *supra* note 11.

lated to the occupation and handover of authority to subsequent Iraqi sovereign governments through several successive stages during which a constitution was drafted and voted on by the people of Iraq, and a new government was ultimately elected pursuant to the new constitution. As shown in the detailed timeline in **Appendix A**, the key periods of post-war transition in the governance of Iraq included the following:

| <b>Dates</b>                   | <b>Governing Body in Power</b>        | <b>Description</b>  |
|--------------------------------|---------------------------------------|---|
| March 20, 2003 – June 28, 2004 | Coalition Provisional Authority (CPA) | Provided governance during period of occupation; led by US Administrator Paul Bremer. <sup>14</sup>   |
| June 2004 – May 2005           | Iraqi Interim Government              | 25 Iraqi representatives selected under supervision of the CPA as caretaker government pending constitution and elections; led by Prime Minister Iyad Allawi. <sup>15</sup>   |
| May 2005 – May 2006            | Iraqi Transitional Government         | Operated under the “Law of Administration for the State of Iraq for the Transitional Period”; main functions were to draft a permanent Constitution of Iraq and facilitate transition to permanent government; led by Prime Minister Ibrahim al Jaafari of the United Iraqi Alliance, and Kurdish President Jalal Talabani. <sup>16</sup> |

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<sup>14</sup> JAMES DOBBINS ET. AL., OCCUPYING IRAQ: A HISTORY OF THE COALITION PROVISIONAL AUTHORITY iii (RAND Corp. 2009), available at [http://www.rand.org/pubs/monographs/2009/RAND\\_MG847.pdf](http://www.rand.org/pubs/monographs/2009/RAND_MG847.pdf).

<sup>15</sup> KENNETH KATZMAN, CONG. RESEARCH SERV., RS21968, IRAQ: POLITICS, ELECTIONS, AND BENCHMARKS 1 (2011).

<sup>16</sup> *Id.* at 1–2.

|                          |  |  |
|--------------------------|--|--|
| October 15, 2005         | New Iraqi Constitution Ratified                | Referendum Conducted and constitution ratified by popular vote. Many Sunnis decided not to participate. <sup>17</sup>  |
| December 2005 – May 2006 | Parliamentary elections under new Constitution | Votes counted; No single alliance can form a controlling government. <sup>18</sup>   |
| May 2006 – March 2010    | First permanent post-war Iraqi Government      | Continued challenges in forming ruling party alliances and filling key Ministry positions; Nouri al-Maliki eventually selected as Prime Minister. <sup>19</sup>  |
| March 2010 – Present     | Second permanent post-war Iraqi Government     | Second parliamentary elections conducted; Iyad Allawi's Iraqiya coalition wins 91 seats and Nuri al-Maliki's State of Law bloc is second with 89 seats; 8 months pass without forming a majority coalition government and filling key posts. <sup>20</sup> |

This paper focuses primarily on the first two stages of post-war governance in Iraq, during the era from March 2003 through May 2005 when Iraq was governed by the CPA and then the IIG.<sup>21</sup> As outlined below, the CPA was plainly an “occupying power” for purposes of applying international humanitarian law. In July 2003, the CPA formed an “Iraqi Governing Counsel” made up of 25 Iraqis who were selected by coalition leaders, but who remained under the supervision of the CPA.<sup>22</sup>

The IIG was formed to take control from the CPA pursuant to UN Security Council Resolution 1546, and was recognized by the United Nations and the Arab League as a legitimate sovereign govern-

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<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.* at 3–6.

<sup>20</sup> KATZMAN, *supra* note 15, at Summary, 14.

<sup>21</sup> See *Building Iraqi Security Forces: Testimony Before the H. Subcomm. on H. Government Reform*, 112th Cong. (2005) (statement of Joseph A. Christoff, Dir., Gov't Accountability Office).

<sup>22</sup> See, e.g., *Iraqi Governing Council*, GLOBALSECURITY.ORG, <http://www.global-security.org/military/world/iraq/igc.htm> (last visited Sept. 14, 2012).



ment.<sup>23</sup> There is some question, however, regarding whether the period of “occupation” may arguably have continued under the IIG given the substantial continued influence of coalition forces and their military presence in the country.<sup>24</sup>

In Resolution 1546, the UN Security Council states that the continued presence of a multinational coalition military force is justified based on a “request of the Interim Government,” and reaffirms that a special unit within the multinational military force shall be given the task of protecting UN activities in Iraq.<sup>25</sup> Thus, as addressed below, there remains some question as to whether the period of effective “occupation” may have continued during the IIG era for purposes of applying the laws of occupation under the Hague Regulations and the Fourth Geneva Convention. The following section provides an overview of economic reforms implemented during the CPA and IIG eras, and then analyzes whether such reforms violated international humanitarian law of occupation applicable at that time.

### *B. Early Economic and Legislative Reform Efforts in Iraq*

From his first speech to the international community, delivered on June 23, 2003 to a special meeting of the World Economic Forum held in Amman, Jordan, CPA Administrator L. Paul Bremer emphasized the extent and importance of legal and economic reforms.<sup>26</sup> Bremer emphasized that the CPA intended to pursue the following specific economic reforms to begin the process of transitioning Iraq to a market-based economy.<sup>27</sup>

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<sup>23</sup> S.C. Res. 1546, U.N. Doc. S/RES/1546 (June 8, 2004), available at <http://www.uncc.ch/resolutio/res1546.pdf>; Magdi Abdelhadi, *Arab World Split on Volatile Iraq*, BBC News (Sept. 9, 2003), [http://news.bbc.co.uk/2/hi/middle\\_east/3093836.stm](http://news.bbc.co.uk/2/hi/middle_east/3093836.stm).

<sup>24</sup> See Rudiger Wulfrum, *Iraq – from Belligerent Occupation to Iraqi Exercise of Sovereignty: Foreign Power versus International Community Interference*, 9 MAX PLANCK Y.B. UNITED NATIONS 34–45 (2005) (discussing an alternate view of the status of the coalition forces during the IIG period under international humanitarian law of occupation).

<sup>25</sup> S.C. Res. 1546, *supra* note 23, ¶ 9.

<sup>26</sup> Ambassador L. Paul Bremer III, Chief Adm’r in Iraq, Address at the World Economic Forum (June 23, 2003), available at <http://www.c-spanvideo.org/program/177131-4>. The CPA also emphasized the importance of creating a market economy in Iraq, stating: “The ultimate goal for Iraq is a durable peace for a unified and stable, democratic Iraq that is underpinned by new and protected freedoms and a growing market economy.” COALITION PROVISIONAL GOVERNMENT, AN HISTORIC REVIEW OF CPA ACCOMPLISHMENTS 2003–2004, at 4, available at [http://pdf.usaid.gov/pdf\\_docs/PCAAB654.pdf](http://pdf.usaid.gov/pdf_docs/PCAAB654.pdf) (last visited Sept. 21, 2012).

<sup>27</sup> *Id.*

- a) Begin substantial reforms of Iraq's financial sector to provide liquidity and credit for the Iraqi economy;<sup>28</sup>
- b) Simplify Iraq's regulatory regime to lower barriers to entry for new domestic and foreign firms;<sup>29</sup>
- c) Review Iraq's body of commercial law to determine what changes are needed to encourage private investment;<sup>30</sup>
- d) Lift unreasonable restrictions on property rights;<sup>31</sup>
- e) Develop antitrust and competition laws;<sup>32</sup>
- f) Develop an open market trade policy, providing for a level playing field with regional trade partners;<sup>33</sup> and
- g) Encourage the adoption of laws and regulations to assure that Iraq has high standards of corporate governance.<sup>34</sup>

The CPA's goals were reinforced a year later, from the highest levels of the U.S. administration, when President George W. Bush delivered a major speech outlining U.S. goals and policies on Iraq in May 2004.<sup>35</sup> Bush emphasized CPA progress in transforming Iraq's economy, specifically mentioning the relevance of the World Trade Organization and major legal reforms in that process:

The third step in the plan for Iraqi democracy is to continue rebuilding that nation's infrastructure so that a free Iraq can quickly gain **economic independence** and a better quality of life. . . . And **now a growing private economy is taking shape. A new currency has been introduced. Iraq's governing council approved a new law that opens the country to foreign investment for the first time in decades. Iraq has liberalized its trade policy. And today an Iraqi observer attends meetings of the World Trade Organization.** Iraqi oil production has reached more than two million barrels per day, bringing revenues of nearly \$6 billion so far this year, which is being used to help the people of Iraq. And . . . many of Iraq's largest creditors

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Bremer, *supra* note 26; CPA Press Release, *supra* note 26.

<sup>32</sup> Bremer, *supra* note 26.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Remarks at the United States Army War College in Carlisle, Pennsylvania, 1 PUB. PAPERS 919, 919 (May 24, 2004), available at <http://www.gpo.gov/fdsys/pkg/PPP-2004-book1/pdf/PPP-2004-book1-doc-pg919.pdf>.

have pledged to forgive or substantially reduce Iraqi debt incurred by the former regime.<sup>36</sup>

The above statement by President Bush, commenting on the economic reforms already implemented by the CPA as an occupying power, was made a month before the formal transfer of power from the CPA to the IIG.<sup>37</sup>

During its 14 months in control of Iraq before transferring power to the IIG, the CPA implemented a large number of legislative orders aimed at restructuring the Iraqi economy, including institutional and legal reforms relating to issuing a new currency, curbing inflation, instituting banking reforms, debt relief, taxation, foreign trade, foreign investment, customs laws, private economic transactions, securities regulation, improving regulatory systems, and reducing government subsidies.<sup>38</sup> These reforms of existing Iraqi laws and regulations were proposed and implemented in consultation with the Iraq Governing Council; however, members of the IGC were largely selected in consultation with the CPA rather than through open elections.<sup>39</sup> One hundred separate, official CPA orders, some of which were later revised or rescinded, made significant legislative changes from May 2003 through June 2004, and had legal effect and were described by the CPA as “binding instructions or directives to the Iraqi people that create penal consequences or have a direct bearing on the way Iraqis are regulated, including changes to Iraqi law.”<sup>40</sup>

In short, there is no doubt that the United States and the CPA actively promoted economic and legislative reforms in Iraq as a central part of reconstruction initiatives. To be balanced, however, it is also important to note that many of the goals pursued in CPA reforms were also referenced in UN Security Council resolutions, and were largely implemented with the direct support and involvement of the UN, international financial institutions, and other international organizations.

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<sup>36</sup> *Id.* at 923 (emphasis added).

<sup>37</sup> *Id.*

<sup>38</sup> For detailed discussions of these CPA-era reforms, see generally Gregory H. Fox, *The Occupation of Iraq*, 36 GEO. J. INT'L L. 195, 240 (2005), Christopher Foote, William Black, Keith Crane, & Simon Gray, *Economic Policy and Prospects in Iraq*, J. ECON. PERSP., no. 3, Summer 2004, at 58-66, and JAMES DOBBINS ET AL. OCCUPYING IRAQ: A HISTORY OF THE COALITION PROVISIONAL AUTHORITY, 197-42 (2009).

<sup>39</sup> See DOBBINS, *supra* note 38, at 243-48.

<sup>40</sup> CPA Official Documents, IRAQCOALITION.ORG, <http://www.iraqcoalition.org/regulations/> (last visited Sept. 14, 2012) (listing and providing the full text of all binding orders issued by the CPA).

## II. DID ECONOMIC AND LEGISLATIVE REFORMS IN IRAQ VIOLATE THE PRINCIPLE OF CONSERVATION UNDER INTERNATIONAL HUMANITARIAN LAW?

Although there are valid policy-based criticisms of the manner in which the CPA initially pressed for early market-based and legislative reforms in Iraq, it is not entirely clear whether such reforms violated international humanitarian laws applicable during periods of post-war occupation, particularly given the context of the peacekeeping and nation-building goals outlined in applicable UN Security Council resolutions during this period. The sections below outline criticisms of the economic reforms implemented in Iraq, then seek to place the reforms initiated by the CPA in the larger context of conditions on the ground in Iraq, the status of the Iraqi economy following crippling pre-war economic sanctions, and the scope of the mandates for Iraq that were supported by UN Security Council resolutions.

### A. *Criticisms of Economic Reforms Implemented by the Coalition Provisional Authority in Iraq*

The aggressive push by the CPA to begin restructuring the Iraqi economy within the first year after invasion by coalition forces has been criticized both by academic authors and the mainstream media. A few authors, such as Naomi Klein in her book *The Shock Doctrine*, have employed rather exaggerated language to argue that the CPA's economic reforms in post-war Iraq were part of a vast and long-standing neo-conservative conspiracy to deliberately apply economic "shock treatments" to fragile countries.<sup>41</sup>

Torturers believe that when electrical shocks are applied to various parts of the body simultaneously subjects are rendered so confused about where the pain is coming from that they become incapable of resistance. . . . A similar theory applies to economic shock therapy, or "shock treatment," the ugly term used to describe the rapid implementation of free-market reforms. . . . The theory is that if painful economic "adjustments" are brought in rapidly and in the aftermath of a seismic social disruption like a war, a coup, or a government collapse, the population will be so stunned, and so preoccupied with the daily pressures of survival, that it too will go into suspended animation, unable to resist. . . . In only a few

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<sup>41</sup> See, e.g., NAOMI KLEIN, *THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM* 7–8 (2008).

months, the postwar plan to turn Iraq into [such] a laboratory for the neocons had been realized.<sup>42</sup>

One difficulty with Klein's "shock doctrine" theory as applied to Iraq is that the economy already had been immersed in a longstanding state of shock long before implementation of any CPA economic reforms.<sup>43</sup> Although Iraq had achieved middle-income status in the late 1970s, the economy imploded during the Iraq-Iran War in the 1980s, and was only made worse by 12 years of UN sanctions that followed the Persian Gulf War from 1990-1991.<sup>44</sup> The multilateral UN international sanctions program under the Saddam regime had not only isolated Iraq's government, but also crippled the entire economy, given that oil has traditionally provided about 95 percent of foreign exchange earnings for Iraq.<sup>45</sup> In response to international sanctions, Saddam Hussein's government engaged in black market sales of oil and financed operations by printing more money, which only served to debase the currency, fuel inflation, and promote a culture of widespread corruption.<sup>46</sup> For decades, the government had propped up a whole host of money-losing subsidies and state owned enterprises, and nepotism and corruption were rampant at every level.<sup>47</sup> Foreign investment from any non-Arab sources was prohibited in pre-war Iraq and more than sixty percent of the population depended on government food rations.<sup>48</sup>

In contrast to Klein's impassioned rhetoric, a number of academic authors have employed more objective legal analyses to criticize early reforms in Iraq as potentially violating international humanitarian law. These authors argue that the United States and the United Kingdom were "occupying powers" under international law by virtue of military occupation by their troops and administrative control of the CPA, and thus they were bound by the rules of occupation under Article 43 of the Hague Convention of 1907 and Article 64 of the Fourth Geneva Convention of 1949.<sup>49</sup> These rules set forth the principle

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<sup>42</sup> Naomi Klein, *Baghdad Year Zero: Pillaging Iraq in Pursuit of a Neocon Utopia*, HARPER'S MAGAZINE, Sept. 2004, at 43, 45-46, available at <http://www.harpers.org/archive/2004/09/0080197>.

<sup>43</sup> See Christopher Foote et al., *Economic Policy and Prospects in Iraq*, 18 J. ECON. PERSPECTIVES, no. 3, Summer 2004, at 47, available at <http://pubs.aeaweb.org/doi/pdfplus/10.1257/0895330042162395>.

<sup>44</sup> *Id.*

<sup>45</sup> See *id.* at 68.

<sup>46</sup> See *id.* at 47, 54.

<sup>47</sup> See *id.*

<sup>48</sup> See Foote, *supra* note 43, at 47-48.

<sup>49</sup> For detailed discussions of the applicability of the Hague Regulations of 1907 and the Geneva Conventions of 1949 to the sweeping legal and economic reforms made in Iraq under the Coalition Provisional Authority, see generally Fox, *supra*

known as “conservation” in international humanitarian law, which generally requires that an occupying power keep in force the prior laws of the sovereign and respect existing institutions of justice and governance, unless “absolutely prevented” from doing so, or unless derogation is essential to “ensure security” or “maintain orderly government” and “civil life.”<sup>50</sup> These obligations and limitations apply to periods of armed conflict, as well as to post-conflict reconstruction efforts during an occupation, including constitutional reforms, and economic and social policy reforms.<sup>51</sup>

A key legal question is whether the CPA violated these principles by promoting dramatic reforms of the economy, laws, and public institutions in Iraq while it was still an occupied state, before handing control over to a formally recognized indigenous government selected by Iraqi people.<sup>52</sup> Based on the context in which these economic reforms occurred, and subsequent acceptance of such reforms by the duly elected governments of Iraq, this paper argues that such economic reforms did not violate principles of international humanitarian law, as outline below.

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note 7; Kristen E. Boon, *Open for Business: International Financial Institutions, Post-Conflict Economic Reform, and the Rule of Law*, 39 N.Y.U. J. INT'L L. & POL. 513 (2007). See also Geneva Convention Relative to the Protection of Civilian Persons in Time of War (IV) art. 64, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter “Fourth Geneva Convention”]; Convention Respecting the Laws and Customs of War on Land art. 43, Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539 [hereinafter “Hague Convention”]. See generally 2(a) FINAL RECORD OF DIPLOMATIC CONFERENCE OF GENEVA 285–287 (1949), available at [http://www.loc.gov/rr/frd/Military\\_Law/pdf/Dipl-Conf-1949-Final\\_Vol-2-A.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/Dipl-Conf-1949-Final_Vol-2-A.pdf) (detailing the negotiating history of article 64).

<sup>50</sup> For example, article 64 of the Fourth Geneva Convention provides that occupying powers can only change prior civil laws that “are essential to enable the Occupying Power to fulfill its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power.” Fourth Geneva Convention, *supra* note 49, at art. 64. Article 43 of the Hague Convention further complements this provision of article 64 of Geneva IV. Hague Convention, *supra* note 49, at art. 43. For a detailed discussion of the scope and applicability of Art. 43 of the Hague Convention in peacekeeping operations, see also M. Sassòli, Article 43 of the Hague Regulations and Peace Operations in the Twenty First Century at 6–8 (June 25–27, 2004) (unpublished manuscript, on file with the Program on Humanitarian Policy and Conflict Research at Harvard University), available at <http://www.hpcrresearch.org/sites/default/files/publications/sassoli.pdf>.

<sup>51</sup> Sassòli, *supra* note 50, at 1, 24.

<sup>52</sup> See, e.g., Fox, *supra* note 7, at 196–97; Docena, *supra* note 7, at 123–24.

*B. Economic and Legislative Reforms Implemented by the CPA  
Likely Did Not Violate Key Principles of International Law*

The principle of conservation in international occupation law likely does not invalidate legal and economic reforms implemented in Iraq to date, for several key reasons:

- 1) There are recognized exceptions within the above Hague Regulation and Fourth Geneva Convention provisions that appear to apply in Iraq's case, and such exceptions should be interpreted in light of modern peacekeeping goals and norms under international law.<sup>53</sup>
- 2) The economic reforms implemented by the CPA arguably were authorized by UN Security Council Resolutions, which specifically referenced goals relating to legal and economic reform in Iraq, and the reforms were implemented with assistance from international organizations in direct coordination with UN bodies.<sup>54</sup>
- 3) Duly elected sovereign governments in Iraq subsequently reaffirmed many of the economic reforms and CPA orders following the end of CPA occupation, suggesting the Iraqi electorate did not have strong objections to the reforms.<sup>55</sup>

Below I address each of these arguments in turn.

*1. Economic Reforms During Occupation of Iraq Arguably Were Permissible Under the Hague Regulations and Fourth Geneva Convention*

The rules of occupation under Article 43 of the Hague Regulations of 1907 and Article 64 of the Fourth Geneva Convention of 1949 relied upon by the critics of reforms in Iraq include certain limitations and exceptions to the general rule of conservation. For example, Article 43 of the Hague Regulations specifies:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, **public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.**<sup>56</sup>

Similarly, the third clause of Article 64 of the Fourth Geneva Convention, clarifying Article 43 of the Hague Regulations, states:

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<sup>53</sup> See *infra* notes 56–58 and accompanying text.

<sup>54</sup> See *infra* notes 70–74 and accompanying text.

<sup>55</sup> See *infra* notes 107–09 and accompanying text.

<sup>56</sup> See Hague Convention, *supra* note 49, at art. 43 (emphasis added).

The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfill its obligations under the present Convention, to **maintain the orderly government** of the territory. . .<sup>57</sup>

Taken together, these provisions permit an occupying power to implement reforms that can be deemed necessary to support public order and maintain orderly functioning of government ministries and services, and even to protect private property.<sup>58</sup> Varying interpretations have been suggested for the meaning of the exception “unless absolutely prevented,” but it is well established that this phrase was intended to be a reformulation of the term “necessity” as it originally appeared in Article 3 of the Brussels Declaration before that article was incorporated into Article 43 of the Hague Regulations.<sup>59</sup> Based on the preparatory notes for Article 3 of the Brussels Declaration, it is clear that the term “necessity” as originally used did not require any “military necessity,” and thus can be interpreted to simply require a general justification relating to maintaining orderly government and administering civil life for an occupying power to justify deviating from local legislation.<sup>60</sup>

The original French language version of this exception further supports a broad interpretation of Article 43. Although the English version of the provision uses the words “public order and safety,” the authentic and original French phrasing used the words “l’ordre et la vie publique,” which is viewed as much broader in scope. The legislative history indicates that “la vie publique” (or “public life”) encompasses “des fonctions sociales, des transactions ordinaires, qui constituent la vie de tous les jours” (*i.e.*, “social functions, ordinary transactions, which constitute daily life”).<sup>61</sup> Thus, legal scholars have

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<sup>57</sup> See Fourth Geneva Convention, *supra* note 49, at art. 64. The official ICRC commentary to this provision reiterates: “(b) It [the occupying power] will have the right to enact provisions necessary to maintain the ‘orderly government of the territory’ in its capacity as the Power responsible for public law and order.” INT’L COMM. OF THE RED CROSS, COMMENTARY TO CONVENTION (IV) RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR 335, available at <http://www.icrc.org/ihl.nsf/COM/380-600071?OpenDocument>.

<sup>58</sup> For instance, a number of provisions of the Fourth Geneva Convention of 1949 relate specifically to the duty of the occupying power to preserve state property and also to protect private property. See, e.g., Fourth Geneva Convention, *supra* note 49, at art. 53; INT’L COMM. OF THE RED CROSS, *supra* note 57, at 300.

<sup>59</sup> See Sassòli, *supra* note 50, at 1.

<sup>60</sup> See Edmund Schwenk, *Legislative Power of the Military Occupant Under Article 43, Hague Regulations*, 54 YALE L.J. 393, 401 (1945).

<sup>61</sup> See Sassòli, *supra* note 50, at 3–4; Schwenk, *supra* note 60, at 393 n.1 (citing MINISTÈRE DES AFFAIRES ÉTRANGÈRES DE BELGIQUE, ACTES DE LA CONFÉRENCE DE



noted that Article 43 does not offer any fixed criterion to determine which specific legislative changes by an occupying power would be deemed necessary and lawful, and after two world wars and countless conflicts, international courts and tribunals have indeed accepted a great variety of legislation by occupying powers as legitimate.<sup>62</sup>

These rules of international humanitarian law are logically focused on those occupation issues that were viewed in 1907 and 1949 as relating directly to human rights and humanitarian relief, and thus remain notoriously silent on most matters relating to the economy, international trade, and commerce. The rules under the Fourth Geneva Convention and Hague Regulations make some specific references to taxes and customs,<sup>63</sup> prohibiting pillage,<sup>64</sup> and providing some protections for private and state property,<sup>65</sup> as well as natural resources.<sup>66</sup> However, there is virtually no guidance or even mention of economic

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BRUXELLES DE 1874 23 (Paris, 1874)). *See generally* 2 FINAL RECORD OF DIPLOMATIC CONFERENCE OF GENEVA (1949) (describing the negotiation history of article 64 of the Fourth Geneva Convention).

<sup>62</sup> *See* M. Sassòli, *supra* note 50, at 1; Sylvain Vité, *The Interrelation of the Law of Occupation & Economic, Social and Cultural Rights: The Examples of Food, Health and Property*, 90 INT'L REV. OF THE RED CROSS 629, 634–35 (2008). *See generally* KRETZMER, *THE OCCUPATION OF JUSTICE – THE SUPREME COURT OF ISRAEL AND THE OCCUPIED TERRITORIES* (2002) (detailing instances in which the Israeli Supreme Court has affirmed legislation implemented by occupying powers).

<sup>63</sup> *See* Hague Convention, *supra* note 49, at art. 48 (“[If] the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and . . . be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.”). *See also* Fourth Geneva Convention, *supra* note 49, at art. 61 (requiring the free passage of certain consignments related to religious worship, clothing, and medical supplies).

<sup>64</sup> *See* Fourth Geneva Convention, *supra* note 49, at art. 33. *See also* INT'L COMM. OF THE RED CROSS, *supra* note 57, at 226–27 (“The prohibition of pillage is applicable to the territory of a Party to the conflict as well as to occupied territories. It guarantees all types of property, whether they belong to private persons or to communities or the State. On the other hand, it leaves intact the right of requisition or seizure.”).

<sup>65</sup> *See* Hague Convention, *supra* note 49, at art. 46 (protecting private property); *see also* Fourth Geneva Convention, *supra* note 49, at art. 53 (“Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.”). *See generally* INT'L COMM. OF THE RED CROSS, *supra* note 57, at 301 (elaborating on the scope of the property protections offered by the Fourth Geneva Convention).

<sup>66</sup> *See* Hague Convention, *supra* note 49, at art. 55 (providing that an occupant must safeguard public resources).

administration, international trade, banking systems, currency reforms, or regulation of private sector industry during periods of occupation.

In the first regulation outlining its powers, the CPA made clear from the outset that it would exercise powers only temporarily during a transition period, and would be focused on restoring order and administering activities of daily life, including facilitating economic recovery.<sup>67</sup>

The CPA shall exercise powers of government temporarily in order to provide for the effective administration of Iraq during the period of transitional administration, to restore conditions of security and stability, to create conditions in which the Iraqi people can freely determine their own political future, including by advancing efforts to restore and establish national and local institutions for representative governance and **facilitating economic recovery** and sustainable reconstruction and development.”<sup>68</sup>

The CPA also emphasized in this initial regulation that such powers would be “exercised under relevant U.N. Security Council resolutions, including Resolution 1483 (2003),” reflecting that the CPA viewed such economic, construction, and development reforms as within the scope of activity authorized by relevant Security Council resolutions, as discussed below.<sup>69</sup>

## *2. Economic Reforms in Iraq Were Arguably Backed by UN Security Council Resolutions With Direct Assistance from Other UN and International Organizations*

UN Security Council resolutions, both during and after the CPA occupation, included specific language supporting goals of economic reconstruction and building Iraq’s capacity for international trade.<sup>70</sup> From the outset, Security Council Resolution 1483, dated May 22, 2003, included numerous statements endorsing economic reconstruction in Iraq and authorizing direct involvement of international economic agencies such as the International Monetary Fund and the

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<sup>67</sup> Coalition Provisional Authority Regulation Number 1 in the Transitional Period [Coalition Provisional Authority] of 2003, § 1, ¶ 1 [hereinafter CPA Reg. 1], available at [http://www.iraqcoalition.org/regulations/20030516\\_CPAREG\\_1\\_The\\_Coalition\\_Provisional\\_Authority\\_.pd](http://www.iraqcoalition.org/regulations/20030516_CPAREG_1_The_Coalition_Provisional_Authority_.pd).

<sup>68</sup> *Id.* (emphasis added).

<sup>69</sup> *Id.*, § 1, ¶ 2.

<sup>70</sup> See, e.g., S.C. Res. 1483, ¶ 4, U.N. Doc. S/RES/1483 (May 22, 2003); S.C. Res. 1511, ¶1, U.N. Doc. S/RES/1511 (Oct. 16, 2003); S.C. Res. 1546, ¶ 2, U.N. Doc. S/RES/1546 (June 8, 2004).

World Bank in implementing such reforms.<sup>71</sup> For example, Security Council Resolution 1483 states:

(Preambulatory clause) *Noting* the statement of 12 April 2003 by the Ministers of Finance and Central Bank Governors of the Group of Seven Industrialized Nations in which the members **recognized the need for a multi-lateral effort to help rebuild and develop Iraq and for the need for assistance from the International Monetary Fund and the World Bank** in these efforts. . . .<sup>72</sup>

15. ***Calls upon the international financial institutions to assist the people of Iraq in the reconstruction and development of their economy*** and to facilitate assistance by the broader donor community, and welcomes the readiness of creditors, including those of the Paris Club, to seek a solution to Iraq's sovereign debt problems;<sup>73</sup>

Resolution 1483 also took the important step of appointing a UN Special Representative for Iraq, who was specifically authorized to coordinate with the CPA and international institutions activities in Iraq related to economic, legal, and judicial reform:<sup>74</sup>

8. *Requests* the Secretary-General to appoint a Special Representative for Iraq whose independent responsibilities shall involve reporting regularly to the Council on his activities under this resolution, coordinating among United Nations and international agencies engaged in humanitarian assistance and reconstruction activities in Iraq, and, in coordination with the Authority, assisting the people of Iraq through:

(a) coordinating humanitarian and reconstruction assistance by United Nations agencies and between United Nations agencies and non-governmental organizations; . . . .

(d) facilitating the reconstruction of key infrastructure, in cooperation with other international organizations;

(e) promoting economic reconstruction and the conditions for sustainable development, including

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<sup>71</sup> See S.C. Res. 1483, *supra* note 70, preambular clause 8.

<sup>72</sup> *Id.* (emphasis added).

<sup>73</sup> See *id.*, ¶ 15 (emphasis added).

<sup>74</sup> *Id.* ¶ 8.

through coordination with national and regional organizations, as appropriate, civil society, donors, and the international financial institutions;

(f) encouraging international efforts to contribute to basic civilian administration functions; . . . and

(i) encouraging international efforts to promote legal and judicial reform;<sup>75</sup>

A reasonable interpretation of these provisions of Resolution 1483 is that the Security Council not only acknowledged the importance of “economic reconstruction” and “legal and judicial reform” in Iraq, but the Security Council also viewed these processes as urgent and important enough to authorize immediate appointment of a special UN representative to actively coordinate such efforts among the CPA and other international agencies and institutions.<sup>76</sup>

The International Court of Justice has interpreted Article 103 of the UN Charter to establish that binding UN Security Council resolutions prevail over other international obligations.<sup>77</sup> Thus, Security Council resolutions authorizing legislative changes in an occupied territory would, by law, prevail over contrary restrictions in Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention.<sup>78</sup> On this basis, Resolution 1483 also could be interpreted to create a specified “carve out” from the Hague Regulations and Fourth

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<sup>75</sup> *Id.*

<sup>76</sup> This interpretation is consistent with observations made in American Society for International Law commentary at the time, stating that paragraph 8 of resolution 1483 created a binding mandate, the scope of which would have to be determined based on responding to actual conditions in Iraq: “Paragraph 8 of the resolution also calls on [the Special Representative], in coordination with the occupying powers, not only to work toward such goals as restoring and establishing institutions for representative governance, but also to promote conditions for sustainable development and for the protection of human rights. Exactly how far these mandates extend will have to be established by practice when the Special Representative is in place in Iraq.” Frederic L. Kirgis, *Security Council Resolution 1483 on the Rebuilding of Iraq*, ASIL INSIGHTS May 2003, available at <http://www.asil.org/insigh107.cfm>.

<sup>77</sup> See Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. U.S.), 1992 I.C.J. 126 (Apr. 14).

<sup>78</sup> See U.N. Charter art. 103 (“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”); see also *id.* at art. 24–25 (establishing that the Security Council has “primary responsibility for the maintenance of international peace and security,” and “[t]he Members of the United Nations agree to accept and

Geneva Convention, leaving other provisions of those treaties in force, but suspending, with respect to the CPA, those provisions that otherwise would curb its license to change the laws, institutions, and personnel of the occupied state consistent with directives in the resolution.<sup>79</sup> In other words, in instances where there is a direct contradiction between the actions of an occupying power authorized under a Security Council resolution and the requirements of the Fourth Geneva Convention or Hague Regulations, the Security Council resolution should be deemed controlling under international law.<sup>80</sup>

Additionally, because Resolution 1483 mandated direct involvement of a UN Special Representative, it may have been intended to not only help to better coordinate the reform process, but also to provide oversight of coalition activities on the ground to help mitigate any risk that reforms might be conducted in a manner that would exploit the Iraqi people or jeopardize humanitarian rights of Iraqi citizens in a manner contrary to international humanitarian law.

Along these same lines, paragraph 24 of Resolution 1483 also set up a reporting system under which the Secretary General would regularly report to the Security Council on progress toward the Resolution's goals in Iraq.<sup>81</sup> In his first such report, dated July 17, 2003, the Secretary General noted his appointment of Sergio Vieira de Mello as the Special Representative for Iraq, and explained that the Special Representative and his team had identified economic reconstruction as a key priority based on their wide ranging and extensive interviews with

[P]eople representing a large and diverse spectrum of Iraqi society. . . [including] political groups; religious leaders; tribal leaders; senior civil servants in the ministries; and members of civil society, including nascent Iraqi human rights and non-governmental organiza-

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carry out the decisions of the Security Council in accordance with the present Charter.”).

<sup>79</sup> This interpretation also reconciles any perceived conflict with paragraph 5 of Res. 1483, which calls upon all concerned to comply with their obligations under international law. See S.C. Res. 1483, *supra* note 70, ¶ 5; see also Thomas D. Grant, *Iraq: How to reconcile conflicting obligations of occupation and reforms*, *ASIL Insights*, AM. SOC'Y OF INT'L LAW (June 2003), <http://www.asil.org/insigh107a1.cfm> (citing as precedent the Security Council resolutions that established a legal basis for similar programs to be carried out relating to the independence of East Timor and administration of Kosovo).

<sup>80</sup> S.C. Res. 1483, *supra* note 70, ¶ 5.

<sup>81</sup> See U.N. Secretary-General, *Report of the Secretary-General Pursuant to Paragraph 24 of Security Council Resolution 1483*, ¶ 1, U.N. Doc. S/2003/715 (July 17, 2003), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/430/63/PDF/N0343063.pdf?OpenElement>.

tions, women's associations, journalists and independent professionals and business leaders, both in Baghdad and in the regions. . . . [a]ll considered United Nations involvement essential to the legitimacy of the political process. Others frequently cited **key priority areas for ensuring future stability and prosperity, including economic reconstruction and sustainable development**, the need for an accounting for past crimes, respect for human rights and **the rule of law**, national reconciliation, the development of a dynamic civil society — including free and independent media, and **capacity-building**.<sup>82</sup>

This statement in Resolution 1483 suggests that the United Nations believed the Iraqi people strongly supported such efforts to promote economic reconstruction and to establish a “rule of law” through judicial and legislative reforms. Similarly, the Secretary General's report also specifically emphasized the urgency of efforts by existing internal institutions in Iraq to promote legal and judicial reform, consistent with paragraph 8 (i) of Resolution 1483, stating:

[t]he Iraqi legal community has been eager to establish the rule of law and functioning institutions after decades of living without an independent judicial system. . . . The lack of functioning courts has, so far, stifled the role of the legal community. . .<sup>83</sup>

The Secretary General's report under Resolution 1483 further stressed that unique circumstances in post-war Iraq made it urgent and necessary to begin the process of transitioning Iraq “from a centrally planned economy to a market economy” under the CPA:

84. As a result of successive wars, strict international sanctions and debilitating economic controls and distortions, Iraq's economic infrastructure and civic institutions have deteriorated significantly. . . .The UNDP Arab Human Development Report 2002 places Iraq at 110 among 111 countries reviewed and over 80 per cent of the population are now estimated to be living in poverty. The lack of progress towards the Millennium Development Goals, regarded as a potential longer-term benchmark for recovery, also indicates the degree to which Iraq has deteriorated. **It is against the backdrop of this situation, further exacerbated by the recent**

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<sup>82</sup> *Id.* ¶¶ 6, 13 (emphasis added).

<sup>83</sup> *Id.* ¶ 53; *see also* S.C. Res 1483, *supra* note 70, ¶ 8(i) (“encouraging international efforts to promote legal and judicial reform”).

**war and the attendant breakdown of social services, that the development of Iraq and the transition from a centrally planned economy to a market economy needs to be undertaken.**<sup>84</sup>

The report then emphasized the necessity and high priority of comprehensive market reforms, with immediate technical assistance to be provided by the IMF and World Bank:

**A comprehensive policy enacting institutional and legal reforms will be necessary to establish a market-oriented environment that promotes integration with the global marketplace.** Sustainable economic growth in Iraq will be feasible only through the establishment of a **dynamic private sector, a real challenge for an economy dominated by the public sector and State-owned enterprise . . . . Priority technical assistance missions in the next three months will focus on the areas of** (a) currency reform, central bank, and payments system; (b) the commercial banking sector; (c) public expenditure management; (d) tax policy and the fiscal regime for the oil sector; (e) price liberalization, enterprise reform, and social protection; (f) an initial assessment of policies and actions to energize the private sector; and (g) economic statistics. The two institutions [IMF and World Bank] have established a continuing presence in Baghdad, in close cooperation with my [UN] Special Representative.<sup>85</sup>

Finally, the July 2003 Secretary General's report on Iraq issued pursuant to Resolution 1483 also stressed that the ability to make progress on economic reforms was hampered by the increased violence and growing security risks in Iraq, necessitating a continued military presence in order to improve security:

Above all, my Special Representative's contacts expressed deep concern about the precarious, some believed deteriorating, security situation, particularly in Baghdad. They feared that if the situation were not addressed quickly insecurity would hamper efforts to address many of their immediate other concerns, notably the inadequate provision of basic public services and the pressing need to create jobs for the high numbers of unemployed in Iraq.<sup>86</sup>

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<sup>84</sup> U.N. Secretary-General, *supra* note 81, ¶ 84 (emphasis added).

<sup>85</sup> *Id.* ¶¶ 90, 93 (emphasis added).

<sup>86</sup> *Id.* ¶ 12.

This proved to be a prophetic statement. At 4:30 pm on August 19, 2003, a truck bomb was detonated outside the United Nations headquarters in Baghdad, killing 22 persons, including 15 UN staff members, and seriously wounding more than 150 others.<sup>87</sup> Among those killed was Sergio Vieira de Mello himself, the new Special Representative for Iraq appointed pursuant to Resolution 1483, who also served as the UN High Commissioner for Human Rights.<sup>88</sup> Abu Musab Zarqawi, leader of the Al-Qaida in Iraq terrorist organization, claimed responsibility for the blast, and further investigation supported this claim.<sup>89</sup> A December 2003 report on Iraq by the Secretary General details a string of additional violent attacks in Iraq between July and December of that year (even including a direct attack on the International Committee of the Red Cross), in which dozens of diplomats, government employees, relief workers, business persons, contractors, and coalition troops were killed.<sup>90</sup> These events resulted in the withdrawal of the 600 UN staff members from Iraq and had a profound impact on the UN's peacekeeping security policies and practices globally.<sup>91</sup>

The above UN resolutions and reports, and conditions on the ground in Iraq during 2003-04, have a direct bearing on whether legislative and market reforms undertaken during CPA occupation were justified and legitimate in light of the conservation principle in international humanitarian law. As discussed above, the key issue under Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention is whether it is "necessary" and justified for an occupying power to depart from existing law or implement new legal reforms in order to support orderly government and the institutions of public life.

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<sup>87</sup> See U.N. Secretary-General, *Report of the Secretary-General Pursuant to Paragraph 24 of Resolution 1483 (2003) and Paragraph 12 of Resolution 1511 (2003)*, ¶ 17, S/2003/1149 (Dec. 5, 2003), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/642/85/PDF/N0364285.pdf?OpenElement>.

<sup>88</sup> *Id.*

<sup>89</sup> See *id.* ¶ 20; see also, Pam Benson, *CIA: Zarqawi tape 'probably authentic,' CNN.COM* (Apr. 7, 2004), available at <http://edition.cnn.com/2004/WORLD/meast/04/07/zarqawi.tape/>.

<sup>90</sup> See *id.* ¶ 22-32. Security Council Resolution 1511 also listed a number of the attacks directly impacting diplomatic personnel, specifically: "the terrorist bombing of the Embassy of Jordan on 7 August 2003, and of the Imam Ali Mosque in Najaf on 29 August 2003, and of the Embassy of Turkey on 14 October 2003, the murder of a Spanish diplomat on 9 October 2003, and the assassination of Dr. Akila al-Hashimi, who died on 25 September 2003." S.C. Res. 1511, *supra* note 70, ¶ 18.

<sup>91</sup> *Id.*; see also *Press Briefing by Manoel de Almeida de Silva, Spokesman for the Special Representative of the Secretary-General on Afghanistan*, U.N. NEWS SERV. (Aug. 21, 2003), available at <http://www.un.org/apps/news/infocusnews.asp?NewsID=597&sID=1>.



The above descriptions from the UN Secretary General's report suggest that the existing judicial system and economic laws and institutions in Iraq were either completely non-functional or utterly insufficient to support basic administration of public institutions and orderly government as necessary for reconstruction. Under the circumstances, based on the text of Resolution 1483 and reports issued thereunder, the UN determined that legislative and economic reforms to support a transition to a market-based economy were reasonably necessary under the circumstances to support Iraq's post-war transition.<sup>92</sup>

In light of these Security Council directives and the economic, judicial, and security conditions on the ground in Iraq, it would not appear that the CPA's economic reforms were merely a unilateral and deliberate effort to impose radical economic "shock therapy" on a country already reeling from violence as suggested by Naomi Klein.<sup>93</sup> Moreover, this analysis supports the view that such reforms arguably were implemented pursuant to directives under a UN Security Council Resolution that provided a specific carve-out from the "conservation principle" normally applied during periods of occupation.

3. *If the Iraqi Interim Government Functioned as a Sovereign Government Once the CPA Was Disbanded, the Period of "Occupation" Under International Law May Have Ended in June 2004*

The CPA was disbanded and formally transferred sovereign authority to the Iraqi Interim Government (IIG) as of June 28, 2004. Security Council Resolution 1546 of June 2003 "endorse[d] the formation of a sovereign Interim Government of Iraq" and stated that "by 30 June 2004, the occupation will end and the Coalition Provisional Authority will cease to exist, and Iraq will reassert its full sovereignty."<sup>94</sup> Once the United Nations and the Arab League formally recognized the IIG as a transitional sovereign government, the period of "occupation" arguably ended for purposes of applying the laws of occupation under the Hague Regulations and Fourth Geneva Convention.<sup>95</sup>

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<sup>92</sup> U.N. Secretary-General, *supra* note 81, ¶ 90.

<sup>93</sup> See NAOMI KLEIN, *THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM* 20 (2008) ("I am not arguing that all forms of market systems are inherently violent. It is eminently possible to have a market-based economy that demands no such brutality and no such ideological purity. A free market in consumer products can coexist with free public health care, with public schools, with a large segment of the economy – like a national oil company – held in state hands. . . . Markets need not be fundamentalist.").

<sup>94</sup> See S.C. Res. 1546, *supra* note 23, ¶¶ 1–2.

<sup>95</sup> See *id.* ¶ 2. Note that some authors have argued that there nevertheless remained an "effective occupation" by the multinational force (MNF) because there is a reference in a preambular clause of Resolution 1546 "noting the commitment

Author Rüdiger Wolfrum argues that Resolution 1546 may not prove that the IIG was a sovereign and independent government; rather, the period of “occupation” may have continued under the IIG, given that the IIG was constrained in its ability to operate as a fully functioning government, and coalition military forces were still present and occupying the territory of Iraq.<sup>96</sup> Resolution 1546 and an exchange of official letters between the United States and the new IIG annexed thereto, however, endorse the continued presence of multilateral military forces in Iraq based upon the “request of the incoming Interim Government.”<sup>97</sup> Indeed, in Resolution 1546, the Security Council uses mandatory language and explicitly “[d]ecides that the multinational force shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to this resolution expressing, inter alia, the Iraqi request for the continued presence of the multinational force.”<sup>98</sup>

Paragraph 11 of Resolution 1546 further describes the annexed letters between the US and Iraq that “establish a security partnership between the sovereign Government of Iraq and the multinational force and . . . ensure coordination between the two,” which suggests that the continued presence of military troops was coordinated under a security agreement with the formal consent of the IIG.<sup>99</sup>

Iraq was governed by an interim constitution known as the “Law of Administration for the State of Iraq for the Transitional Period” or the “Transitional Administration Law” (“TAL”) while the IIG drafted a new Iraqi constitution that was to be voted on in a national

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of all forces . . . to act in accordance with international law, including obligations under international humanitarian law.” *Id.* at intro. However, given that this statement is made in an introductory clause, it may be non-binding, and intended merely to provide general background information. See, e.g., Michael C. Wood, *The Interpretation of Security Council Resolutions*, 2 MAX PLANCK Y.B. UNITED NATIONS L. 73, 86–87 (1998), available at [http://www.mpil.de/shared/data/pdf/pdfmpunyb/wood\\_2.pdf](http://www.mpil.de/shared/data/pdf/pdfmpunyb/wood_2.pdf).

<sup>96</sup> Rüdiger Wolfrum, *Iraq – from Belligerent Occupation to Iraqi Exercise of Sovereignty: Foreign Power versus International Community Interference*, in 9 MAX PLANCK Y.B. UNITED NATIONS L. 1, 34–36 (2005).

<sup>97</sup> S.C. Res. 1546, *supra* note 23, ¶ 9 (“[T]he presence of the multinational force in Iraq is at the request of the incoming Interim Government of Iraq and therefore reaffirms the authorization for the multinational force under unified command established under Resolution 1511 (2003), having regard to the letters annexed to this resolution.”).

<sup>98</sup> *Id.* ¶ 10.

<sup>99</sup> *Id.* ¶ 11.

referendum.<sup>100</sup> Under this law, the IIG operated under a much more extensive and substantive government structure than the 25-member “Iraqi Governing Council” that existed under CPA rule. For example, the IIG included a Presidency, Prime Minister, Council of Ministers, Supreme Commission of Provincial Representatives, Interim National Council, and a Judicial Authority.<sup>101</sup>

Pursuant to Section 2 of the TAL Annex, the IIG was also empowered to undertake most of the same activities of an elected transitional government as outlined in the TAL, except those listed under Chapter 9 which related primarily to the drafting of a permanent constitution by an elected transitional government.<sup>102</sup> In turn, this Annex provision meant that the IIG was expressly permitted under Article 26 of the TAL to revise any CPA or other prior pieces of legislation, including legislation implemented during CPA rule.<sup>103</sup> Similarly, section 2 of the TAL Annex also reflects that the IIG was given authority under Article 25(E) of the TAL to manage the country’s natural resources, such as oil and petroleum products, thus reflecting another important piece of substantive authority that was withdrawn from the CPA and handed over to the new IIG.<sup>104</sup>

Additionally, the IIG was authorized to exercise “full sovereign powers,” specifically with respect to “the power to conclude international agreements in the areas of diplomatic relations and economic reconstruction, including Iraq’s sovereign debt.”<sup>105</sup> By comparison, the IIG was not authorized “to form agreements which permanently alter the destiny of Iraq,” as such powers were reserved for a government to be selected through nationwide elections.<sup>106</sup> This language suggests the IIG was specifically authorized to continue the process of implementing economic reforms, which it proceeded to do, by filing a formal

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<sup>100</sup> Law of Administration for the State of Iraq for the Transitional Period [Interim Iraqi Government] of 2004, *available at* <http://law.case.edu/saddamtrial/documsnets/TAL.pdf> [hereinafter “Law of Administration”]; Annex to the Law for the Administration of Iraq in the Transitional Period [Interim Iraqi Government] of 2004, *available at* <http://www.iraqwatch.org/government/Iraq/IGC/Iraq-igc-annextoTAL-060104.htm> [hereinafter “Annex”].

<sup>101</sup> Press Release, Iraqi Interim Government, Iraqi Interim Government Announcement Ceremony (2004), *available at* [http://dosfan.lib.uic.edu/ERC/cpa/english/government/press\\_packet.pdf](http://dosfan.lib.uic.edu/ERC/cpa/english/government/press_packet.pdf).

<sup>102</sup> Annex, *supra* note 100, § 2 (“Except for the purposes of Chapter Nine of this Law or as otherwise specified herein, references to the Iraqi Transitional Government and its institutions and officials in this Law will apply to the Interim Government and its institutions and officials.”).

<sup>103</sup> See Law of Administration, *supra* note 100, at art. 26(c).

<sup>104</sup> *Id.* at art. 25(E).

<sup>105</sup> Press Release, *supra* note 101.

<sup>106</sup> *Id.*

application for accession to the World Trade Organization in September 2004 and participating in the official Working Group on the Accession of Iraq established by the WTO.<sup>107</sup>

In sum, based on the relatively broad IIG powers outlined in the TAL and the formal recognition of the IIG as a sovereign government by the UN Security Council and the Arab League, as well as the explicit consent granted under Security Council Resolution 1546 for military forces to remain in Iraq as part of a Security Partnership, it appears that the IIG could reasonably be acting as a sovereign government.<sup>108</sup> This means that the period of “occupation” for purposes of international humanitarian law arguably had ended as of June 28, 2004, when the CPA disbanded and the IIG took control.<sup>109</sup> Provided that the period of occupation had ended, the additional economic reform efforts undertaken by the IIG would be legitimate acts of a sovereign government, and not in violation of the “principle of conservation” under Article 43 of the Hague Regulations of 1907 and Article 64 of the Fourth Geneva Convention of 1949.<sup>110</sup>

#### *4. Subsequent Governments of Iraq Reaffirmed Many of the Economic and Trade-Related Reforms and CPA Orders Since the Occupation Ended*

In the seven years since the CPA disbanded, Iraq’s sovereign government has been in a state of flux. Following IIG rule, in May 2005 the Iraqi Transitional Government (“ITG”) replaced the IIG and drafted a permanent constitution that was ratified through a national referendum in October 2005.<sup>111</sup> National parliamentary elections were then held pursuant to the permanent constitution, and the first duly elected Government of Iraq was formed in 2006.

As the Iraqi government has progressed through these various stages outlined in **Appendix A**, its new representatives and sovereign institutions have revisited many of the basic economic reform goals referenced in the CPA orders and in the UN documents quoted above. Generally speaking, Iraq’s new laws and permanent constitution continued to embrace the broad goals of creating a modern, market-based

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<sup>107</sup> See *Accessions: Iraq*, WORLD TRADE ORG., [http://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_iraq\\_e.htm](http://www.wto.org/english/thewto_e/acc_e/a1_iraq_e.htm) (last visited Sept. 13, 2012); *Accession Working Parties Established for Afghanistan, Iraq*, WORLD TRADE ORG., [http://www.wto.org/english/news\\_e/news04\\_e/gc\\_afghanistan\\_iraq\\_13dec04\\_e.htm](http://www.wto.org/english/news_e/news04_e/gc_afghanistan_iraq_13dec04_e.htm) (last visited Oct. 8, 2012).

<sup>108</sup> S.C. Res. 1546, *supra* 23, ¶ 1; see also *Law of Administration*, *supra* note 100, at intro.

<sup>109</sup> See KATZMAN, *supra* note 15, at 1–2.

<sup>110</sup> See Hague Convention, *supra* note 49; Fourth Geneva Convention, *supra* note 49, at art. 64.

<sup>111</sup> See KATZMAN, *supra* note 15.

economy, developing a strong private sector, and promoting investment. Indeed, broad economic reform goals are specifically affirmed in Iraq's new constitution, which was ratified by nationwide vote in 2005, and states in Articles 25 and 26:

Article 25: The State shall guarantee the reform of the Iraqi economy in accordance with modern economic principles to insure the full investment of its resources, diversification of its sources, and the encouragement and development of the private sector.<sup>112</sup>

Article 26: The State shall guarantee the encouragement of investment in the various sectors, and this shall be regulated by law.<sup>113</sup>

Notably the TAL had provided both the IIG and the ITG with the explicit authority to rescind or amend any previous laws enacted by the CPA or prior regime.<sup>114</sup> Neither the IIG nor the ITG rescinded or revoked the economic reform laws and free market laws implemented by the CPA, and the IIG and ITG actively participated in the process of officially itemizing these laws with the World Trade Organization Working Group on Accession as part of Iraq's WTO Accession process that was ongoing in 2004 and 2005.<sup>115</sup> For example, the IIG participated in WTO working group meetings in 2004 and the ITG submitted a Memorandum on the Foreign Trade Regime in September 2005, which would have outlined all of the economic legislation that it deemed legally binding in Iraq at that time.<sup>116</sup> These facts suggest that the IIG and the ITG effectively reaffirmed the economic reforms that had been implemented to date.

While keeping these general legal and economic reform goals in place, the permanent Government of Iraq (GOI) that was elected following referendum on Iraq's permanent constitution has also taken ownership of the reform process through passage of new legislation that revises or replaces some of the key economic orders originally issued by the CPA. For example, CPA Order 39, which governs foreign

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<sup>112</sup> Art. 20–38, *Doustour Joumhouriat al-Iraq* [The Constitution of the Republic of Iraq] of 2005. Importantly, the new Constitution also provides significant human rights protections, including civil and political rights such as the right to vote (Art. 20) freedom of expression/press/peaceful assembly (Art. 38); the right of work and to join trade unions (Art. 22); “social and health security” (Art. 30); education for all Iraqi children (Art. 34); and protection of the natural environment (Art. 33), among others.

<sup>113</sup> *Id.* at art. 25.

<sup>114</sup> See Law of Administration, *supra* note 100, at art. 26.

<sup>115</sup> See *Technical Note by the Accession Process (Revision 6): Secretariat: State of Play and Information on Current Accessions*, WT/ACC/11/Rev.6 (Nov. 23, 2005).

<sup>116</sup> *Id.*

investment in Iraq, was replaced by the 2006 Iraqi National Investment Law, which was further amended on January 4, 2010.<sup>117</sup> The new investment law provides a more limited form of national treatment, exempting investment in oil and gas extraction, as well as investment in the production, banking, and insurance sectors.<sup>118</sup>

Since 2005, the GOI has made additional formal filings to the WTO as part of the accession process in which the GOI must itemize all of the economic and international trade related laws and regulations currently in force in Iraq.<sup>119</sup> By issuing new laws and regulations that reaffirm many of the basic reforms made in the CPA Orders, and then formally notifying and providing copies to the WTO of all economic laws and regulations, the government accepts the new sovereign government and has confirmed its acceptance of such legal and economic reforms as having the force of law in Iraq in the 2006 Investment Law.

Finally, the GOI has also outwardly reconfirmed to the international community its strong commitment to economic reform and international trade by undertaking a major initiative in collaboration with the United Nations to create the formal International Compact with Iraq (ICI). The Compact was first announced on July 27, 2006, and was formally introduced at the United Nations on March 16, 2007, before its official launch on May 3, 2007.<sup>120</sup> Through the ICI, the GOI expressly affirmed its intentions to implement substantial legal and economic reforms and even provided a legislative timetable for doing so.<sup>121</sup>

Based on the transitional processes and actions of the new Iraqi governments described above, it is my opinion that the GOI has reaffirmed that legal and economic reforms in Iraq are legitimate under principles of international law. Furthermore, a representative

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<sup>117</sup> See INT'L TRADE ADMIN., U.S. DEP'T OF COMMERCE, IRAQ INV. & RECONSTRUCTION TASK FORCE, LEGAL GUIDE TO INVESTING IN IRAQ 2-3 (Feb. 2011), available at <http://trade.gov/static/LegalGuide2008.pdf>.

<sup>118</sup> See *id.* at 4-5.

<sup>119</sup> See Appendix for a complete listing of all formal submissions made by the Government of Iraq to the World Trade Organization to date, along with the dates of each submission. Note that many of these materials remain in "restricted" status, and thus will not be made public by the WTO until the end of Iraq's accession process.

<sup>120</sup> See Press Release, United Nations, United Nations and Iraq Jointly Announce Launch of Five-Year International Compact Aimed at Achieving National Vision of United, Federal, Democratic Country, U.N. Press Release IK/552 (July 27, 2007), available at <http://www.un.org/News/Press/docs/2006/ik552.doc.htm>.

<sup>121</sup> See United Nations, *International Compact with Iraq*, art. 4.3, Annex III, available at [http://www.uniraq.org/ici/INTERNATIONAL\\_COMPACT\\_WITH\\_IRAQ\\_FINAL\\_English\\_final.pdf](http://www.uniraq.org/ici/INTERNATIONAL_COMPACT_WITH_IRAQ_FINAL_English_final.pdf)

Iraqi government has largely accepted and endorsed many of the same economic reform policies originally enacted by the CPA, while adjusting these policies where needed for specific issues such as management of natural resources and distribution of wealth from the nation's oil resources. As discussed in Section III below, this paper now, therefore, seeks to place economic reforms implemented during post war occupation into the larger context of shifting international norms related to UN peacekeeping, nation building, and establishing the rule of law in post-conflict countries.

### III. NEW NORMS FOR JUS POST BELLUM ARE EMERGING AS INTERNATIONAL ORGANIZATIONS ENGAGE IN PEACE-BUILDING OPERATIONS SEEKING TO ESTABLISH THE "RULE OF LAW" IN POST-CONFLICT COUNTRIES

The reconstruction experience of Iraq raises larger questions about the appropriate roles to be played by the UN and international multilateral organizations, such as the IMF, World Bank, and WTO, in promoting economic development, peace, and security in post-conflict countries.

Over the past three decades, the international community has begun to view economic reforms and development goals as a key component of promoting the "rule of law" in post-conflict countries.<sup>122</sup> One reason for this shift has been the growing body of empirical evidence that has emerged confirming direct links between economic stability and international peace and security. For instance, a study of forty-one African countries between 1981 and 1999 showed a strong correlation between economic growth and the incidence of civil conflict, concluding that a negative economic growth shock of five percentage points increased the likelihood of major civil conflict by more than fifty percent.<sup>123</sup> After conducting an extensive review of empirical literature on the relationship between economy and unrest, Yale Professor Nicholas Sambanis concluded: "The economic studies of civil war have successfully identified an empirically robust relationship between pov-

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<sup>122</sup> See Simon Chesterman, *The UN Security Council and the Rule of Law: The Role of the Security Council in Strengthening a Rules-based International System Final Report and Recommendations from the Austrian Initiative 2004-2008* at i-ii (Feb. 2008) (on file with Institute for International Law & Justice, New York University School of Law & Federal Ministry for European and International Affairs), available at [http://www.iilj.org/research/documents/UNSC\\_and\\_the\\_Rule\\_of\\_Law.pdf](http://www.iilj.org/research/documents/UNSC_and_the_Rule_of_Law.pdf); see also Secretary-General, *On the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Rep. of Secretary General*, U.N. Doc. S/2004/616 (Aug. 3, 2004); G.A. Res. 61/39, U.N. Doc A/RES/61/39 (Dec. 18, 2008).

<sup>123</sup> See Edward Miguel, Shanker Satyanath, & Ernest Sergenti, *Economic Shocks and Civil Conflict: An Instrumental Variables Approach*, 112 J. POLITICAL ECON., no. 4, 725-26, 740 (2004).

erty, slow growth, and an increased likelihood of civil war onset and prevalence.”<sup>124</sup>

Similarly, according to reports of the UN Conference on Trade and Development (UNCTAD), most of the developed countries in which civil conflict broke out in the 1990s had experienced either negative or sluggish economic growth rates in the 1980s, and the conflicts of the 1990s were a direct reaction to these economic difficulties of the 1980s.<sup>125</sup> Studies by the Conflict Prevention and Reconstruction Unit of the World Bank also present sobering statistics:

Conflicts are increasingly concentrated in low-income countries: 80 percent of the world’s poorest countries have suffered a major civil war in the past fifteen years. These countries have failed to sustain the policies, governance, and institutions that might give them a chance of achieving reasonable growth and diversifying out of dependence on primary commodities. Countries that have suffered conflict in the recent past are also likely to see conflict return: The risk that a country will fall back into conflict within the first five years of the end of a conflict is nearly 50 percent.<sup>126</sup>

These World Bank studies further identify specific economic factors that dramatically increase the likelihood of conflict, including a country’s heavy economic dependence on a major export commodity, such as oil, and high levels of unemployment among youth, both of which apply in Iraq.<sup>127</sup>

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<sup>124</sup> Nicholas Sambanis, *A Review of Recent Advances and Future Directions in the Quantitative Literature on Civil War*, in 13 DEFENCE AND PEACE ECONOMICS, no. 3, 215–43 (2002). For detailed qualitative and empirical analyses of the connection between economics and peace/stability, see generally TODD SANDLER & KEITH HARTLEY, *THE ECONOMICS OF CONFLICT* (Edward Elgar 2004); NICHOLAS SAMBANIS & MICHAEL DOYLE, *MAKING WAR AND BUILDING PEACE: THE UNITED NATIONS SINCE THE 1990s* (Princeton Univ. Press 2006); 2 NICHOLAS SAMBANIS & PAUL COLLIER, *UNDERSTANDING CIVIL WAR: EVIDENCE AND ANALYSIS: EUROPE, CENTRAL ASIA, AND OTHER REGIONS* (World Bank Publ’ns 2005); PAUL COLLIER ET AL., *BREAKING THE CONFLICT TRAP: CIVIL WAR AND DEVELOPMENT POLICY* (Oxford Univ. Press & World Bank Publ’ns 2003).

<sup>125</sup> See Rep. of U.N.C.T.A.D., p. 3, UNCTAD/DGS/AFRICA/1, U.N. Doc. TD/B/48/12 (2001), available at <http://unctad.org/en/Docs/pogdsafricad1.en.pdf>; see also Rep. of U.N.C.T.A.D., U.N. Doc. UNCTAD/LDC/2004 (2004), available at [http://unctad.org/en/docs/ldc2004\\_en.pdf](http://unctad.org/en/docs/ldc2004_en.pdf).

<sup>126</sup> See Kazuhide Kuroda, World Bank Seminar Series: Conflict and Development 2 (2006) (unpublished), available at <http://siteresources.worldbank.org/EXTA/BOUTUS/Resources/Conflictpaper.pdf>; see also COLLIER, *supra* note 124, at forward.

<sup>127</sup> See Kuroda, *supra* note 126, at 2.



In the decade since the September 11, 2001 attacks on the World Trade Centers and the subsequent launch of the “war on terror,” a broad consensus has emerged within the UN system regarding the direct link between economic instability and the risks of social unrest, armed conflict, and terrorist activity.<sup>128</sup> This consensus has resulted in fundamental changes in UN policy approaches to international peacekeeping programs, with a growing emphasis on economic stabilization and development as a key to the preventing further conflict through “peacebuilding.” As a result, there has been a basic shift within the U.N. General Assembly and the U.N. Security Council towards policies aimed at establishing the “rule of law” in post-conflict societies, including a strong emphasis on economic law and policy reforms and integration into the international trading system.<sup>129</sup>

This growing focus on promoting the “rule of law” began in the 1990s and picked up steam in 2006, such that this is now a primary policy focus of UN peacebuilding operations in post-conflict zones:

Promoting the rule of law at the national and international levels is at the heart of the United Nations’ mission. Establishing respect for the rule of law is fundamental to achieving a durable peace in the aftermath of conflict, to the effective protection of human rights, and to sustained economic progress and development.<sup>130</sup>

Within the UN system, the term “rule of law” is now defined as:

A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty,

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<sup>128</sup> See Rep. of the Panel on United Nations Peace Operations, transmitted by letter dated Aug. 21, 2000 from the Secretary-General, ¶¶ 24, 29, U.N. Doc. S/2000/809 (Aug. 21, 2000).

<sup>129</sup> See U.N. Secretary-General, *Uniting Our Strengths: Enhancing United Nations Support for the Rule of Law: Rep. of the Secretary General*, ¶ 5, U.N. Doc. S/2006/980 (Dec. 14, 2006).

<sup>130</sup> See *United Nations and the Rule of Law Website & Document Repository*, UNITED NATIONS, <http://www.un.org/en/ruleoflaw/index.shtml> (last visited Nov. 19, 2012).

avoidance of arbitrariness and procedural and legal transparency.<sup>131</sup>

As part of this increased focus on rule of law issues, UN Security Council resolutions have increasingly endorsed legal and judicial reform initiatives in post-conflict countries, including efforts in which UN-affiliated and other international organizations have provided direct technical and legislative drafting assistance to countries in restructuring their economic, financial, and trade systems.<sup>132</sup>

The UN General Assembly has also articulated the emerging international consensus relating to the economic dimensions in rule of law initiatives. The UN convened the 2005 World Summit as “a once-in-a-generation opportunity to take bold decisions in the areas of development, security, human rights and reform of the United Nations,” in order to initiate reforms of UN policies and programs to reflect these changing priorities.<sup>133</sup> The summit resulted in an important General Assembly resolution that downplays a reactive, sanctions-driven “peace-keeping” approach in favor of a more preventative “peace-building” approach, in part by applying rule of law principles to creating legal and regulatory systems that support and facilitate trade and economic development.<sup>134</sup> The resolution specifically emphasizes the role of economic reform, international trade, the private sector, and private property rights in supporting sustained economic growth in Iraq, stating, for example, the following declarations and goals:<sup>135</sup>

We acknowledge that good governance and the rule of law at the national and international levels are essential for sustained economic growth, sustainable development and the eradication of poverty and hunger.

We further reaffirm our commitment to sound policies, good governance at all levels and the rule of law, and to mobilize domestic resources, attract international flows, promote international trade as an engine for develop-

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<sup>131</sup> U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies: Rep. of the Secretary-General*, ¶ 6, U.N. Doc. S/2004/616 (Aug. 23, 2004).

<sup>132</sup> See Kristen E. Boon, “Open for Business”: *International Financial Institutions, Post-Conflict Economic Reform, and the Rule of Law*, 39 N.Y.U. J. INT’L L. & POL. 513, 514 (2007) (discussing actions of the United Nations, the World Bank, and the IMF).

<sup>133</sup> *United Nations Millennium Development Goals*, UNITED NATIONS, <http://www.un.org/millenniumgoals/bkgd.shtml> (last visited Sept. 14, 2011).

<sup>134</sup> See G.A. Res. 60/1, ¶¶ 6–7, U.N. Doc. A/RES/60/1 (Oct. 24, 2005), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>.

<sup>135</sup> *Id.* ¶¶ 11, 20–32.

ment and increase international financial and technical cooperation for development, sustainable debt financing and external debt relief and to enhance the coherence and consistency of the international monetary, financial and trading systems.

To support efforts by developing countries to adopt and implement national development policies and strategies through increased development assistance, [and] the promotion of international trade as an engine for development. . .

[To] acknowledge the vital role the private sector can play in generating new investments, employment and financing for development;

To pursue good governance and sound macroeconomic policies at all levels and support developing countries in their efforts to put in place the policies and investments to drive sustained economic growth, promote small and medium sized enterprises, promote employment generation and stimulate the private sector;

To reaffirm that good governance is essential for sustainable development; that sound economic policies, solid democratic institutions responsive to the needs of the people and improved infrastructure are the basis for sustained economic growth, poverty eradication and employment creation; and that freedom, peace and security, domestic stability, respect for human rights, including the right to development, the rule of law, gender equality and market-oriented policies and an overall commitment to just and democratic societies are also essential and mutually reinforcing;

To encourage greater direct investment, including foreign investment, in developing countries and countries with economies in transition to support their development activities and to enhance the benefits they can derive from such investments. We underscore the need to sustain sufficient and stable private financial flows to developing countries and countries with economies in transition.<sup>136</sup>

The World Summit Resolution also articulates the General Assembly's consensus regarding the important role of international trade

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<sup>136</sup> *Id.*

in facilitating economic development, and the need for direct technical assistance from international organizations to ensure that developing countries are able to fully benefit from participating in the multilateral trading system, as follows:<sup>137</sup>

A universal, rule-based, open, non-discriminatory and equitable multilateral trading system, as well as meaningful trade liberalization, can substantially stimulate development worldwide, benefiting countries at all stages of development. In that regard, we reaffirm our commitment to trade liberalization and to ensure that trade plays its full part in promoting economic growth, employment and development for all.

We are committed to efforts designed to ensure that developing countries, especially the least-developed countries, participate fully in the world trading system in order to meet their economic development needs, and reaffirm our commitment to enhanced and predictable market access for the exports of developing countries.

We will work to accelerate and facilitate the accession of developing countries and countries with economies in transition to the World Trade Organization consistent with its criteria, recognizing the importance of universal integration in the rules-based global trading system.<sup>138</sup>

This World Summit resolution, taken together with UN practices on the ground in post-conflict countries (e.g., Iraq, Cambodia, Kosovo), reflects a UN commitment to providing technical assistance, capacity building programs, and other types of direct support for implementing the legal and economic reforms needed to achieve economic goals such as participation in the world trading system.<sup>139</sup>

#### IV. CONCLUSION

As discussed above, the increasing United Nations emphasis on establishing the “Rule of Law” in post-conflict countries reflects a focus that is shifting away from “peacekeeping” in favor of peace- and nation-building. As outlined in Sections I and II of this paper with respect to Iraq, this new emphasis on establishing the rule of law during periods of occupation may in some instances conflict with the tradi-

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<sup>137</sup> *Id.*

<sup>138</sup> *Id.* ¶¶ 27, 28, 31.

<sup>139</sup> Indeed, through this resolution, the UN General Assembly even established an entirely new UN Organization, the “Peacebuilding Commission,” to provide integration of the many different goals and organizations involved in reconstruction of post-conflict countries and rebuilding their economies. *Id.* ¶¶ 97–105.

tional principles of Conservation under Article 43 of the Hague Regulations of 1907 and Article 64 of the Fourth Geneva Convention of 1949. Traditionally, “conservation” requires that an occupying power shall keep in force the prior laws of the sovereign and respect existing institutions of justice and governance, unless “absolutely prevented” from doing so or unless derogation is essential to “ensure security” or “maintain orderly government” and “civil life.”<sup>140</sup>

In contrast to “conservation,” the “rule of law” actually implies that new peacekeeping efforts, legislative changes, economic reforms, security initiatives, and judicial frameworks may be necessary for stabilizing post-conflict countries and creating the conditions needed for a lasting peace. The emerging norms for UN peacekeeping and the Security Council resolutions that seek to establish the rule of law in post-conflict countries thus require a new legal framework to determine the parameters of a “*jus post bellum*.” As aptly explained by author Kristin Boon:

Transformative approaches to peacebuilding have revealed profound inadequacies in the current legal framework, and principles of international law have not developed sufficiently to fill the gaps. Neither the Charters of the UN, IMF, or World Bank, nor the law of occupation (codified in the Geneva Conventions and the Hague Regulations) are sufficient in and of themselves to provide general principles on transitional interventions to build the peace. These inadequacies have created complexities on the ground because the duties and obligations of the various international actors are uneven and often unclear.<sup>141</sup>

This lack of clarity is evident from the differing views outlined in Sections I and II above regarding whether economic reforms implemented in post war Iraq were consistent with international law.

The central goal of *jus post bellum* is to create a lasting and durable peace, whether through conflict prevention, peacekeeping,

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<sup>140</sup> For example, article 64 of the Fourth Geneva Convention provides that occupying powers can only change prior civil laws that “are essential to enable the Occupying Power to fulfill its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power.” Fourth Geneva Convention, *supra* note 49. Article 43 of the Hague Convention further complements this provision of article 64 of Geneva IV. See Hague Convention, *supra* note 49. See also, Sassòli, *supra* note 50 (discussing the scope and applicability of art. 43 of the Hague Regulations in peacekeeping operations).

<sup>141</sup> Kristen E. Boon, *Obligations of the New Occupier: The Contours of a Jus Post Bellum*, 31-2 LOY. L.A. INT’L & COMP. L. REV. 101, 103 (2008).

peacebuilding, or via post-conflict economic reconstruction and development.<sup>142</sup> To build a credible foundation for establishing the rule of law, the United Nations system needs to further codify what range of legislative, economic, and judicial reforms are typically appropriate during a period of occupation in order to establish the rule of law. As in the case of Iraq, one approach is for the Security Council to pass resolutions on a case-by-case basis outlining what types of reforms the council is willing to support in any given country.<sup>143</sup> Of course, the danger in such a case-by-case approach is that it is subject to seemingly arbitrary or inconsistent resolutions being implemented from one country to the next, and it may become a politicized process rather than one based on a common core of widely accepted UN principles that are embodied in UN treaties and instruments and/or customary international law.

The rule of law fundamentally requires that no organization – including the UN itself, its authorized multilateral peacekeeping forces, or other international organizations (e.g., IMF, World Bank, WTO) that are collaborating with the UN to provide assistance in post-conflict countries – should be permitted to act in a manner that is perceived as “above the law.” For example, the “rule of law” has been defined as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”<sup>144</sup>

Setting clear guidelines for post-conflict occupation will help to reinforce credibility and legitimacy in establishing a rule of law and achieving the key *jus post bellum* goal of building a lasting peace. To accomplish this, the UN system would benefit from more clearly defining a common set of standards, norms, rights, and boundaries regarding what actions by an occupying force should be deemed consistent with emerging norms for *jus post bellum* during transitional periods of post war occupation. In codifying such standards, the international community should review the strong empirical evidence of links between economic stability and international peace and security, and determine more specifically the extent to which economic reforms and market opening measures are appropriate during such transition periods.

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<sup>142</sup> *Id.* at 127.

<sup>143</sup> See also S.C. Res. 1483, ¶¶ 4, 8(e), U.N. Doc. S/RES/1483 (May 22, 2003); S.C. Res. 1511, ¶8, U.N. Doc. S/RES/1511 (Oct. 16, 2003).

<sup>144</sup> U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Rep. of the Secretary-General*, ¶6, U.N. Doc. S/2004/616 (Aug. 23, 2004).

APPENDIX A – TIMELINE OF KEY EVENTS IN IRAQI GOVERNANCE  
(2003 – 2010)

| DATE              | EVENT  |
|-------------------|--|
| March 2003        | <ul style="list-style-type: none"> <li>• US and British Coalition Forces Invade from Kuwait<sup>145</sup></li> </ul>   |
| April/May 2003    | <ul style="list-style-type: none"> <li>• Coalition forces take Baghdad<sup>146</sup></li> <li>• Saddam disappears<sup>147</sup></li> <li>• UN Security Council Resolution 1483 (May 22nd) on Reconstruction<sup>148</sup></li> </ul> |
| July 13, 2003     | <ul style="list-style-type: none"> <li>• The Iraqi Governing Council is established<sup>149</sup></li> <li>• 25 Iraqis selected under supervision of the Coalition Provisional Authority<sup>150</sup></li> </ul>                    |
| August 19, 2003   | <ul style="list-style-type: none"> <li>• Suicide truck bomb at U.N. headquarters in Baghdad<sup>151</sup></li> <li>• Kills 22 persons, including U.N. envoy Sergio Vieira de Mello<sup>152</sup></li> </ul>                          |
| December 13, 2003 | <ul style="list-style-type: none"> <li>• US troops capture Saddam near Tikrit<sup>153</sup></li> </ul>   |
| February 4, 2004  | <ul style="list-style-type: none"> <li>• Iraq files request for “Observer Status” at the WTO<sup>154</sup></li> </ul>  |
| March 8, 2004     | <ul style="list-style-type: none"> <li>• Governing Council signs interim constitution<sup>155</sup></li> </ul>   |

<sup>145</sup> *Frontline: Operation Iraqi Freedom*, PBS, <http://www.pbs.org/wgbh/pages/frontline/shows/invasion/cron/> (last visited Oct. 10, 2012).

<sup>146</sup> Simon Jeffery & Rebecca Allison, *US Forces Occupy Palaces*, GUARDIAN (London), Apr. 7, 2003, <http://www.guardian.co.uk/world/2003/apr/07/iraq.politics>.

<sup>147</sup> *The Rise and Fall of a Dictator*, CNN, Dec. 14, 2003, [http://articles.cnn.com/2003-12-14/world/sprj.irq.saddam.profile\\_1\\_saddam-hussein-iraqi-leader-coalition-troops?\\_s=PM:WORLD](http://articles.cnn.com/2003-12-14/world/sprj.irq.saddam.profile_1_saddam-hussein-iraqi-leader-coalition-troops?_s=PM:WORLD).

<sup>148</sup> S.C. Res. 1483, *supra* note 70.

<sup>149</sup> *Iraqi Governing Council Members*, BBC NEWS, July 14, 2003, [http://news.bbc.co.uk/2/hi/middle\\_east/3062897.stm](http://news.bbc.co.uk/2/hi/middle_east/3062897.stm).

<sup>150</sup> *Id.*

<sup>151</sup> *Iraq Profile: Timeline*, BBC NEWS, <http://www.bbc.co.uk/news/world-middle-east-14546763> (last updated Oct. 10, 2012); *Timeline of Events in Iraq*, BOSTON.COM (Mar. 26, 2010), [http://www.boston.com/news/world/middleeast/articles/2010/03/26/timeline\\_of\\_events\\_in\\_iraq](http://www.boston.com/news/world/middleeast/articles/2010/03/26/timeline_of_events_in_iraq).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> Request for Observer Status by Iraq, WT/L/560 (Jan. 23, 2004).

<sup>155</sup> *Timeline*, *supra* note 151.

|                   |  |
|-------------------|--|
| June 1, 2004      | <ul style="list-style-type: none"> <li>• Governing Council dissolved to make way for Iraqi Interim Government<sup>156</sup></li> <li>• Iyad Allawi Ghazi al-Yawar named president<sup>157</sup></li> </ul> |
| June 8, 2004      | <ul style="list-style-type: none"> <li>• UN Security Council Res 1546 on transfer of authority to Iraqi Interim Government<sup>158</sup></li> </ul>  |
| June 28, 2004     | <ul style="list-style-type: none"> <li>• US formally returns sovereignty to Iraqi Interim Government<sup>159</sup></li> <li>• CPA dissolved and Paul Bremer leaves Iraq<sup>160</sup></li> </ul>           |
| July 2004         | <ul style="list-style-type: none"> <li>• Trial of Saddam Hussein Begins<sup>161</sup></li> </ul>   |
| Sept. – Dec. 2004 | <ul style="list-style-type: none"> <li>• Iraq Files WTO Accession Application<sup>162</sup></li> <li>• WTO Working Group on Iraq Accession Established<sup>163</sup></li> </ul>                            |
| January 30, 2005  | <ul style="list-style-type: none"> <li>• Elections for Transitional Government<sup>164</sup></li> </ul>  |
| March–April, 2005 | <ul style="list-style-type: none"> <li>• Iraqi National Assembly holds first meeting<sup>165</sup></li> <li>• Kurdish Jalal Talabani Selected as President of Iraq<sup>166</sup></li> </ul>                |
| May 3, 2005       | <ul style="list-style-type: none"> <li>• Iraqi Transitional Government Replaces the Iraqi Interim Government<sup>167</sup></li> </ul>  |
| May 2005          | <ul style="list-style-type: none"> <li>• Parliamentary Commission drafts new Constitution<sup>168</sup></li> </ul>   |
| October 15, 2005  | <ul style="list-style-type: none"> <li>• Constitution Ratified by National Referendum<sup>169</sup></li> </ul>   |

<sup>156</sup> *Iraq Council Disbands; CPA Still in Power*, CHINA DAILY, June 6, 2004, [http://www.chinadaily.com.cn/english/doc/2004-06/02/content\\_335630.htm](http://www.chinadaily.com.cn/english/doc/2004-06/02/content_335630.htm).

<sup>157</sup> *Id.*; *Interim Iraqi Government*, BBC NEWS, June 1, 2004, [http://news.bbc.co.uk/2/hi/middle\\_east/3766401.stm](http://news.bbc.co.uk/2/hi/middle_east/3766401.stm).

<sup>158</sup> S.C. Res. 1546, *supra* note 23.

<sup>159</sup> *Timeline*, *supra* note 151.

<sup>160</sup> Associated Press, *U.S. Transfers Sovereignty to Iraq 2 Days Early*, MSNBC (June 28, 2004), [http://www.msnbc.msn.com/id/5312795/ns/world\\_news-mideast\\_n\\_africa/t/us-transfers-sovereignty-iraq-days-early/#.UHWFR\\_kWm6N](http://www.msnbc.msn.com/id/5312795/ns/world_news-mideast_n_africa/t/us-transfers-sovereignty-iraq-days-early/#.UHWFR_kWm6N).

<sup>161</sup> Hamza Hendawi, *A Defiant Saddam Hussein Appears at Hearing in Court*, SEATTLE TIMES (July 1, 2004), <http://community.seattletimes.nwsourc.com/archive/?date=20040701&slug=websaddam01>

<sup>162</sup> *Accessions: Iraq*, WTO, [http://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_iraq\\_e.htm](http://www.wto.org/english/thewto_e/acc_e/a1_iraq_e.htm) (last visited Oct. 10, 2012).

<sup>163</sup> *Id.*

<sup>164</sup> KATZMAN, *supra* note 15, at 1.

<sup>165</sup> *Timeline: Iraq Votes on New Government*, REUTERS (Dec. 21, 2010), <http://www.reuters.com/article/2010/12/21/us-iraq-politics-events-idUSTRE6BK3D020101221> (Dec. 21, 2010).

<sup>166</sup> *Iraq Profile*, BBC News Middle East, <http://www.bbc.co.uk/news/world-middle-east-14546763> (last updated Oct. 2, 2012).

<sup>167</sup> *See* KATZMAN, *supra* note 15, at 1–2.

<sup>168</sup> *Id.* at 2.

<sup>169</sup> *Id.*



|                   |   |
|-------------------|---|
| December 15, 2005 | <ul style="list-style-type: none"> <li>• National Parliamentary Elections Held . . More Sunnis vote than in January 2005 Parliamentary Elections<sup>170</sup></li> </ul>   |
| February 10, 2006 | <ul style="list-style-type: none"> <li>• Final Election results Shi'ite-led UIA gets near majority with 128 seats; Sunni Arabs have 58; Kurds 53.<sup>171</sup></li> </ul>  |
| May 20, 2006      | <ul style="list-style-type: none"> <li>• The new Iraqi Government replaces Iraqi Transitional Government<sup>172</sup></li> <li>• After much difficulty forming government, Nouri al-Maliki eventually selected as Prime Minister<sup>173</sup></li> </ul>          |
| December 2006     | <ul style="list-style-type: none"> <li>• Saddam Hussein found guilty of Crimes Against Humanity and Executed<sup>174</sup></li> </ul>   |
| January 2007      | <ul style="list-style-type: none"> <li>• US announces "Troop Surge" to counter escalating violence<sup>175</sup></li> </ul>   |
| May 2007          | <ul style="list-style-type: none"> <li>• WTO Iraq Accession Working Party Meetings held in Geneva<sup>176</sup></li> </ul>  |
| May 2007          | <ul style="list-style-type: none"> <li>• Iraq Oil law proposed by Parliament<sup>177</sup></li> </ul>   |
| January 2008      | <ul style="list-style-type: none"> <li>• Parliament votes to allow return of junior members of Saddam's Baath Party to government posts (key to reconciliation)<sup>178</sup></li> </ul>  |
| November 17, 2008 | <ul style="list-style-type: none"> <li>• The U.S. &amp; Iraq Sign "Status of Forces Agreement" Stipulating that U.S. troops will be out of Iraq by the end of 2011<sup>179</sup></li> </ul>   |
| November 2008     | <ul style="list-style-type: none"> <li>• Treaty ratified by the Iraqi Parliament<sup>180</sup></li> </ul>   |
| March 7, 2010     | <ul style="list-style-type: none"> <li>• National Iraqi Parliamentary Elections<sup>181</sup></li> <li>• Iyad Allawi's Iraqiya coalition wins 91 seats<sup>182</sup></li> <li>• Nuri al-Maliki's State of Law bloc is second with 89 seats<sup>183</sup></li> </ul> |

<sup>170</sup> *Id.* at 3.

<sup>171</sup> Trumbull IV, Charles P. and Julie B. Martin, *Elections and Government Formation in Iraq: An Analysis of the Judiciary's Role*, 44 VAND. J. TRANSNAT'L L. 331, 338 (2011).

<sup>172</sup> KATZMAN, *supra* note 15, at 3–6.

<sup>173</sup> *Id.*

<sup>174</sup> *Timeline*, *supra* note 151.

<sup>175</sup> *Id.*

<sup>176</sup> *See Accessions: Iraq*, *supra* note 162.

<sup>177</sup> Kamil Mahdi, *Iraq's Oil Law: Parsing the Fine Print*, 24 WORLD POL'Y J. 11, 11 (June 2007).

<sup>178</sup> *Timeline: Iraq votes on new government*, *supra* note 165.

<sup>179</sup> UK BORDER AGENCY COI SERVICE, IRAQ: COUNTRY OF ORIGIN FORMATION REPORT 26 (Mar. 2011).

<sup>180</sup> *Id.*

<sup>181</sup> KATZMAN, *supra* note 15, at 14.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

|               |   |
|---------------|---|
| August 2010   | <ul style="list-style-type: none"><li>American combat operations in Iraq end as its last combat brigade departs for Kuwait<sup>184</sup></li></ul>  |
| November 2010 | <ul style="list-style-type: none"><li>Eight month deadlock ends on formation of government as factions agree on top 3 posts<sup>185</sup></li></ul> |
| December 2010 | <ul style="list-style-type: none"><li>AI Maliki to serve as PM, with Kurdish president, and Allawi promised new post<sup>186</sup></li></ul>        |

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<sup>184</sup> *Last U.S. Combat Brigade Leaves Iraq*, NPR, Aug. 19, 2010, <http://www.npr.org/templates/story/story.php?storyId=129288654>.

<sup>185</sup> Trumbull et al., *supra* note 171, at 375.

<sup>186</sup> *Id.*

