

# Iraq: Looter's Licence

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*The Economist* described the legal and institutional groundwork laid down by Iraq's Coalition Provisional Authority (CPA) as 'a capitalist dream ... The kind of wish-list that foreign investors and donor agencies dream of for developing markets.' This dream was fulfilled with decrees signed by United States proconsul Paul Bremer<sup>1</sup>. Income and corporate taxes were capped at 15%; tariffs were eliminated (though 5% reconstruction surcharge was imposed on certain imports); the monetary and financial system was overhauled; and some 200 public companies were to be privatised. After more than 40 years of strict government control Iraq was, at least on paper, transformed into a vast free trade zone.

The shock therapy was justified in either-terms by the US Defence Secretary, Donald Rumsfeld, whose agency oversees the reconstruction effort: 'Market systems will be favoured, not Stalinist command systems'<sup>2</sup>. The most controversial reform was the regulation, or rather non-regulation, of foreign investment: on 19 September Order 39 threw open once heavily guarded doors to foreign investment: foreigners could now own property and invest in any sector of the Iraqi economy with the exception of natural resources. The decree made no provisions for prior authorisation or screening mechanisms. Foreign investors would need no local partners; there was no obligation of local reinvestment. The foreign investment regime became more liberal than those of the United States or Britain, where certain sectors including armaments and media are off-limits to foreigners. It went beyond World Bank guidelines on the treatment of foreign direct investment, which recognise the right to maintain mechanisms governing admission of foreign investment and allow for reasonable limits on repatriation of revenues.

The reform, hailed by the Coalition Provisional Authority as 'setting the most far-sighted investment climate in the Middle East',

did everything to please the investment community, although some still considered it insufficiently bold. Harvard economist Robert Barro, while acknowledging the 'nobility' of reforms anchored in 'law and private property', deplored the way the oil industry was considered as 'owned in common' and kept off-limits to foreign investors<sup>3</sup>. A major law firm lamented the fact that 'record-keeping and maintenance of accounting records [had to be] in Arabic'<sup>4</sup>.

Despite such reservations, the international business community was euphoric. Colossal contracts were about to be handed out. Iraq, as the world's second largest oil producer, offered limitless possibilities. There was talk of deals of the century, a gold rush, a free enterprise heaven. The country was to become the first Islamic tiger – a model and showcase for the entire Middle East.

Many people wonder whether this reform would survive a return to full Iraqi sovereignty. The legality of such reforms is in question. According to the Hague Regulations of 1907 and to the Fourth Geneva Convention of 1949, an occupying power has no right to conduct sweeping reforms. It should be said that such considerations do not seem to preoccupy President George Bush, who, when asked about the compatibility of certain US decisions with international law, responded: 'International law? I better call my lawyer'<sup>5</sup>.

The issue was taken seriously by legal experts. A memo written in March 2003 by the British attorney general, Lord Goldsmith, to the prime minister, Tony Blair – and later leaked to the *New Statesman* – warned that 'the imposition of major structural economic reforms' might violate international law unless the Security Council of the United Nations specifically authorised it<sup>6</sup>. Lord Goldsmith, the government's chief legal adviser, was referring to Article 43 of the Hague Regulations, which stipulates that an occupying power must 're-establish and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country'<sup>7</sup>.

Since the fall of Saddam Hussein the Coalition Provisional Authority seems to have done the opposite. Rather than re-establishing public order and safety (judging by the widespread looting and serious unrest), it put considerable effort into overhauling the system. Of course, the question of Iraq's economic future, poorly conceived and badly executed, had been debated for a long time. According to the former treasury secretary Paul O'Neill, from the first days of the Bush administration, long before the 11 September 2001 attacks, there was planning for the best way to control Iraq's lucrative oil contracts<sup>8</sup>.

Key members of that administration (including the President, Vice-President Richard Cheney and National Security Adviser Condoleezza Rice) had some experience in the oil industry. Iraq, a potentially rich country devastated by the combined effects of a dreadful dictatorship, three wars and 12 years of international sanctions, was an inviting target. Of course, it was assumed that Iraq would welcome its liberators with flowers.

Post-war pacification has proved far more difficult than anticipated and there are now signs that policy change is likely. In autumn 2003, after two years of 'spiteful unilateralism', the US seemed eager to mend fences with the international

community; on 16 October 2003 UN Resolution 1511 legitimising the US presence in Iraq was approved unanimously; on 23 October a donors' conference met in Madrid under the aegis of the United Nations, with 73 countries, 20 international organisations and 13 non-governmental organisations represented.

This conference, described by US officials as a tremendous success, ended with promised commitments of \$33bn – in reality, a rough estimate of loans and donations, linked aid (contingent on awarding contracts to national companies), and conditional contributions (which would materialise only with a return to normality or to Iraqi sovereignty). It was far less than the \$56bn over four years deemed necessary by the World Bank to get the country back on its feet. Still, the United States could finally boast of the support of the international community.

A few days later, to finance wars in Iraq and Afghanistan, the US Congress approved an \$87bn budget, of which \$18.6bn would be related to Iraqi military and reconstruction contracts. An amendment providing for criminal penalties against war profiteers was rejected in conference. One of its sponsors, Democratic Senator Richard Durbin, said: 'That's a sad commentary, because I think the American people, as troubled as they are by this \$87bn shock, are troubled even more at the prospect that this is going to go to the friends of the administration or to some chummy arrangement or, frankly, be wasted in the deserts of Iraq when it might have been spent for the good of the people of that country.'

On 5 December 2003 Bush announced that James Baker, who had been secretary of state during his father's presidency, would visit European capitals, including Paris, Berlin and Moscow, to negotiate the reduction of the Iraqi debt, which was valued at \$130bn. As it had been contracted by a tyrant, it could be considered an 'odious debt' and an unfair burden on the Iraqi people. Such debt reduction was seen as necessary for the reconstruction effort. The selection of Baker, a committed multilateralist, was perceived as another sign that the neo-conservatives were losing ground in Washington.

But the hawks' response was swift. On the same day the defence undersecretary, Paul Wolfowitz, issued a circular announcing that certain countries, among them France, Germany, Russia and Canada, would not be eligible for the main reconstruction contracts, valued at \$18.6bn; 26 contracts for the reconstruction effort, to train and equip the new Iraqi army and rebuild the infrastructure, including roads, oil fields, sewers, water and power plants, would be reserved for the 63 countries of the coalition of the willing that had supported the war effort.

Wolfowitz, theoretician of the neo-conservative movement and principal architect of the Iraqi adventure, had again seized the offensive, placing a *fait accompli* before administration moderates. A year earlier the Secretary of State, Colin Powell, had warned opponents to the war that they would face unspecified consequences. It was payback time.

In the circular, Wolfowitz claimed that such measures were 'indispensable for national security and national defence purposes' and that they were intended both as reward and incentive for future cooperation. There was a predictable outcry in the excluded countries, as well as in Washington. The European Union asserted

that such measures violated World Trade Organisation rules on public contracts, which ban discrimination against foreign companies on the basis of nationality. Senator Joseph Biden of Delaware, the top Democrat on the Senate Foreign Relations committee, issued a statement criticising the Pentagon move as a 'totally gratuitous slap ... that does nothing to protect our security interests and everything to alienate countries we need with us in Iraq'.

The White House seemed to side with the hawks; its spokesman, Scott McClellan, said: 'I think it is appropriate and reasonable that prime contracts for reconstruction funded by US taxpayer dollars should go to the Iraqi people and those countries who are working with the US on the difficult task of helping to build a free, democratic and prosperous Iraq.'

The State Department argued that the new policy did not intend to exclude, but to include, since besides the United States, 62 countries were eligible for contracts, among them the UK, Italy, Spain and Poland, Rwanda, Palau and Tonga. And the Pentagon added that the list of coalition partners was still open: whoever wished to join was welcome<sup>9</sup>. A spokesman for the US trade representative, Robert Zoellick, rejected accusations of protectionism. Displaying a selective approach to international law, he said the Coalition Provisional Authority was not covered by the World Trade Organisation rules, and that it was free to discriminate in the awarding of contracts as it saw fit.

The most candid policy statement came from President Bush, who declared: 'What I'm saying is, in the expenditure of the taxpayers' money ... the US people, the taxpayers, understand why it makes sense for countries that risked lives to participate in the contracts in Iraq. It's very simple. Our people risked their lives, friendly coalition folks risked their lives and therefore the contracting is going to reflect that.' Until then, the administration had been quiet about mercantile aspects of the Iraqi war, expounding instead on the imminent threat of weapons of mass destruction, or the need to bring democracy to the Iraqi people<sup>10</sup>. Then the president acknowledged what had long been obvious: big contracts were spoils of war and dividends had to be commensurate with the war effort.

That makes it easier to understand the dark side of reconstruction. Every day there is a report of conflicts of interest, fraud, over-billing, botched work, waste or abuse. At the top of the list of profiteers are a few US firms with close ties to the Bush administration. The dominance of US firms in the rebuilding of Iraq has troubled even the most loyal allies. Despite all their efforts, British companies have missed out completely on oil rehabilitation contracts. Trying to head off domestic political embarrassment, the British government has been working behind the scenes, apparently to no avail, to land at least a few face-saving affirmative action contracts<sup>11</sup>.

According to a report issued by the Centre for Public Integrity, the 71 companies that received contracts for work in either Iraq or Afghanistan contributed more than \$500,000 to Bush's 2000 election campaign. He received more contributions from these sources than any other politician in the past 12 years. According to the report, 'Nearly 60% of the companies had employees or

board members who either served in or had close ties to the executive branch for Republican and Democratic administrations, for members of Congress of both parties, or at the highest levels of the military.’ In the words of Charles Lewis, the centre’s director: ‘No single agency supervised the contracting process for the government. This situation alone shows how susceptible the contracting system is to waste, fraud and cronyism’<sup>12</sup>.

Despite promises of transparency, the most lucrative contracts were not subjected to public bidding. The main beneficiaries were Halliburton, the oil services company, primarily through its subsidiary Kellogg, Brown and Root (KBR), and construction giant Bechtel, both companies closely tied to the Washington hawks and both with some recent Iraqi experience. Bechtel had built a major pipeline in Iraq, which had been negotiated by Donald Rumsfeld (then special envoy to Iraq) and Saddam Hussein in 1983 when former executives of Bechtel held key positions in the Reagan cabinet. As for Halliburton, whose president from 1995-2000 was the current US vice-president, Richard Cheney, it had been able to operate in Iraq until recently despite a strict international sanctions regime.

An incessant stream of revelations has made Halliburton a symbol of US-style crony capitalism. Henry Waxman, a Democratic member of the House of Representatives from California, has been investigating the cosy ties between Halliburton and US policy-makers. He revealed that a no-bid contract awarded by the US Army Corps of Engineers to its Kellogg, Brown and Root subsidiary in the early days of the war, ostensibly to fight oil fires, was far more extensive. It included an open-ended arrangement to operate oil facilities and distribute oil products, in effect granting the company a concession on substantial Iraqi oil reserves.

According to Waxman, the contract was financed with funds drawn from the oil-for-food programme (renamed the Development Fund for Iraq). Many laws and regulations seem to have been written specifically to protect major oil companies; on 22 May 2003 Bush signed Executive Order 13303, which appears to give them blanket immunity. The decree stated that ‘the threat of attachment or judicial process against the Development Fund for Iraq, Iraqi petroleum and petroleum products, and interests therein constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States’. According to Tom Devine, legal director of the Government Accountability Project, ‘translated from the legalese, this is a licence for corporations to loot Iraq and its citizens’. He added that the decree ‘cancels the concept of corporate accountability and abandons the rule of domestic and international law’<sup>13</sup>.

Besides legal risk, Halliburton and its subsidiary were protected against financial risk; their contracts were negotiated on a cost-plus or ‘indefinite quantity/indefinite delivery’ basis. Under this method, which is justified by conditions of urgency or uncertainty, the company passes all its costs on to the government plus a profit margin typically between 1-7%<sup>14</sup>.

Clearly such a system opens the door to abuses and conflicts of interest.

Kellogg, Brown and Root was repeatedly caught red-handed. It was discovered that Kellogg, Brown and Root had inflated the price of petrol imported into Iraq by more than 60%: a gallon bought for 70 cents in Kuwait was sold to the US army for \$1.59. The loss to the government was around \$61m. Kellogg, Brown and Root's explanation was that the price was justified by transportation costs (although Kuwait is Iraq's neighbour) and high risks. A few weeks later, Kellogg, Brown and Root was caught over-billing the army for \$16m for meals for US soldiers. In an unrelated inquiry, a Pentagon audit revealed that the quality of the work of Kellogg, Brown and Root, and of Bechtel, was shoddy<sup>15</sup>. This may be just the tip of the iceberg.

The Pentagon's response to these and other scandals was to open inquiries, create new auditing structures, promise more transparency, and withhold for the time being payment of disputed bills. But the central role of Kellogg, Brown and Root in Iraq was never in question: just as the public learned about dubious practices, Kellogg, Brown and Root received more contracts, generating revenues at the expense of the Iraqi people and the US taxpayer. One of the beneficiaries will be Cheney, who still receives deferred income from Halliburton (\$150,000 in 2001, \$160,000 in 2002 and \$178,000 in 2003) and holds 433,000 stock options whose value is directly influenced by revenues generated by such contracts<sup>16</sup>.

The line between politics and business is getting blurred. Iraqi contracts were, at least until the most recent insurrections, considered certain to lead to instant riches. Richard Perle took full advantage of his double role: as the head of the US Defence Policy Board, he was one of the most effective advocates of the extension of the war on terror to Iraq and other countries. As a private citizen, he enriched himself by founding Trireme International, a venture capital firm designed to benefit from his inside knowledge of defence<sup>17</sup>. Joe Allbaugh, Bush's campaign chairman in 2000, created New Bridge Strategies to help corporations obtain contracts in Iraq. The law firm that Douglas Feith (Pentagon under-secretary and leading hawk in charge of supervising the Iraqi reconstruction effort) once worked for has opened in Baghdad.

Comparable conflicts of interest will be common in Iraq. At the end of 2003 the Coalition Provisional Authority had announced that out of 115 identified projects, 25 would be awarded to Iraqi firms. But given the conditions created by Order 39, it will be far from a level playing field. It is anticipated that contracts will be grabbed by insiders and by people close to the Coalition Provisional Authority, or to the Iraqi Governing Council, whose 25 members were named by the Americans.

So what about the Iraqi people? In the official rhetoric, they will be the ultimate beneficiaries of the new order. US officials have been encouraging them to take advantage of the new climate of economic freedom. During a brief trip to Iraq, the Commerce Secretary, Don Evans, said he saw phenomenal progress in the country and praised the entrepreneurial spirit he witnessed. To star CNN journalist Wolf Blitzer he said: 'I stopped by the side of the road to buy some Coca-Cola from some boy, a young entrepreneur'<sup>18</sup>.

For the average Iraqi, there is no cause yet for celebration. The injection of substantial funds in a sick economy has exacerbated post-war economic problems. Inflation, rationing, oil shortages and rising unemployment have fed chaos and insecurity. Job cuts in public firms and the disbanding of the Iraqi military have swelled the ranks of the unemployed. The ultra-liberal economic reforms, which allow for labour to be freely imported and profits to be freely repatriated, have had some perverse effects.

Public officials have repeatedly affirmed that unrest is caused by infiltrated foreign elements, but relations between international firms and Iraqis were marked by mistrust from the start. The best illustration is Kellogg, Brown and Root; this over-billing subsidiary of Halliburton relies on Saudi subcontractors to cater for the troops, and much of their workforce is imported from India and Bangladesh. Why do they not employ Iraqis? Because they fear Iraqis may try to poison the troops<sup>19</sup>.

## Notes

- 1 *The Economist*, 25 September 2003.
- 2 Daphne Eviatar, *The New York Times*, 10 January 2004.
- 3 Robert J Barro, *Business Week*, 5 April, 2004.
- 4 Pillsbury Winthrop LLP, *International Trade News Brief*, 'Reconstruction of Iraq', 23 September, 2003.
- 5 *Washington Post*, 12 December 2003.
- 6 John Kampfner, *New Statesman*, 26 May 2003.
- 7 Alan Audi, 'Iraq's New Investment Law and the Standard of Civilisation', *Georgetown Law Journal*, vol 93, issue 1, Washington 2004.
- 8 Ron Suskind, *The Price of Loyalty: George W Bush, the White House, and the Education of Paul O'Neill*, Simon and Schuster, New York, 2004.
- 9 *Washington Post*, 10 December 2003.
- 10 Ibrahim Warde, 'It's the economy, stupid', *Le Monde diplomatique*, English language edition, April 2003.
- 11 Terry Macalister, *The Guardian*, 13 February 2004.
- 12 [http://www.publicintegrity.org/wow/...](http://www.publicintegrity.org/wow/)
- 13 <http://www.whistleblower.org>
- 14 George Anders and Susan Warren, *The Wall Street Journal*, 19 January 2004.
- 15 Paul Krugman, *New York Times*, 16 December 2003.
- 16 Halliburton stock peaked at \$54.69 in September 2000 and hit a low of \$9.10 in July 2002. It now hovers around \$30.
- 17 Revelations about his activities led him first to resign as chairman of the board, and later to leave the board altogether.
- 18 *Wolf Blitzer Reports*, CNN, 19 October 2003.
- 19 *The Economist*, 9 October 2003.

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