

# Destroy and Profit

## Wars, Disasters and Corporations

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## INTRODUCTION

# George Bush's Rollback Economics

BY WALDEN BELLO

**T**he essays in this volume provide a remarkable portrait of the hothouse brew of corruption, cronyism, unilateralism, neoliberal rhetoric, protectionism, and good old American nationalism that has marked the Bush administration's approach to post-war and post-disaster reconstruction.

The following introductory remarks are an effort to place the Bush administration's reconstruction policies in the context of the larger shift in the political economy of the US in the Bush period.

### **KEY FEATURES OF US POLITICAL ECONOMY UNDER BUSH**

Over the last four years, a distinctive Bushite political economy has developed, the main features of which are the following:

- Unlike the Clinton administration and even the Bush senior administration, the Bush II people aggressively put the interests of US corporations ahead of the

common interest of the global capitalist class, even if severe disharmony is the outcome.

- Bush's political economy is very wary of a process of globalization that is not managed by a US government to ensure that the process does not dilute the economic power of the US. After all, a totally free market might victimize key US corporations thus compromising US economic interests. Thus, despite the free market rhetoric, we have a group that is very protectionist when it comes to trade, investment, and

the management of government contracts. It seems that the motto of the Bushites is protectionism for the US and free trade for the rest of the world.

- The Bush inner circle is strongly skeptical about multilateralism. They fear it since although multilateralism may promote the interests of the global capitalist class in general, it may, in many instances, contradict particular US corporate interests. The Administration's growing ambivalence towards the WTO stems from the fact that the US has lost a number of rulings there, rulings that hurt US capital and added a degree of regulation of inter-capitalist competition.
- For the Bush people, politics is key, not only in the sense of using state power to repay political favors to corporate interests but, even more important, in the sense that for them, strategic power is the ultimate modality of power. The neoconservatives and nationalists that command enormous power in the administration, see economic power as a means to achieve strategic power. Economic arrangements, like trade deals and the WTO, are judged less by their adherence to free trade than by the extent to which they contribute to the strategic power of the United States.
- While the Bush administration is dedicated to advancing the interests of US capital as a whole, it is especially tied to the interests of what might be called the "Hard Economy." These are interests which are either tied to government leaders by direct business links, as is the case with the oil industry (Bush and Cheney count as its special sons); those that can only subsist only with massive subsidies from the government, like the steel industry

and agribusiness; or those which often operate outside the free market and depend instead on secure government contracts that run on "cost-plus" arrangements. The third kind of firms make up the powerful "military industrial complex" that is really the most powerful bloc among corporate lobbyists in Washington today.

Not surprisingly, since many of the interests supporting Bush are not subject to the market, they regard the free market and free trade as no more than rhetorical weapons that are deployed against external competitors and not taken seriously as an operating principle.

### KEY ECONOMIC POLICY THRUSTS

If these are the premises for action, then the following prominent elements of recent US economic policy make sense:

- *Achieving control over Middle East oil.* While it did not exhaust the war aims of the administration in invading Iraq, it was certainly high on the list. Partly this is aimed at potential European competitors. But perhaps, as discussed earlier, the more strategic goal was to preempt the region's resources in order to control access to them by energy poor China, which is still identified as a strategic threat in the 2002 National Security Strategy paper, notwithstanding its serving as an ally in the War on Terror.<sup>1</sup>
- *Aggressive protectionism in trade and investment matters.* The Bush administration has, in fact, not hesitated to destabilize the multilateral trading order in order to protect US corporate interests. In addition to pushing for massive farm subsidies and raising steel tariffs, it defied the Doha Declaration (from the WTO's fourth Ministerial Meeting in Doha) that health should take priority over intellectual property claims. Responding to its powerful pharmaceutical lobby, the

Administration sought to limit the easing of patent controls to just three diseases. Since the Doha ministerial, in fact, Washington has put less energy into making the WTO a success. It prefers to pour its efforts into bilateral or multilateral trade deals, such as the Free Trade of the Americas (FTAA) or the Central America Free Trade Agreement (CAFTA). Indeed the term “free trade agreements” is a misnomer since these are actually preferential trade deals designed to severely disadvantage parties outside the deal like the European Union.

- *Incorporating strategic considerations into trade agreements.* In a speech in May 2003, U.S. Trade Representative Robert Zoellick stated explicitly that “countries that seek free-trade agreements with the United States must pass muster on more than trade and economic criteria in order to be eligible. At a minimum, these countries must cooperate with the United States on its foreign policy and national security goals, as part of 13 criteria that will guide the U.S. selection of potential FTA partners.” New Zealand, a government committed to free trade, has nevertheless not been offered a free trade deal because it has a policy that prevents nuclear ship visits.<sup>2</sup>
- *Manipulation of the dollar’s value to shift the costs of economic crisis to rivals among the center economies and regain competitiveness for the US economy.* Exchange rate manipulation is a convenient instrument of displacing the costs of adjustment to one’s competitors in a global economy marked by overcapacity.
- *Aggressive manipulation of multilateral agencies to promote the interests of US capital coupled with a renewed reliance on bilateral aid as a means of forcing change on poor countries.* While instrumental employment of a multilateral agency may not be too easy to achieve in the WTO owing to the strength of the European Union, it can be more

readily done at the World Bank and the IMF, where US dominance is more effectively institutionalized. Despite support for the proposal from many European governments, the US Treasury torpedoed the IMF Management’s proposal for a Sovereign Debt Restructuring Mechanism (SDRM) to enable developing countries to restructure their debt while giving them a measure of protection from creditors. Already a very weak mechanism from the point of view of developing countries, the SDRM was vetoed by US Treasury in the interest of US banks.<sup>3</sup>

The US has also made the World Bank an instrument of its bilateral aid and development initiatives, including the radical privatization effort known as the Private Sector Development (PSD). Nancy Alexander’s account of how this came about is instructive:

Initially, most of the Bank’s Board of Directors opposed the PSD Strategy’s proposal to launch a third generation of adjustment focused on investment and to privatize services, especially health, education, and water. Gradually, outright opposition dissipated as Board members described the hard, uncompromising, “you’re with us or against us” attitude of US officials. The PSD Strategy, which was finally approved by the Board on February 26, 2002, calls for a radical transformation of the form and functions of the World Bank group in order to promote the private sector. The Bank is now promoting investor rights while, at the same time, liberalizing and privatizing services, especially in low-income countries where regulatory regimes are generally weak to

non-existent.<sup>4</sup>

Perhaps even more important, the US has lassoed the World Bank and the IMF to provide public finance for its so-called reconstruction efforts in both Afghanistan and Iraq. This is using international taxpayers' money to stabilize economies devastated by US wars. Both agencies are not only being asked to provide money, but also, to help manage the privatization effort, particularly in Iraq.

Instead of multilateral aid, bilateral aid in the form of grants has become the main conduit of US aid policy. Bilateral grant aid, Bush's foreign policy people argue, is more effectively controlled and thus tailored for one's purposes. "Grants can be tied more effectively to performance in a way that longer-term loans simply cannot. You have to keep delivering the service or you don't get the grant," said John Taylor, undersecretary of the Treasury.

The most ambitious new bilateral aid program unveiled by the administration was the Millennium Challenge Account (MCA), which called for a \$5 billion increase in US aid, in addition to the average of \$10 billion now regularly appropriated. To qualify for aid under the new program and for aid to continue flowing once a country qualified, it had to get passing grades on 16 criteria that included trade policy, "days needed to start a business," inflation, budget deficit, control of corruption, rule of law, civil liberties, and immunization rates.<sup>5</sup> The World Bank would provide assessments of the eligibility of countries for aid, as would conservative private NGO's like Freedom House and the Heritage Foundation. The aid process itself would be conducted like a business venture, as the State Department made clear:

[T]he MCA will use time-limited, business-like contracts

that represent a commitment between the US and the developing country to meet agreed performance benchmarks. Developing countries will set their own priorities and identify their own greatest hurdles to development. They will do so by engaging their citizens, businesses, and governments in an open debate, which will result in a proposal for MCA funding. This proposal will include objectives, a plan and timetable for achieving them, benchmarks for assessing progress and how results will be sustained at the end of the contract, delineation of the responsibilities of the MCA and the MCA country, the role of civil society, business and other donors, and a plan for ensuring financial accountability for funds used. The MCA will review the proposal, consulting with the MCA country. The Board will approve all contracts.<sup>6</sup>

The aim of this radical right-wing transformation of the aid policy is not just to accelerate market reform but, equally, to push political reform along narrow Western lines.<sup>7</sup>

- *Making the other center economies as well as developing countries bear the burden of adjusting to the environmental crisis.* While some of the Bush people do not believe there is an environmental crisis, others know that the current rate of global greenhouse emissions is unsustainable. However, they want others to bear the brunt of adjustment since that would mean not only exempting environmentally inefficient US industry from the costs of adjustment, but hobbling other economies with even greater costs. Raw economic realpolitik, not fundamentalist blindness, lies at the root of Washington's decision to not sign the Kyoto Protocol on Climate Change.

In sum, in reconstruction and in other

areas, the Bush administration economic policies reflect a much more aggressive pursuit of both US corporate and strategic interests. Like Bush's military strategy, its aim is to assure overwhelming superiority for US corporate interests. Like that strategy, it is creating the conditions for its own defeat. ■

## Notes

<sup>1</sup> David Harvey, Speech at Conference on Trends in Globalization, University of California at Santa Barbara, May 1-4, 2003.

<sup>2</sup> "Zoellick Says FTA Candidates Must Support US Foreign Policy," *Inside US Trade*, May 16, 2003. This article summarizes a May 8, 2003 speech by Zoellick.

<sup>3</sup> For the sharpening conflicts between the US Treasury Department and IMF officials, see Nicola Bullard, "The Puppet Master Shows his Hand," *Focus on Trade*, April 2002 (<http://focusweb.prg/popups/articleswindow.php?id=41>).

<sup>4</sup> Nancy Alexander, "The US on the World Stage: Reshaping Development, Finance, and Trade Initiatives," Citizens' Network on Essential Services, Washington, October 2002/

<sup>5</sup> Susanne Soederberg, "American Empire and 'Excluded States': the Millenium Challenge Account and the Shift to Preemptive Development," *Third World Quarterly*, Vol. 25, No. 2 (2004), p 295.

<sup>6</sup> Quoted in *ibid.*

<sup>7</sup> *Ibid.*



# ‘Shock and Awe’ Therapy

*How the United States is attempting to control Iraq’s oil and pry open its economy*

**BY HERBERT DOCENA**

*“One of the most audacious hostile takeovers ever”* – Wall Street Journal<sup>1</sup>

*“The best time to invest is when there’s still blood on the ground.”* – a delegate to Rebuilding Iraq 2 convention<sup>2</sup>

*“We must find new lands from which we can easily obtain raw materials and at the same time exploit the cheap slave labor that is available from the natives of the colonies.”* – Cecil Rhodes<sup>3</sup>

*“Iraq will be sold to others and will be begging the foreigners as we begged Saddam before”* – an Iraqi businessman<sup>4</sup>

*“The United has the biggest slice, but we’re confident there’s enough of the pie to go around for everyone.”* – participant to an Iraq investor’s conference<sup>5</sup>

## CHRONOLOGY OF EVENTS

**19 March 2003:** US-led forces invade Iraq  
**1 May 2003:** Bush declares end of “major combat operations”  
**13 July 2003:** first meeting of US-installed Iraq Governing Council  
**18 July 2003:** contract for transforming Iraq’s economy is awarded to Bearing Point  
**September 2003:** occupation authority enacts Order 39, opening up Iraq’s economy to foreign investors  
**15 November 2003:** US agrees to accelerate political transition for transferring “sovereignty” to Iraq  
**28 May 2004:** Iyad Allawi is chosen as prime minister of Iraq’s interim government  
**28 June 2004:** US hands over “sovereignty” to interim government  
**18 August 2004:** conference for choosing members of Iraq’s Interim National Council  
**30 January 2005:** national elections for choosing members of Iraq’s National Assembly

**I**nvasion. This was to be the first step in what has since become the most ambitious, most radical, and most violent project to reconstruct an economy along neoliberal lines in recent history. Since the invasion of Iraq in 2003, the United States has attempted to open up almost all sectors of Iraq’s economy to foreign investors; pry it open to international trade; launch a massive privatization program to sell off over 150 state-owned enterprises; liberalize its financial market and re-orient the role of its Central Bank; impose a flat tax and remove food and oil subsidies; adopt a patents and intellectual property rights regime beneficial to corporations; and lay the ground for the eventual privatization of Iraq’s oil.

While similar efforts to comprehensively restructure economies have often begun from inside the finance or planning ministries, legislative halls, universities, or five-star

hotels in other countries, in Iraq, the first phase in a multi-stage and all-encompassing project began in March 2003 from the skies, with the dropping of bombs, and in the field, with the rolling in of tanks. “Shock therapy” had to be presaged by “shock and awe.”

Even before the bombs fell on Baghdad, however, the blueprint for Iraq’s economy was ready and waiting to be implemented – an indication that while the invasion may have been part of a larger geo-strategic game-plan to dominate a vital region, the goal to implement neoliberal economic policies in Iraq, including securing access to its oil, was not afterthought. By February 2003, the US had finished drafting what the *Wall Street Journal* called “sweeping plans to remake Iraq’s economy in the US’s image”<sup>6</sup> Entitled “Moving the Iraqi Economy from Recovery to Growth,” the document laid down what was to be done with various aspects of Iraq’s economy once the occupation forces had ensconced themselves in Baghdad. Michael Bleyzer, former executive of Enron summed up the goal when he briefed Defense Secretary Donald Rumsfeld and other officials of the Bush administration: “We want to set up a business environment where global companies like Coca-Cola and McDonald’s could come in and create a diversified economy not dependent on oil...”<sup>7</sup>

The plan called for nothing less than Iraq’s comprehensive transformation from a centralized command economy with very strong state intervention into a market economy in which the state plays virtually no other role but to create, maintain, and defend the openness of this market.<sup>8</sup> Just as the US bombed out and physically obliterated almost all of Iraq’s ministries, the plan entails the repeal of almost all of its current laws and the dismantling of its existing institutions, except those that already fit in with the US’ design.<sup>9</sup> From their rubble is to be erected a new state from the ground up – one empowered to usher in foreign investments and facilitate the unfettered operations of multinational corporations but disempowered to provide services to its citizens or promote development and social justice.

## BREMER'S ORDERS

### SAMPLE OF LAWS ENACTED BY COALITION PROVISIONAL AUTHORITY IN IRAQ

ORDER	IMPLICATIONS FOR IRAQIS
<b>39</b>	
"national treatment" gives foreign investors same rights as Iraqis in selling to domestic market and in exploiting resources	Iraqi government can't favor local businesses or pursue industrialization policies
removes restrictions on investments and operations of multinational corporations	Iraqi government denied power to regulate and control investments
allows for 100% repatriation of profits	takes away Iraqi government's prerogative to compel foreign investors to re-invest profits in domestic economy
<b>12</b>	
suspended tariffs, duties and other taxes on imports	gives Iraqi government less control over trade policy
<b>40</b>	
allow foreign banks to operate in Iraq and to own 50% of domestic banks	gives foreign banks more control over Iraqis' access to credit and more control over monetary policy
<b>49</b>	
imposes flat tax on Iraq	prevents Iraqi government from imposing higher taxes on the rich
<b>81</b>	
introduces system of monopoly rights over seeds, facilitates entry of multinational agri-corporations	denies Iraqis 'food sovereignty'

Source: various Orders enacted by Coalition Provisional Authority ([www.iraqcoalition.org](http://www.iraqcoalition.org))

## TAKE ADVANTAGE OF THE CHAOS

Awarded the task to remake Iraq's economy and prepare the ground for the likes of Coca-Cola and McDonald's was Bearing Point, a private business consultancy group. Its contract with USAID, a meticulously methodical document complete with timetables, delegation of responsibilities, and assignment of tasks for specific Iraqi government posts, is essentially the masterplan for the US economic design on Iraq – the "smoking gun" proving the US' intent to reconstruct Iraq's economy along neoliberal lines. The language of the contract is revealing: At one point, it says, "The new government *will* seek to open up its trade and investment linkages and to put into place the institutions promoting democracy, free enterprise and reliance on a market-driven private sector as the engine of economic recovery and growth" [italics provided] – as though this government will have no other choice.

The painstakingly systematic plan contrasts with the apparent lack of any planning for post-war humanitarian, rehabilitation, and relief operations.<sup>10</sup> This hinted at what the so-called "reconstruction process" was not going to be about. As Defense Secretary Donald Rumsfeld said, "I don't believe it's our job to reconstruct that country after 30 years of centralized Stalinist-like economic controls in that country."<sup>11</sup>

Having settled at Saddam's Republican Palace complex, occupation authorities quickly moved to implement the Bearing Point workplan. Little more than one month after the invasion was declared "mission accomplished" by Bush in May 2003, then Coalition Provisional Authority (CPA) chief L. Paul Bremer unveiled the US' economic agenda on Iraq at a World Economic Forum meeting in Jordan. "Our strategic goal in the months ahead is to set in motion policies which will have the effect of reallocating people and resources from state enterprises to

the more productive private firms,” he said.<sup>12</sup> That same month, the American adviser to the ministry of industry and minerals announced the “fast-track” privatization of 48 state-owned enterprises (SOEs).<sup>13</sup> By the time the US handed-over “sovereignty” in a secret ceremony in June 2004, key elements of its economic designs on Iraq had been put in place. The CPA had passed an array of laws and that were to be the foundations and pillars of Iraq’s neoliberal regime.<sup>14</sup>

Among the most groundbreaking was **Order 39** which was described as fulfilling the “wish list of international investors” by *The Economist* and as a “free market manifesto” by *Reuters*.<sup>15</sup> The Order allows foreign investors to buy and take over Iraq’s SOEs, to enter and leave Iraq as they please, to have the same rights as any Iraqi in selling to the domestic market, and to repatriate 100 percent of their profits and other assets anytime. Seen another way, the Order effectively deprives the Iraqis sovereignty over their economy.<sup>16</sup> By moving towards the privatization of Iraq’s SOEs, the Order effectively allows the transfer of the Iraqi people’s assets to foreign and/or private owners whose priority is to maximize profits rather than to provide services or products to Iraqis. By removing restrictions on investments, the Order denies the Iraqi state any power to regulate and control investments entering its territory. By giving foreign investors “national treatment,” it deprives Iraqis the option to support local business or pursue industrialization policies in the hope of attaining a degree of self-sufficiency and economic sovereignty. The clause allowing full and unimpeded repatriation takes away the Iraqi state’s prerogative to compel foreign investors to re-invest their profits in the domestic economy.

While oil was exempted from this Order, the Bearing Point contract specifically states that it “will implement USAID-approved recommendations to begin supporting the privatization, especially those in the oil and supporting industries.”<sup>17</sup> It was told to go ahead with preparing legislation and implementing regulations to establish an “improved fiscal regime for petroleum and mining sectors and for transit pipelines.”<sup>18</sup> Earlier, Bush had signed an Executive Order

giving blanket and indefinite immunity to US oil corporations involved in any oil-related activity in Iraq.<sup>19</sup>

**Order 12**, or the “Trade Liberalization Policy,” suspended tariffs, duties, and other taxes on goods entering Iraq’s market, thereby depriving the Iraqis of revenue control over trade flows and an independent trade policy.

**Order 40** allowed a few foreign banks to enter the Iraqi market and take over up to 50 percent of domestic banks. Combined with the other Orders, this gives foreign bankers power over Iraqis’ access to credit and loans and gives the government less control over monetary policy.

**Order 49** reduced the tax-rate on corporations and individuals from 40 percent to a flat rate of 15 percent. Doing away with the principle of progressive taxation, the idea that those who have more should contribute more, it also means that an Iraqi who earns \$100 a month will have to pay the same percentage of tax as a corporation that earns \$1 billion a month.

**Order 81**, which lays the ground for Iraq’s intellectual property rights regime, introduces a system of monopoly rights over seeds.<sup>20</sup> This facilitates the entry of multinational agricultural corporations and undermines Iraqis’ “food sovereignty,” or their right to define their own food and agriculture policies instead of having them subordinated to international market forces.

Observers were quick to point out the similarities between elements of the plan and the structural adjustment policies imposed by the World Bank in scores of developing countries around the world since the 1980s or the “shock therapy” administered to Russia in the 90s. Only this time, it goes further. The *New York Times* economic columnist Jeff Madrick noted that, “By almost any mainstream economist’s standard, the plan... is extreme – in fact, stunning.”<sup>21</sup> Former World Bank chief economist and Nobel prize winner Joseph Stiglitz observed that Iraq’s own was “an even more radical form of shock therapy than pursued in the former Soviet world.”<sup>22</sup> Naomi Klein was more descriptive, saying, “Iraq’s “reconstruction” makes those wrenching economic reforms look like spa

treatments.”<sup>23</sup> If all goes well, *The Economist* says Iraq will be a “capitalist’s dream.”<sup>24</sup>

The extremism of the plan – and US’ officials determination to pursue it – was not just ideological; it was driven by all that was at stake. With the US expected to depend on other countries for 70 percent of its oil needs by 2025 – and with both ally countries and rivals as, if not, more dependent on oil imports,<sup>25</sup> securing access to oil was both a matter of survival and a source of great power. Old surveys indicate that Iraq holds around 100-130 billion barrels of oil, or about 11 percent of the world total, making it second only to world’s largest reserve, Saudi Arabia.<sup>26</sup> But there could be more. With only 17 out of 80 oil fields tapped,<sup>27</sup> there’s widespread belief among industry insiders that the wells run deeper and that reserves might even exceed 300 billion barrels, or about a quarter of global reserves.<sup>28</sup> In a speech at the London Institute of Petroleum in 1999, US Vice President Richard Cheney said, “While many regions of the world offer great oil opportunities, the Middle East, with two-thirds of the world’s oil and the lowest cost is still where the prize ultimately lies.”<sup>29</sup>

A clear appreciation of this fact was evident during the invasion. British Petroleum engineers were embedded with the troops during the invasion and traveled with them in order to locate and secure the oil wells.<sup>30</sup> While virtually all other ministries were bombed down, the oil ministry complex was spared. Subsequently, as much as 20 percent of the US’ 18-billion reconstruction budget for Iraq was to go to oil infrastructure, including exploration and development of new oil and gas fields.<sup>31</sup> A Pentagon policy document had, as early as 1999, argued that a war for Iraq’s oil should be considered a legitimate military option.<sup>32</sup> Two months before the invasion, the Pentagon officials said they “have crafted strategies that will allow us to secure and protect those fields as rapidly as possible in order to preserve those prior to destruction.”<sup>33</sup> This mental exercise in taking over Iraq’s petrol reserves had a precedent: As early as the 1970s, former State Secretary Henry Kissinger had put forward plans for invading Middle Eastern oil fields in an essay entitled “Seizing Arab Oil.”<sup>34</sup>

Dubbed “today’s California gold rush” by the US official tasked to privatize its SOEs,<sup>35</sup> Iraq is giving investors a rush not just because of oil per se but also because of its potential to create domestic purchasing power. In theory, as the proceeds from oil trickle down to the Iraqis, demand can be expected to grow and Iraq’s domestic market can be a much-needed outlet for products. For an investor, while the windfall to be reaped in the post-conflict reconstruction spending bonanza is huge, the long-term prospects in a privatized, liberalized, and deregulated Iraq looks even more promising. As US Commerce Secretary Don Evans saw it, “Their [Iraqis] collective hopes and aspirations form a valuable market for goods and services of all types.”<sup>36</sup>

## **DISREGARD INTERNATIONAL LAW, PLACATE THE RESISTANCE**

For all that was at stake, two obstacles stood in the way.

All of the laws the occupation authorities passed were in clear violation of international law.<sup>37</sup> Article 43 of the Hague Regulations of 1907 states that an occupying power “must re-establish and insure as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.” In other words, the US could not overturn existing laws and pass new ones; only a sovereign government could. Article 55 of 1907 Hague Regulations says: “the occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.” In other words, the US could not sell off Iraq’s state-owned companies; only a sovereign government could.

But there was a bigger problem: resistance to the occupation in general and opposition to the laws themselves in particular. According to a survey conducted by the Coalition Provisional Authority itself in May 2004, up to 86 percent of Iraqis wanted the coalition forces to leave either immediately or once an elected government assumes power, as

## STEPS IN THE POLITICAL TRANSITION

**June 2004:** hand-over of “sovereignty” to a transitional Iraqi government

**August 2004:** formation of an interim Iraqi National Council

**January 2005:** national elections for Iraq’s National Assembly

**October 2005:** referendum on new Iraqi constitution

**December 2005:** elections for constitutionally-based Iraqi government

opposed to only 6 percent who wanted them to stay.<sup>38</sup> The Iraqi Governing Council, the 25-member proto-governing entity formed by the US in July 2003 and which it sought to project as Iraq’s temporary government, was widely seen as US stooges, with a Gallup poll survey revealing that up to three in every four Iraqis believed that its actions were “mostly determined by the CPA” and only 16 percent thought it was independent.<sup>39</sup> In addition, according to a survey conducted by the Iraq Center for Research and Studies, 68 percent of respondents either strongly supported or somewhat supported Moqtada Sadr, the leader of the Sadrist movement, who has consistently called for the withdrawal of the US forces.<sup>40</sup>

Even if the policies violated international law, for as long as they had the support of the Iraqis, the US would have been able to rest easy. The problem was that the changes the US was introducing to Iraq did not have the consent of the Iraqis and were widely unpopular, even among those who supported the invasion. While the US Treasury Department conferred with Citigroup, JP Morgan Chase, and the Bank of America over some details of the privatization process, at least one IGC ministry claimed he was not even informed of the proposal.<sup>41</sup> As Isam al-Khafaji, who worked with the US in the early stages of the occupation but later left, attests, “Many radically new sweeping changes, for example the law on foreign investment, Iraqis were not allowed to review it. They were not even given the chance to look at it before it was passed.”<sup>42</sup> What was troubling the occupation officials was that the Iraqis were not just waiting for the courts to decide on the policies’ legality; they were throwing bombs at them.<sup>43</sup>

All these threatened to turn the “capitalist’s dream” into billion-dollar nightmares for those whose investments could be seized and expropriated by a future Iraqi government sensitive to popular opinion. With few buyers willing to take the risk, the illegality of the US-imposed economic restructuring and the resistance it spawned threatened the viability of the privatization program in the short term and the larger economic agenda in the long-term. What the US needed to do was summed up by Sir Philip Watts, chair of Royal Dutch Shell, when asked what the conditions need to be met before oil companies could move in. “There has to be proper security, legitimate authority and a legitimate process...by which we will be able to negotiate agreements that would be longstanding for decades,” he said. “When the legitimate authority is there on behalf of Iraq, we will know and recognize it.”<sup>44</sup>

## UNDERGO A ‘POLITICAL TRANSITION’ PROCESS

The US’ solution was straightforward: If only a sovereign government could legally do the things it was trying to do in Iraq, then the US would have to create this “sovereign” government itself. It was not just to be any kind of government but one structurally conducive to the US’ preferred economic policies; run by Iraqis willing to implement and defend these policies; and insulated from popular pressures. This seemed to have been the strategy from the beginning. Bearing Point’s contract, for example, takes it for granted that a cooperative government would be put in place. In May 2003, Defense Secretary Rumsfeld announced that the Bush administration would be installing a regime headed by personnel who “favor market systems” and “encourage moves to privatize state-owned enterprises.”<sup>45</sup>

If the decisions had been entirely up to the occupation authorities, they would have preferred to go slow and make sure the conditions for managing the political process were firmly in place before letting go. While the Bush administration had conceded that at some point it would have to hold elections, it sought to postpone holding them until

## THE EXPERTS AND ADVISERS

### USAID CONTRACTORS WORKING ON VARIOUS SECTORS OF IRAQ'S ECONOMY

Sector	Contractor	Tasks
Local Government	Research Triangle Institute	"collaborate with appropriate agencies who will identify individuals or groups who represent the most appropriate, 'legitimate' and functional leadership with which to liaise"
Economy	Bearing Point	"recommend best available options for proceeding to implement an improved policy, regulatory, and legal climate for economic growth"
Education	Creative Associates	Work towards "enhanced public-private partnerships for education service delivery"
Agriculture	Development Alternatives Inc.	"helping the rural poor move a to a market -led economic transformation"
Public Health	Abt Associates	"to expand, strengthen, and reform the overall health system to improve its efficiency and ability to deliver vital services"

Source: various contracts with USAID, [www.usaid.gov](http://www.usaid.gov)

the time was right and the risks could be minimized. At one point, US military commanders even broke up local elections initiated and organized by Iraqis across Iraq right after Saddam's government fell.<sup>46</sup> The US also adamantly resisted proposals to have one-person-one-vote general elections as soon as possible, saying it was not logistically possible despite claims to the contrary by the Planning Ministry's Census Bureau and even by some British officials.<sup>47</sup>

Instead of elections, the occupation authorities insisted on forming a transitional Iraqi government through a complex system of caucuses that would have given them more say in the outcome. Participants of the caucuses would be chosen and vetted by the military, as assisted by Research Triangle Institute (RTI), a USAID contractor hired to "identify the most appropriate 'legitimate' and functional leaders" [quotes around "legitimate" appear in original text].<sup>48</sup> As Bremer said, "I'm not opposed to it [elections] but I want to do it in a way that takes care of our concerns... Elections that are held too

early can be too destructive...In a situation like this, if you start holding elections, the people who are rejectionists tend to win."<sup>49</sup> By "rejectionists," Bremer was obviously referring to Iraqis who opposed the presence of US military forces in the country, objected to its political and economic agenda, and refused to be part of US-installed political institutions. A senior official of the CPA was more direct when asked why elections could not be held soonest: "There's not enough time for the moderates to organize."<sup>50</sup>

When tens of thousands of people marched on the streets in early 2004 to demand direct elections or else face more violent resistance, the US was forced to relent. US officials reluctantly agreed to accelerate the political transition only because of the growing resistance against the occupation, the widening clamor for direct elections, and the consequent stalling of the neoliberal economic agenda. The US hoped that this decision would pacify the resistance and entice the investors. As a Pentagon official said, "The transfer of sovereignty

clearly will have an impact on security because you rid yourself of the ‘occupation’ label. That is one of the claims that these so-called insurgents make; that they are under American occupation. So you remove that political claim from the ideological battle.”<sup>51</sup> Diplomatically, it would be crucial to giving allies political cover for contributing troops and money for the reconstruction. Legally, it would provide cover for investments made under occupation and protect against possible expropriation.

But it was going to be very risky. As former National Security Adviser Brent Scowcroft said when the US President George Bush was faced with a similar dilemma in Iraq after the first Gulf War: “What’s going to happen the first time we hold an election in Iraq and it turns out the radicals win? What do you do? We’re surely not going to let them take over.”<sup>52</sup>

## **BRING IN THE EXPERTS, EMBED THE ADVISERS**

Even as they tried to defer the inevitable, occupation authorities moved quickly to entrench the foundations of a radical neoliberal free market regime – before any future sovereign and elected government could come up with other ideas. In other words, the strategy was to preempt the Iraqi government on some of the most fundamental decisions any government has to make regarding its economy. The adopted tactic was best described by USAID’s instruction to Bearing Point as it endeavored “to establish the basic legal framework for a functioning market economy.” In accomplishing its tasks – from writing up laws and regulations to setting up the stock market and the Central Bank – Bearing Point was explicitly ordered to take “appropriate advantage of the unique opportunity for rapid progress in this area presented by the current configuration of political circumstances.”<sup>53</sup>

To plant the laws and policies Bearing Point was drafting, the US placed hundreds of “advisers” with extensive corporate backgrounds, as well as dozens of organizations and agencies specializing in designing neoliberal policies, in key ministries and in the bureaucracy. Brought

in to supervise Iraq’s privatization spree, for example, was Thomas Foley, a former head of Citicorp who specialized in mergers and acquisitions. Charged to oversee Iraq’s agricultural policies was Dan Amstutz who, as former vice president of Cargill, the world’s biggest grain exporter, drafted the controversial agreement on agriculture at the World Trade Organization.<sup>54</sup> A US law firm connected to Bush, Squire, Sanders and Dempsey, was retained to provide advise on privatizing government industries, establishing regulatory agencies, and developing Iraq’s tax structure.<sup>55</sup> Assigned to head the “advisory board” to the oil ministry was the former chief executive officer of Shell, Phillip Carroll, who was subsequently replaced by Robert McKee, a former vice president of oil giant ConocoPhillips. Bremer himself was a former aide of Kissinger, who had once said, “what is called ‘globalization’ is really another name for the dominant role of the US.”<sup>56</sup> Most interestingly, the US hired the services of Yegor Gaidar, the former Russian prime minister who administered his country’s own “shock therapy.”<sup>57</sup>

Also deployed was the vast apparatus of the US government that has been promoting neoliberal free-market policies around the world for the past three decades. This included the US State Department, the USAID, the quasi-governmental National Endowment for Democracy (NED) and their affiliates. Practicing what it preached, the US privatized the project to privatize Iraq by subcontracting various tasks to an army of private contractors: Creative Associates was to work towards “enhanced public-private partnerships for education service delivery”; Abt Associates was assigned to “reform” Iraq’s health sector; while Development Alternatives Inc. was to “help the rural poor move a to a market-led economic transformation.”

The instructions given to Bearing Point and the way it was directed to operate are illustrative of the powers given these contractors. In the name of “technical assistance,” the contractor was authorized to “begin to reform, revise, extract or otherwise advise on changes to policies, laws, and regulations that impact the

economy.”<sup>58</sup> Lamenting that the existing commercial law framework is “woefully deficient in terms of establishing a market-friendly legal and regulatory environment for business formation and operation,” the US ordered the contractor “to create a World Trade Organization-consistent trade and investment legal framework which will both promote competitive development of domestic business...and lay the groundwork for greater integration into international financial and trading networks.”<sup>59</sup> On the plan to privatize the SOEs, not only was Bearing Point tasked to appraise the market price at which the SOEs are to be sold. “If changes to legislation are required,” says the contract, “contractor will assist legislative reform specifically to allow for the privatization of State-owned industries and firms and/or establishing a privatization entity.”<sup>60</sup>

While in other countries, the USAID and its contractors have to negotiate with the existing government to push for their desired laws, in Iraq, as a top US military official said on another matter, “[W]e’d be negotiating with ourselves because we are the government.”<sup>61</sup> While in other settings, they have to contend with existing bureaucracies, in Iraq, they were themselves building that bureaucracy – in this case, literally from the inside-out: To establish their presence firmly within the ministries, Bearing Point was tasked to set up “Macroeconomic Analysis Units” or “Tax Policy Units” to be staffed by Bearing Point employees within the Ministry of Finance and the Central Bank.<sup>62</sup>

The goal was to be visible and invisible at the same time. The US needed to lock-in the laws and policies but it also wanted to be able to show that it was the Iraqis who pushed for them. To this end, “the Contractor will employ extensive efforts to interact with government officials and leading authorities.”<sup>63</sup> Called “instilling ownership” in USAID jargon, this entails ensuring that the adoption of “reforms” are not perceived as externally imposed. “The ultimate goal,” notes the contract, “is to have Iraq’s government and private sector capable to assume responsibility for appropriately structured and managed market and non-market institutions...”<sup>64</sup> In other words, the measure of Bearing Point’s success relies on

the capacity of Iraqis to continue to defend and sustain the neoliberal economic regime even without US stewardship as formal occupation is ended.

## **PUT IRAQIS OUT FRONT**

But the laws, structures, and institutions that the US was constructing in Iraq were not going to survive on their own. The paradox of any free market system is that it requires strong intervention to keep it “free.” In order to perpetuate its preferred economic order in Iraq, the US, from the earliest days of the occupation, had searched for Iraqis who would be willing to do its bidding – not because they were just unthinking “puppets” – but because their interests converge with that of the US. This confluence of interests has been found to be a firmer foundation for collaboration: While the US needs Iraqis faces to project “ownership” and to show that they are not colonizers imposing their will on the Iraqi people, these Iraqis need the US because, lacking constituency and legitimacy, they have no chance surviving in power without US patronage and protection.<sup>65</sup> Advising the US administration on how to quell mounting attacks against US forces, Thomas Friedman described this strategy as putting “more Americans out back and more Iraqis out front.”<sup>66</sup>

In examining the US’ relationship with these Iraqis, the USAID’s highly developed step-by-step check-list of techniques for improving the likelihood of “reforms” being successfully embraced is illuminating. To achieve “legitimation” or the means for getting “buy-in” from the people who should be seen as owning the policies, USAID should single out “policy champions” or people who could be relied on to act as its main proponents. Drawing from its “Policy Implementation Toolkit,” USAID contractors should perform “stakeholder analysis” to help them “identify individuals and groups that have an interest, or stake, in the outcome of a policy decision.”<sup>67</sup> To do this, a catalog of stakeholders classifying them either as “supporters,” “opponents” or “neutral parties” should be created and maintained.<sup>68</sup>

It is worth mentioning that the US’ “policy

champions” are not just to be put inside the formal apparatuses of the state, they are also to be lodged within “civil society.” Along with the troops who entered Iraq was a silent battalion of agencies and contractors whose mission was to build up a pro-US, pro-neoliberal “civil society” by creating, funding, and supporting NGOs, trade unions, business councils, research institutions, professional associations, and other civil society organizations. Since the beginning of the occupation, this battalion has fanned out across the country, effectively building up a national political machinery of supporters and campaigners of groups fundamentally at peace with the US role in the country.<sup>69</sup> On the one hand, they were being built up as a mass base to support the Iraqis that the US wanted to run Iraq’s government; at the same time, they could also be used to pressure them into backing the US agenda. As the USAID put it, “Where political will for systemic reform is lacking, the main thing that foreign assistance can do is to strengthen the constituencies for reform in civil society.”<sup>70</sup>

While the Iraqis out front may occasionally disagree with the Americans out back, on the fundamental questions, they either concur or have no other choice but to submit. After all, their powers are meant to be confined to day-to-day administrative affairs; the US ultimately calls the shots on the questions that matter most. As Dilip Hiro, a Middle East historian put it, “What Washington wanted was Iraqis who – while willing to dabble in occasional criticism of the administration – were in the final analysis beholden to it.”<sup>71</sup> So while the relationship can at times be turbulent, the Americans know that they need the Iraqis out front as much as the Iraqis need the Americans out back.

And so, as both parties were forced to show that something was being handed from one to the other as part of a political transition, both worked in tandem to hold on to power. The story of the political transition is the story of how the US attempted to manage the process and determine the outcome every step of the way, as evidenced by its efforts to retain the power of its preferred Iraqis and preserve ultimate political, military, and economic control while appearing to be relinquishing them.

## **HAND-OVER ‘SOVEREIGNTY’ BUT KEEP ALL THE POWER**

On June 28 2004, the US reportedly handed over “sovereignty” to Iraq and began a gradual process towards installing an elected government. As to what exactly that word meant, even US officials had varying interpretations. According to Bush, they were transferring “full sovereignty;”<sup>72</sup> a State Undersecretary called it “limited sovereignty.”<sup>73</sup> For then State Secretary Colin Powell, “It’s sovereignty but (some) of that sovereignty they are going to allow us to exercise on their behalf and with their permission.”<sup>74</sup> But with the US ultimately deciding which part of that sovereignty they are going to exercise on the Iraqis’ behalf and which part they were going to concede to the Iraqis, US Congresswoman Nancy Pelosi’s description of the event was perhaps most accurate: It was “essentially a handover of authority from the US-led occupation to the new embassy there.”<sup>75</sup>

Despite media coverage to the contrary, then Defense Undersecretary Paul Wolfowitz was first to caution against depicting the June 28 hand-over as a “magical date.”<sup>76</sup> The Transitional Administrative Law, or the so-called interim constitution which was drafted by American lawyers and which Bush vowed would embody “American values,” was to remain in force.<sup>77</sup> This meant that the Orders enacted by Bremer would also remain in effect. Repealing it would be extremely difficult, if not near impossible, because to do so would require the approval of two-thirds to three-fourths of a future assembly. As if to underscore the continuity before and after the hand-over, a State Department official explained, “The law doesn’t expire with a new government coming in, any more than the laws passed under the Clinton administration expired when the Bush administration came into office.”<sup>78</sup>

All US and coalition troops were to stay behind indefinitely and the Iraqi government had no power over them, no authority to order them to leave, and no control over their operations.<sup>79</sup> They even had no power to prosecute them in case they commit crimes because they were granted legal immunity by the US.<sup>80</sup> The CIA retained control of Iraq’s intelligence apparatus.<sup>81</sup> Asked when the

troops might leave, Gen Richard B. Myers, chairman of Joint Chiefs of Staff, said, “I really do believe it’s unknowable.”<sup>82</sup> While the occupation forces struggled to cast the Iraqi troops as Iraq’s own army, they were in fact being built to function as proxies of the US military. The TAL puts them under US command, at the frontlines.<sup>83</sup> As a Pentagon official explained, “They will take over the fight as we move back into the shadow, out of the cities, and provide logistics, quick-reaction forces, communications, food, bullets, advice and training.”<sup>84</sup> One of Iraq’s most important defense officials, its National Security Adviser, was to be appointed by Bremer and was to remain in office even after a government is elected.<sup>85</sup>

Apart from leaving behind the US troops to watch over the new government, the US also created new commissions and institutions that, according to the *Wall Street Journal*, “effectively take away virtually all of the powers once held by several ministries.”<sup>86</sup> This included Iraq’s Inspector General, the Commission on Public Integrity, the Communication and Media Commission, which has the power to shut down media outlets, and the Board of Supreme Audit, which has authority to review government contracts.<sup>87</sup> Bremer appointed the chiefs of these powerful commissions to five-year terms, effectively ensuring that they could not be replaced by the incoming government, in order to “promote his concepts of governance long after the planned hand-over,” according to the *Washington Post*.<sup>88</sup> Iraq’s Oil Minister had hoped that, “When sovereignty is regained, it means that there will be no more US advisers not only in the ministry of oil, but in every ministry in Iraq.”<sup>89</sup> In fact, the 110 to 160 advisers in the various ministries were not told to vacate their desks and they continue to report for work in the ministries until now.<sup>90</sup>

Aside from having no power over the troops and having little sway over the ministries, the new interim government would also have little power over the coffers. While authority over Iraq’s oil revenues was to be transferred to the interim government, the US had tied its proceeds down to projects decided by the US and to contractors chosen by the US, thereby depleting the amount of revenue to

be controlled by the interim government. As the date of the hand-over approached, the US engaged in a massive spending spree. Issuing more than 1,000 contracts on a single day, it was, as the *Los Angeles Times* described it, “like a Barneys warehouse sale in the Wild West, with the US playing the role of frenzied shopper and leaving Iraqis to pay the bill.”<sup>91</sup> At some point, US soldiers used the cash that they had been given from out of Iraq’s oil revenues to attempt to make the Iraqis “like” them.<sup>92</sup> Between \$4 to \$20 billion of Iraq’s oil revenues disbursed under the occupation authorities were unaccounted for, prompting Transparency International to warn that Iraq could be the “biggest corruption scandal in history.”<sup>93</sup>

The US had the option to retain management control over all contracts entered before the CPA was dissolved; the interim government had no power to renege on them, reallocate previously committed funds, and enter into longer-term commitments.<sup>94</sup> Along with the International Monetary Fund, the US would still have a seat in the body monitoring disbursements after the hand-over and would still have power over the other big source of money flowing into Iraq, the \$18-billion reconstruction fund from the US, and to an extent, over the amounts donated to Iraq by foreign donors.<sup>95</sup> In fact, Iraq’s budget for 2004-2006 had to be approved by the CPA and had to meet the guidelines of the IMF.<sup>96</sup>

All these indicate that the occupation did not end; the June 28 hand-over merely inaugurated a new relationship between the Americans and the Iraqis. “We’re still here. We’ll be paying a lot of attention and we’ll have a lot of influence,” a ranking US official said.<sup>97</sup> It was an exit strategy without having to exit and the goal was to put in place handles with which to pull strings. As one senior White House official told the *New York Times* then, “We’ll have more levers than you think, and maybe more than the Iraqis think.”<sup>98</sup>

### **CHOOSE TO WHOM YOU’RE GOING TO HAND-OVER ‘SOVEREIGNTY’**

Aside from setting the terms by which “sovereignty” was going to be transferred, the US also decided to whom it was going to be

transferred.

In an attempt to bestow legitimacy on the process and show that the international community has a role in the transition, the US deployed UN special envoy Lakhdar Brahimi to Iraq to hold consultations with various groups in search of the particular Iraqis to head Iraq's transitional government. Brahimi came out of the negotiations and horse-trading at first furious, then exasperated, then resigned to the outcome, saying, "I sometimes say – I'm sure he doesn't mind me saying that – that Bremer is the dictator of Iraq. He has the money. He has the signature. Nothing happens without his agreement in this country."<sup>99</sup>

In the end, it was the US, through Bremer and a certain Robert Blackwill, who chose Iraq's new prime minister, Iyad Allawi. The National Security Council's coordinator for strategic planning and Bush's unofficial emissary to Iraq, Blackwill was said to be the "single most influential person when it comes to decision-making in Baghdad today," according to an expert on the Middle East with the US Institute of Peace.<sup>100</sup> He allegedly gave Brahimi the names of the Iraqis that the US favored and reportedly "railroaded" the IGC into supporting Allawi, as confirmed by people involved in the process, because he was most willing to give in to the US demands.<sup>101</sup> One IGC member, Mahmoud Othman complained, "The Americans are trying to impose their decisions on us, and we are trying to reject them."<sup>102</sup> The *New York Times* observed how the turn of events seemed to confirm that Brahimi "was merely bowing to the wishes of others."<sup>103</sup> Brahimi himself admitted that he faced "terrible pressure" that prevented him from asserting his preferences;<sup>104</sup> others reported that he only gave in to the Americans' choice because of their "aggressive recommendation."<sup>105</sup> He said: "You know, sometimes people think I am a free agent out here, that I have a free hand to do whatever I want."<sup>106</sup>

Blackwill's choice, Allawi, was a long-time CIA agent who provided some of the misleading intelligence reports that the US and the UK needed to justify the war.<sup>107</sup> He also subsequently gave the US what it badly wanted at that particular juncture: an

invitation for the US-led troops to stay. With Allawi, as "prime minister," agreeing not to call for the withdrawal of US occupation forces, the US secured the legal veneer it needed in the form of a United Nations Resolution proclaiming that the Iraqis had regained sovereignty. Ghazi al-Yawar, the IGC member who emerged as "president," said that it would be "complete nonsense" to call for the troops to leave.<sup>108</sup>

For the second step of the political process, the formation of the Iraqi Interim National Council in August 2004, the US and the IGC agreed to reserve 19 out of the 100 seats to the parties that were in IGC. The method of balloting for choosing the rest of the 81 was designed such that these same parties would eventually dominate the council. The participants of the conference were self-selected; groups calling for the withdrawal of troops simply boycotted the event.<sup>109</sup> Those who did attend were supposed to come up with lists of candidates but since only the parties that were already in the IGC were able to consolidate their rosters in time, no voting eventually took place and a 4-member panel ended up hand-picking the members.<sup>110</sup> As one participant explained it, "They've already divided the cake among themselves. They've been negotiating in secret for weeks. We don't know who is on this list and they tell us, 'take it or leave it!'"<sup>111</sup>

## **PUT YOUR FRIENDS IN POWER**

The third step in the process was the elections held in January 2005. Here, the US did everything its power to make sure Scowcroft's scenario does not come true.

After deciding to accelerate the transition process, the US reallocated its budget for "democracy-building" from \$100 million to \$458 million out of its \$18-billion reconstruction chest." So important was this goal seen that its allotment was just about as big as the budget for transportation and telecommunications projects.<sup>112</sup> For the elections, the US allotted more than \$30 million to provide "strategic advise, training, and polling data" to "moderate and democratic" Iraqi political parties in order to make them "compete effectively"

and to “increase their support among the Iraqi people.”<sup>113</sup> The Department of State was reported to be spending \$1 million on monthly opinion surveys to find out “which candidates are attracting the most support from the Iraqi people.”<sup>114</sup>

Brought in to carry out these electoral operations were the usual “democracy promotion” organs of the US such as the USAID and its contractors, the National Endowment for Democracy (NED), the National Democratic Institute (NDI), the International Republican Institute (IRI), International Foundation of Elections Systems, etc, which are documented to have supported and funded pro-US parties and candidates in Venezuela, Nicaragua, Haiti, Ukraine, El Salvador, etc.<sup>115</sup> The Central Intelligence Agency, whose station in Baghdad had grown to be its largest in the world, was also reported to be planning covert operations to influence election outcomes.<sup>116</sup> The NDI and the IRI, the foreign arms of the US’ Democratic and Republican parties respectively, were given \$80 million by the USAID to help their preferred parties. The NED had been holding sessions teaching Iraqis how to build up their parties’ local and regional structures, how to recruit members, how to fundraise and how to cultivate relations with media.<sup>117</sup> The IRI produced a database of parties, with information on each group’s characteristics, their regions of operations, and estimates of their memberships.<sup>118</sup>

In these activities, “democracy promotion” translated to promoting the US’ goals in the country in general, and to promoting Allawi’s party and most of the other parties that were inside the IGC, in particular.<sup>119</sup> This was a tough task because the interim government, as dominated by these parties, were seen by up to 55 percent of Iraqis in an IRI survey as no longer representing their interests.<sup>120</sup> As it did in Nicaragua or in Haiti, the White House explicitly urged leaders of the parties it was supporting to coalesce and get their act together. Blackwill continued to perform his role mediating between the Bush administration and the Iraqis, at one point suggesting that they form a single slate for the elections supposedly to counter the power of Grand Ayatollah Ali Sistani, Iraq’s most

influential religious and political leader.<sup>121</sup>

Even as the US gave its Iraqi allies advantage, it also sought to isolate and weaken their rivals. This was not limited to giving one side an advantage in resources and organization; it also meant writing the rules to their favor. The election law enacted by the CPA gave the 7-member electoral commission appointed by Bremer the power to disqualify candidates and required it to implement a code banning candidates from using “hate speech, intimidation, and support for the practice of and the use of terrorism.”<sup>122</sup> In practice, given how “terrorism” has been defined in Iraq’s context as actions directed against US forces, this code was meant to eliminate those whom Bremer called the “rejectionists” from the electoral race. One anti-occupation force, that headed by Moqtada Sadr, was not only banned from joining the elections but also became the target of an all-out military offensive and assassination.<sup>123</sup> Other important political forces, who were not necessarily engaged in armed resistance, boycotted the elections as a matter of principle or out of a strategic calculation that even if they engaged, they would have had no chance and they would only have ended up legitimizing the winners. Needless to say, in the dispensation of cash, none was to be given to the “rejectionists.” As the IRI’s President Lorne Craner put it, “If you’re a violent party outside the process, this is not the right place for you.”<sup>124</sup>

Further limiting the choices for Iraqis – and in effect favoring the non-rejectionists – was the manner by which the elections were actually conducted. For example, the composition of the ballots could only have been bewildering. It contained 98 mostly indistinguishable political formations to choose from, almost none of which – except the incumbents – had any chance to campaign and present themselves to the public. The full list of the 7,000-plus candidates was announced only five days before election. Moreover, all Iraqi expatriates living outside the country, the constituency of the exile parties supportive of the US, were automatically given the right to vote.<sup>125</sup>

The final outcome of the tally was clouded with confusion and suspicion. At first the

election commissioner announced, even before polling closed, that the turn-out was 72 percent, only to be scaled down later to just 58 percent.<sup>126</sup> *Reuters* reported that the winning United Iraqi Alliance was initially informed by the electoral commission that they had won 60 percent of the vote, giving them a clear majority in the new interim government, only to be told later that they actually got 48 percent and therefore had to form a coalition government with the pro-US Kurdish parties.<sup>127</sup> There was no way of verifying whether fraud took place because there were no independent international monitors to scrutinize the elections. The world just had to take the US-installed Iraqi government's word for it.<sup>128</sup>

### **KEEP YOUR FRIENDS IN LINE**

Through the first three steps of the stage-managed political process, the US has so far succeeded in installing a government supportive of the US goals in Iraq. Currently at the helm of Iraq's interim government are virtually the same political forces who came side-by-side with the Americans during the invasion and who were subsequently appointed to the IGC.

While there have been tensions and disagreements, most of them have consistently echoed the US' plans for Iraq's economy. The first appointed oil minister of the Iraq Governing Council, Mohammad Bahr al-Ulum said he favored the privatization of downstream oil installations and production-sharing contracts upstream, saying priority would be given to US oil companies and "European companies, probably."<sup>129</sup> He also vigorously enticed foreign oil companies to invest in Iraq and removed senior technocrats in the oil ministry who oppose his plans. Just before bowing out of power as Iraq's prime minister between June 2004 and January 2005, Allawi signed guidelines permitting the multinational oil corporations to develop Iraq's reserves and keeping oil policy out of the hands of any future parliament.<sup>130</sup> While he reportedly had a few skirmishes with sections of the Bush administration, Ahmed Chalabi – who is even more aggressive in pushing for the privatization of Iraq's oil –

went on to become Iraq's acting oil minister after the January 2005 elections.<sup>131</sup> "American oil companies will have a big shot at Iraqi oil," Chalabi had promised before the invasion.<sup>132</sup> With Iraqis like these in front, Pentagon officials had already assured investors who signed contracts with the former occupation authority that their investments would be honored by the new government because those who were involved in the reconstruction planning will still be part of that government.<sup>133</sup>

While some commentators have played up the supposed contradictory relationship between the US' and the winning UIA, which includes parties with Shia constituencies such as the Supreme Council for Islamic Revolution (SCIRI) and the Da'awa Party, it bears pointing out that a week before the elections, the UIA changed its platform from "setting a timetable for the withdrawal of multinational forces in Iraq" to "the Iraq we want is capable of protecting its borders and security without depending on foreign forces."<sup>134</sup> It was Da'wa leader Ibrahim al-Jafaari, Iraq's new prime minister, who allowed the US forces to stay on beyond the elections.<sup>135</sup> It was Adil Abdel Mahdi, a senior leader of SCIRI and now Iraq's vice president, who, just before the elections, said the government intends to privatize the Iraqi National Oil Company and open up Iraq's oil reserves to multinational oil companies, saying, "[T]his is very promising to the American investors and to American enterprises, certainly to oil companies."<sup>136</sup> As importantly as the new interim government's decision to allow the troops to stay and to open up the oil reserves is its decision to respect the Transitional Administrative Law, and therefore, to keep the neoliberal economic laws in place.<sup>137</sup>

### **BRING IN THE BRETTON WOODS TWINS**

Having succeeded in installing the "non-rejectionists" at the reins of Iraq's interim government and in preserving the structures it had constructed to secure its neoliberal laws, the US is confident that its "reforms" for Iraq will survive the last two steps of the political

transition: the scheduled referendum on the new constitution this October 2005 and then the elections for a constitutionally elected government this December 2005. As the Iraqis write their country's most important law, there are already indications that the US embassy in Baghdad, its largest in the world, will not sit idly by. Deputy Prime Minister Roz Noori Shawes has signified that "we might make use of foreign experts."<sup>138</sup> USAID "advisers" are ready with their "technical assistance." Former State Secretary Colin Powell has clearly stated what the priorities of the largest US embassy in the world will be. "The real challenge for the new embassy, so to speak, or the new presence will be helping the Iraqi people get ready for their full elections and the full constitution....," he said.<sup>139</sup>

Meantime, the neoliberal agenda is moving forward. Iraq's Industry Ministry announced in May 2005 that the plans to privatize the SOEs are pushing through.<sup>140</sup> The plans for Iraq's oil industry has become much clearer. As proposed by US advisers, , Iraq will form a state oil company that will walk and talk like a state oil company but will not be a state oil company. It will be nominally state-owned but open to foreign investors"; "politically independent" but "run by a professional management team insulated from political interference in day-to-day affairs."<sup>141</sup>

Despite the relative success with which the US has managed the political transition so far, however, the US is still not assured of making the "capitalist's dream" come true. As of June 2005, the resistance to the occupation is growing, not abating. The latest survey shows that 45 percent of Iraqi respondents support those fighting the US troops, while only 15 percent back the US-led coalition.<sup>142</sup> Moreover, in spite of its accomplishment in putting Iraqis friendly to its interests in power, there's still opposition – even among the non-rejectionists – to the US neoliberal economic plans, as evidenced most dramatically by the IGC's earlier unanimous decision not to participate in the proposed privatization program.<sup>143</sup>

To confront this defiance and to further circumscribe the power of any Iraqi

government in power – whether it be run by rejectionists or non-rejectionists, the US has tapped the services of the multilateral financial institutions known for disciplining recalcitrant governments resisting economic restructuring. In November 2004, the Paris Club decided to forgive a portion of Iraq's \$40 billion debt but only if it follows IMF conditions.<sup>144</sup> As evidenced by its reports and policy papers, the IMF's stance towards Iraq clearly hews closely to that of the US, i.e. that the country is in desperate shape because of Saddam's centralized economy, that the US has come to liberate it, the IMF is only there to help, and that the ones resisting the occupation are "opponents."<sup>145</sup>

Its economic design on Iraq also fits in very neatly with the US' plans. According to Takatoshi Kato, IMF Deputy Managing Director, "Iraq will need to embark in the near future on a program of ambitious structural reforms to achieve sustained private sector-led growth, including, among other things, the establishment of the legal, institutional and regulatory frameworks for markets to work effectively and the design of appropriate safety nets that would support social stability."<sup>146</sup> IMF loans, Kato said, should "help the authorities to undertake difficult but necessary reforms, including restructuring of the public sector."<sup>147</sup>

Tasked to coordinate closely with the IMF is the World Bank which is now headed by one of the US' top war architects, then Defense Undersecretary Paul Wolfowitz, who, when asked why the US invaded Iraq and not North Korea, said: "[E]conomically, we just had no choice in Iraq. The country swims on a sea of oil."<sup>148</sup> The World Bank has already worked on Iraq's National Development Strategy, or the over-all framework for Iraq's economy and, like Bearing Point, is providing technical assistance on virtually all aspects of Iraq's economy. Like Bearing Point, a World Bank staffmember calls for fast action. Citing the lessons of an earlier war, a working paper states that "One of the main lessons of Bosnia and Herzegovina's experience is the need to press for investment-related policy reforms as early as feasible...[T]here is no doubt that earlier reform would have been desirable, and this is one of the most important lessons for

other post-conflict environments.”<sup>149</sup>

As it has done in scores of countries around the world, the IMF and the World Bank use debt as leverage to impose conditions that severely inhibit the policy scope of any future Iraqi government. Though the Iraqi National Assembly has rejected the Paris Club deal on the debt,<sup>150</sup> the interim government has promised the IMF that it will push through with “reforms aimed at reducing the role of the government in the economy,” including cutbacks in government employees’ wages and pensions and in subsidies on food and oil products.<sup>151</sup> While there are serious shortcomings in the way the Assembly was constituted, it is the closest to a representative institution in Iraq – certainly more representative than the hand-picked Finance Minister – and its position on the debt and the IMF’s conditions illustrate the threats that the US economic agenda faces once more Iraqis are given a say.

### **KEEP THE TROOPS READY TO MARCH OUT ANYTIME**

But there is no option of backing down. While there have been divergences among US officials on the scale and speed of Iraq’s economic restructuring, there has been few cracks on the ultimate goal of transforming Iraq into an open free-market economy.<sup>152</sup> As long as the Iraqis out front are protected by those out back, the plans will push through. As General David Petraeus, who was tasked to oversee training of Iraqi forces, said, “The key there is of course Iraqi leadership backed up and very firmly embraced by coalition forces.”<sup>153</sup>

Just in case anything happens, i.e. the rejectionists take power despite all of the US’ precautions or the non-rejectionists begin disobeying orders, the US can always call in the troops – or order them to march out of their bases – anytime. The indefinite presence of the US troops and the planned establishment of permanent military bases in Iraq represent the ultimate safeguard for the US’ economic agenda in Iraq. US military engineers are now constructing a network of up to 14 “enduring” military bases all over Iraq.<sup>154</sup> Noting how US naval bases in the

Philippines gave the US “great presence in the Pacific,” former Iraq administrator Lt Gen Jay Garner, said “To me that’s what Iraq is for the next few decades. The ought to have something there...that gives us great presence in the Middle East.”<sup>155</sup> The US has also drafted a Status of Forces Agreement, the same sort the US has with dozens of countries around the world, in order to present the US troops’ continuing stay in Iraq as a deal between two sovereign countries.<sup>156</sup> As was the case in the Philippines, it is expected that concurrence with this agreement will be a condition for any local Iraqis wanting US support for their political ambitions.

Like missiles directly aimed at any Iraqi government, the presence of the US-led coalition will serve to threaten and restrain any Iraqi government’s ambitions. Asked what the Bush administration would do if the transition government start doing things inimical to US interests, a State Department official cryptically said, “We have to make our views known in the way that we do around the world.”<sup>157</sup> Such will be the enduring relationship between the US and the Iraqi government. One US official summed it up, saying that although Iraqis were “the ultimate determinants of their own destiny... we have 140,000 troops here, and they’re getting shot at. We’re also spending a lot of money. We don’t dictate action plans. But we constantly remind them that we’re working toward the same goal, and we have our ‘red lines.’”<sup>158</sup> The US will ensure that, in case the laws and institutions falter or the Iraqis cross the lines, the “capitalist’s dream” endures as it was created: by force. The Iraqis, however, may already be dreaming another dream. ■

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# Iraq's Neoliberal Constitution

BY HERBERT DOCENA

Last June 30, the Iraqi newspaper *Al-Mada* newspaper published the latest draft of the Iraqi constitution that was then being negotiated upon by Iraqi politicians.<sup>1</sup> Its contents would have been enough to give former occupation authority chief Paul Bremer a heart attack.

The Iraqis – even those who were willing to cooperate with the Americans – wanted, at least on paper, to build a Scandinavian-type welfare system in the Arabian desert, with Iraq's vast oil wealth to be spent upholding every Iraqi's right to education, health care, housing, and other social services. "Social justice is the basis of building society," the draft declared. All of Iraq's natural resources would be owned collectively by the Iraqi people. Everyone would have the right to work and the state would be legally bound to provide employment opportunities to everyone. The state will be the Iraqi people's collective instrument for achieving development. (See key provisions in matrix below.)

In other words, the Iraqis wanted a country different from that which the Americans had come to Iraq for. They, or at least those who were involved in drafting the constitution, wanted nothing of the kind of economic and political system that Bremer and other US officials had been attempting to create in Iraq ever since the occupation began. What the occupation authorities wanted was to fulfill "the wish-list of international investors," as *The Economist* magazine had described the economic policies they began imposing in the country in 2003.<sup>2</sup>

As direct occupiers, the US had enacted laws which give foreign investors equal rights as Iraqis in the domestic market; permit the

full repatriation of profits; institute the flat tax system; abolish tariffs; enforce a strict intellectual property rights regime; sell-off a whole-range of state-owned companies; reduce food and fuel subsidies; and privatize all kinds of social services such as health, education, water delivery, etc.

By the time the next version was leaked in late July, the progressive provisions in the draft constitution had disappeared.

### **‘INTENSIVE DIPLOMACY’**

Writing Iraq’s permanent constitution is the latest step in the political transition process agreed upon by the US administration and the Iraqi political parties that have chosen to cooperate with it since the beginning of the occupation. At every step of that process, the US has attempted to lock-in policies which would advance and protect its fundamental interests in the country by championing and strengthening the hand of those Iraqis committed to defending them even after formal occupation ends.<sup>3</sup>

Even before combat began, the US had assembled Iraqi exile groups who would not only support the invasion but would also defend free-market policies and tolerate the presence of coalition troops. In July 2003, the US handpicked the members of what would become Iraq’s first political entity during the transition, the Iraqi Governing Council (IGC). American lawyers then worked with the IGC members to draft Iraq’s transitional constitution, ensuring that all the laws enacted under occupation would be carried over by the incoming Iraqi interim government.<sup>4</sup> In June 2004, the US handed “sovereignty” to this interim government, its prime minister and other officials effectively chosen by the US.<sup>5</sup> In the elections for choosing Iraq’s transitional parliament last January 2004, the US conducted both overt and covert operations to support former CIA agent Iyad Allawi’s party and to reduce the margin of the winning coalition dominated by the Supreme Council for the Islamic Revolution (SCIRI) and the Islamic Da’awa party.<sup>6</sup> While the US did not succeed in installing Allawi, SCIRI and Da’awa officials subsequently championed the US preferred

agenda on oil, privatization, and the presence of coalition troops.

As the Iraqis huddled to hammer their permanent constitution, US officials were once again with them every step of the way. Outside the Green Zone, the negotiations were protected by 160,000 US and other coalition troops. Playing a central role inside was newly appointed US Ambassador to Iraq Zalmay Khalilzad, a member of the Project for a New American Century who had called for invading Iraq since 1998. Having served as an intermediary for the US government with the Taliban regime, Khalilzad previously worked for UNOCAL in Afghanistan. After the invasion in 2001, he was subsequently appointed to be the US’ first ambassador to Afghanistan. There, he was accused of serving as the “campaign manager” of pro-US candidate Hamid Karzai in that country’s presidential elections.<sup>7</sup>

Behind closed doors where real debates took place, according to the *Washington Post*, Khalilzad was described by *Reuters* as being an “ubiquitous presence” and by the *Financial Times* as playing a “big role in the negotiations.”<sup>8</sup> One State Department official called Khalilzad’s actions “intensive diplomacy.”<sup>9</sup> While media spin on the process portrayed US officials as reluctant, impatient intermediaries uninterested in the contents of the constitution – just as long as it gets it done on time, at one point, Khalilzad’s team of American diplomats offered their own proposed text of the constitution to the Iraqis.<sup>10</sup> Shuttling back and forth from constant meetings with the Iraqi president, the speaker, and other high-ranking officials, Khalilzad was backed up by US embassy officials who, according to the *Washington Post*, were working from a Kurdish party headquarters to “to help type up the draft and translate changes from English to Arabic for Iraqi lawmakers.”<sup>11</sup>

Complained one Kurdish member of the constitutional committee who was involved in the caucuses: “The Americans say they don’t intervene, but they have intervened deep. They gave us a detailed proposal, almost a full version of a constitution. They try to compromise the different opinions of all the political blocs. The US officials are more interested in the Iraqi constitution than the

Iraqis themselves, because they promised their people that it will be done August 15.”<sup>12</sup> And it’s not that the officials were acting as neutral mediators; according to Othman. US and UK officials, he said, are “being governed by their domestic agenda.” He also lamented how these officials were meeting with Iraqis individually in backroom meetings, saying “It’s not right and is counterproductive. If they have something to say, why don’t they come and address the whole committee?”<sup>13</sup> Nechirvan Barzani, the Prime Minister of the Kurdistan regional government in Arbil and one of the US closest allies, confirmed Othman’s charges. “The US and the UK are working behind the scenes, dealing with all the groups, saying it should be like this and like that,” he said.<sup>14</sup>

Khalilzad was conspicuous not just behind the scenes. Just before the original August 15 deadline, he strode into the halls of Iraq’s parliament where was introduced to the assembly by Iraqi President Jalal Talabani as “dear brother.”<sup>15</sup> Iraqi Foreign Minister Hoshyar Zebari had earlier implored the US to play a greater role in the drafting of the new constitution – proof that Khalilzad’s interventions were not totally unwelcome to everyone.<sup>16</sup> To reinforce Khalilzad’s own recommendations, President George Bush personally called up SCIRI leader Abdul Aziz al-Hakim last August 24 to talk about the constitution.<sup>17</sup> Just before the extended deadline last August 27, and after working “furiously through the night to broker a deal,” Khalilzad once again stood publicly beside Shiite and Kurdish leader as they announced that they had sealed the draft.<sup>18</sup> Against criticisms, he defended the draft as being “right for Iraq at the present time,” without elaborating to whom it was right for.<sup>19</sup>

While Khalilzad and his team of US and British diplomats were all over the scene, some members of Iraq’s constitutional committee were reduced to being bystanders. One Shiite member grumbled, “We haven’t played much of a role in drafting the constitution. We feel that we have been neglected. We have not been consulted on important issues.”<sup>20</sup> A Sunni negotiator concluded: “This constitution was cooked up in an American kitchen not an Iraqi one.”<sup>21</sup>

## A NEOLIBERAL DISH

By the time it was served on the table last August 28, the final draft of the Iraqi constitution must have tasted very different from the previous servings. Not only were some of the key ingredients of the previous drafts removed outright, new ingredients with distinctly neoliberal flavors were also added in.

Gone was the article proclaiming adherence to social justice as the basis of the economy. In its place was a provision binding the state to “reforming the Iraqi economy according to modern economic bases, in a way that ensures complete investment of its resources, diversifying its sources and encouraging and developing the private sector.” By “reforming,” the framers of the constitution could only have meant the usual stock of neoliberal economic “reforms” which have been prescribed or imposed on dozens of developing countries around the world. This includes privatizing state-owned enterprises, liberalizing trade, deregulating the market, and opening it up to foreign investors. Instead of revoking the so-called Bremer Laws, or the decrees enacted by the occupation authority implementing these neoliberal policies, the draft constitution would make Iraqis constitutionally bound to enforce them. Another provision reiterates, “[t]he country shall guarantee the encouragement of investments in different sectors.”

Also gone was the provision affirming the Iraqi people’s collective ownership of Iraq’s oil and other natural resources and obliging the state to protect and safeguard them. Instead, a new article lays the legal ground for selling off Iraq’s oil and putting it under the control of the big multinational oil companies. Article 110 goes so far as to spell out that “the federal government and the governments of the producing regions and provinces together will draw up the necessary strategic policies to develop oil and gas wealth to bring the greatest benefit for the Iraqi people, relying on the most modern techniques of market principles and encouraging investment.”

By “modern techniques of market principles,” the draft is most likely referring to current plans – supported by the interim

government's top leadership – to privatize the Iraqi National Oil Companies and to open up Iraq's oil reserves to the big oil companies. Referring to such plans, Adil Abdel Mahdi, a senior leader of SCIRI and now Iraq's vice president, told an audience in Washington, just before the elections: “[T]his is very promising to the American investors and to American enterprises, certainly to oil companies.”<sup>22</sup>

Incidentally, during the course of the negotiations over the constitution, SCIRI's al-Hakim strongly pushed for the creation of southern Shiite sub-state with nine of Iraq's 18 provinces. The draft constitution would allow this sub-state to determine oil policy in its territory, earn a substantial portion of revenues from existing oil fields, and rake up to 100 percent of revenues in oil fields that are yet to be developed. The US' stance towards the question of federalism may have a lot to do with the assurance that the ones who may end up ruling over Iraq's oil reserves – the Kurds in the north and the Shiite parties in the South – are people who have gone on record as favoring their privatization.

Contrary to the impression purveyed by the media, federalism is opposed by a clear majority of Iraqis – by majority of Sunnis and by majority of Shiites alike. According to a July 2005 survey conducted by the International Republican Institute, the US government-funded entity tasked to build the machinery of pro-free market Iraqi political parties, 69 percent of Iraqis from across the country want the constitution to establish “a strong central government” and only 22 percent want it to give “significant powers to regional governments.” Even in Shia-majority areas in the south, only 25 percent want federalism while 66 percent reject it.<sup>23</sup>

While the constitution gives oil-producing regions the power to enact oil policy, it also goes out of its way to stipulate that the central state should “guarantee the freedom of movement for workers, goods, and Iraqi capital between the regions and the provinces.” This distinction of roles between the central state and the regions follows the template for the kind of “market-preserving federalism” advocated by neoliberal constitutionalists: that in which the central state is empowered

only to maintain a common market within the territory while the power to regulate the market is relegated to weakened sub-states. For neoliberals, federalism is alright as long as the regions don't put up walls against free trade and so long as they don't become powerful enough to implement labor, environmental, and other social policies.<sup>24</sup>

The constitution is also laying the ground for the eventual acquisition of Iraqi assets, in the form of equity, real estate or other capital, by foreigners or multinational corporations. While the June draft states that “Iraqis have the complete and unconditional right of ownership in all areas without limitation”; the final draft drops the words “unconditional” and “without limitation” and adds instead the qualification “except what is exempted by law.”

Given that Bremer's Order 39 already allows foreign ownership of Iraqi assets and given that this Order will be perpetuated as a law, the constitution in effect removes the restriction giving Iraqis exclusive ownership over assets in Iraq. While oil is not covered yet, it may soon be, judging from Iraqi officials' pronouncements. The so-called “national patrimony” provision, which reserves certain sector's of a country's economy such as land or natural resources to that country's citizens, is a common feature in the constitutions of many developing countries. It has been struck off Iraq's. So while the press continues to tell the story of Sunnis, Shiites, and Kurds squabbling over the spoils of oil; they are missing the contest between Iraqis and non-Iraqis. The constitution may yet pave the way for non-Iraqis to have as much right over Iraq's oil as Iraqis.

The June draft promises extensive welfare commitments to Iraqis, including free education and free health care. The International Monetary Fund, which has been insisting on eliminating government subsidies to Iraqis, would have found in these principles serious legal obstacles to their prescriptions. The July draft says welfare services would still be given – but only if the government could afford them. The final draft gives vague assurances that the services will be delivered but this time, it adds new language on the private sector's role in delivering them. These

subtle changes are significant because they hint at the coming wholesale privatization of social services in Iraq, as is already being advocated by USAID-funded contractors working to restructure Iraq's educational and health sectors.

One other thing worth mentioning is that Iraq's will probably be the only constitution in the world which enshrines "fighting terrorism" as one of the state's objectives. Given how "terrorism" in Iraqi discourse has been used by pro-occupation Iraqis and US officials to refer to the resistance movement, the clause could be invoked to legally justify continuing military offensives against political forces that refuse to come to terms with the occupation and the political process it has bred. As has happened in other countries, the "war against terror" could also conceivably be used to justify continuing US military presence in Iraq.

## THE RULE OF LAW

The contents of Iraq's permanent constitution is of critical interest to those committed to reconstruct Iraq's economy along neoliberal lines. As the basic law of the land, the constitution establishes the fundamental legal foundation on which Iraq's neoliberal edifice is to be built. On it will rise the so-called "rule of law" – a rule which will constantly be invoked to legally defend a reduced role for the government in the economy, liberal trading and investment rules, privatization programs, and other neoliberal economic policies – long after the 160,000 occupation troops withdraw. In this, Iraq is just one front in a global project to eliminate nationalist and progressive economic provisions in the constitutions or legal systems of dozens of developing countries around the world. Whether or not the "wish-list for international investors" gets granted depends to a large extent on whether the Iraqi constitution provides the legal justification for making these wishes come true.

To get its preferred provisions in the constitution, the US, as in the previous steps in Iraq's political transition process, once again huddled with those Iraqis who were

willing to get along with the US' wishes; these Iraqis for their part accommodated the US' demands because this would be the only way they could also get what they wanted for themselves. Other Iraqis who insist on ending the occupation first before writing the constitution refused at the outset to join the process.

The media has tended to focus on the cultural and sectarian provisions of the constitution, ignored the significant insertion of economic provisions, and altogether missed the link between the two. What most likely happened was this: The US tolerated the adoption of religious provisions in the constitution and agreed to the establishment of a federal system in Iraq, as demanded by the Shia and Kurdish parties, in exchange for the introduction of neoliberal economic provisions in the constitution. In the quid-pro-quo, the investor's rights trumped women's rights. The Bush administration cares little as to what political arrangements the Iraqis chose or which god they preferred to pray to just as long as the wishes in their list gets fulfilled.

In the run-up to the negotiations, the Iraqi parliament conducted a massive information campaign, sending out questionnaires and conducting focus group discussions across the country in order to solicit ordinary Iraqis' suggestions for the constitution. At least one suggestion picked up by a *Knight Ridder* reporter supported the ideas articulated in the June draft but that were scrapped in the final text. "Only Iraqis can operate businesses (in Iraq), and if foreign partners are allowed, it should not exceed 49 percent," one respondent wrote.<sup>25</sup> While the June draft was formulated by the same Iraqis who got elected in a process whose legitimacy is widely doubted, it at least gives a hint as to what kind of constitution the Iraqis would have liked if Khalilzad was not inside the room all the time. They have their own wish-list too. ■

## The Evolution of Iraq's Constitution

Area	1990 Constitution <sup>26</sup>	June 30, 2005 Draft <sup>27</sup>	July 20, 2005 Draft <sup>28</sup>	August 25, 2005 final draft <sup>29</sup>
General Principles	Article 12: "The State assumes the responsibility for planning, directing, and steering the national economy for the purpose of (a) establishing the socialist system on scientific and revolutionary foundations and (b) realizing Arab economic unity"	Article 5: 1) "Social justice is the basis of building the society..." Article 18: 1) "The basis of the economy is social justice. It is composed of cooperating between public and private activity. Its goal is economic growth in accordance with a decreed plan and the realization of prosperity for citizens..." 2) "The state shall bear the responsibility for growth, developing production and services, building a solid infrastructure for the economy of the country, and providing services."	No similar provisions.	No similar provision.
Ownership of Iraq's Resources	Article 13: "Natural resources and the basic means of production are owned by the People. They are directly invested by the Central Authority in the Iraqi Republic, according to exigencies of the general planning of the national economy."	Article 17: "All natural resources and the [resulting] revenues are owned by the people. The state shall preserve and invest them well."	No similar provision.	Article 109: "Oil and gas is the property of all the Iraqi people in all the regions and provinces."
Foreigners' Right to Own Iraqi Assets	Article 18: "Immobile ownership is prohibited for non-Iraqi, except otherwise mentioned by law."	Article 8: "Iraqis have the complete and unconditional right of ownership in all areas of Iraq without limitation."	Article 10: "The Iraqi citizen has a complete and unconditional right to ownership in all parts of Iraq without limitation."	Article 23: "An Iraqi has the right to ownership anywhere in Iraq and no one else has the right to own real estate except what is exempted by law."

Right to Work	<p>Article 32: 1) Work is a right which is ensured to be available for every able citizen. “The state undertakes to improve the conditions of work, and raise the standard of living, experience, and culture for all working citizens.”</p>	<p>Article 12: 1) Work is a right for every citizen and duty for him. The state and the governments of the regions shall strive to provide work opportunities for every able-bodied citizen. 2) The state is responsible to support the provision of work opportunities for all qualified and pay monthly salaries for all unemployed for any reason until opportunities are provided in the case of disability, handicap, or illness until the malady ceases.</p>	<p>No similar provisions.</p>	<p>Article 22: 1) Work is a right for all Iraqis in a way that guarantees them a good life. 2) The law regulates the relation between employees and employers on an economic basis, while keeping in consideration rules of social justice.</p>
Private property	<p>Article 16: “Ownership is a social function, to be exercised within the objectives of the Society and the plans of the State, according to stipulations of the Society.”</p>	<p>No similar provision.</p>	<p>Article 10: “Private ownership is protected. Nobody may be prevented from using his property except within the boundaries of law.”</p>	<p>Article 23: “Private property is protected and the owner has the right to use it, exploit it, and benefit from it within the boundaries of the law.”</p>
Taxes	<p>No provision.</p>	<p>Article 17: “The basis for taxes and public expenditures is social justice.”</p>	<p>No similar provision</p>	<p>No similar provision.</p>
Education	<p>Article 27: “The State undertakes the struggle against illiteracy and guarantees the right of education, free of charge, in its primary, secondary, and university stages for all citizens.”</p>	<p>Article 6: “The state and regional governments shall combat illiteracy and provide their citizens with the right of free education at the various stages.”</p>	<p>Article 25: “Iraqi citizens have the right to enjoy security, education in all its stages, health care, and social insurance. The Iraqi state...shall ensure these rights within the limits of their resources, taking into consideration that the state shall strive to provide prosperity and employment opportunities for all members of the Iraqi people.”</p>	<p>Article 24: 1) “Free education is a right for all Iraqis in all its stages” 4) Private and national education is guaranteed and regulated by law.</p>

Area	1990 Constitution <sup>26</sup>	June 30, 2005 Draft <sup>27</sup>	July 20, 2005 Draft <sup>28</sup>	August 25, 2005 final draft <sup>29</sup>
Health	Article 33: “The state assumes the responsibility to safeguard the public health by continually expanding free medical services, in protection, treatment, and medicine, within the scope of cities and rural areas.”	Article 7: “Iraqi citizens have the right to enjoy security and free health care. The Iraqi federal government and regional governments must provide it and expand the fields of prevention, treatment, and medication by the construction of various hospitals and health institutions.”	Article 25: “Iraqi citizens have the right to enjoy security, education in all its stages, health care, and social insurance. The Iraqi state...shall ensure these rights within the limits of their resources, taking into consideration that the state shall strive to provide prosperity and employment opportunities for all members of the Iraqi people.”	Article 31: 1) “Every Iraqi has the right to health service, and the state is in charge of public health and guarantees the means of protection and treatment by building different kinds of hospitals and health institutions.” 2) Individuals and associations have the right to build hospitals, dispensaries, or private clinics under the supervision of the state.” No similar provision.
Agriculture	No provision.	Article 17: “The state shall take the necessary measures to realize the exploitation of land suitable for agriculture, stop desertification, and work to raise the level of the peasant and help farmers and their land ownership in accordance with law.”	No similar provision.	No similar provision.
Terrorism	No provision.	No similar provision.	No similar provision.	Article 8: “The state will be committing to fighting terrorism in all its forms and will work to prevent its territory from being a base or corridor or an arena for its activities.”

Area	1990 Constitution <sup>26</sup>	June 30, 2005 Draft <sup>27</sup>	July 20, 2005 Draft <sup>28</sup>	August 25, 2005 final draft <sup>29</sup>
Free trade	No provision.	No similar provision.	No similar provision.	Article 24: “The state shall guarantee the freedom of movement for workers, goods, and Iraqi capital between the regions and the provinces.”
Economic reforms	No provision.	No similar provision.	No similar provision.	Article 25: “The state shall guarantee the reforming of the Iraqi economy according to modern economic bases, in a way that ensures complete investment of its resources, diversifying its sources and encouraging and developing the private sector.”
Investments	No provision.	No similar provision.	No similar provision.	Article 26: “The country shall guarantee the encouragement of investments in the different sectors.”
Oil	No provision.	No similar provision.	No similar provision.	Article 110: “The federal government and the governments of the producing regions and provinces together will draw up the necessary strategic policies to develop oil and gas wealth to bring the greatest benefit for the Iraqi people, relying on the most modern techniques of market principles and encouraging investment.”

## Notes

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# Accession through the backdoor

## *How the US is pushing Iraq into the WTO*

**MARY LOU MALIG**

**I**n the last few months, all eyes were fixed on the outcome of the 6<sup>th</sup> Ministerial of the World Trade Organization (WTO) in Hong Kong. At stake was the fate of the Doha Development Round. Thousands of protestors, coming from all walks of life and various sectors and movements around the globe, swarmed the streets of Hong Kong to try to prevent a bad deal. However, the big trading powers knew they could not afford another Seattle or Cancun. And so with the help of India and Brazil, the US and EU saved the Round with a deal that will be detrimental to the majority of the world's peoples.

As people analyze what is in this bad deal, most of what the people are rejecting will soon be, if not already, applied onto Iraq.

### **WELCOME TO THE CLUB**

It is a little known fact that Iraq is now well on its way to becoming a full-fledged member

of the WTO. Iraq has now advanced to step 3 of the accession process and will most likely complete it without most Iraqis knowing it even happened.

On February 11, 2004, less than a year after the US invasion of Iraq, the country was granted observer status at the WTO. Four months before the US handed over

## TIMELINE

**19 March 2003:** US invasion of Iraq  
**11 February 2004:** Iraq granted observer status at the WTO  
**28 June 2004:** US handover of “sovereignty” to an interim government  
**13 December 2004:** GC established accession working group parties to examine membership application of Iraq; Iraq started the drafting of its Foreign Trade Regime Memorandum and the creation of a national committee for WTO accession  
**30 January 2005:** National elections in Iraq  
**September 2005:** Iraq submitted a Memorandum on the Foreign Trade Regime

“sovereignty” to an interim government in Iraq, the occupied territory had already taken the first step of accession into the WTO.

According to a trade publication, “Geneva-based analysts were taken aback by the quick move, “I would have thought they would wait until the country was stable.”<sup>1</sup> Even Ahmad Al-Mukhtar, Director General of Foreign Economic Relations of the Iraq Ministry of Trade, stated as fact the country’s instability. “As you know my country is now going through very severe times. We are in a stage of instability.”<sup>2</sup>

Iraq definitely has strong backers for it to get a unanimous vote at the General Council at the first try, despite its instability. In the same meeting, the application for observer status by Iran, which has been on the table for the past three years, was blocked by the US for the fifteenth time.<sup>3</sup>

The US it seems, has been able to push Iraq’s accession so successfully that the members of the WTO and the secretariat itself had overlooked the fact that Iraq does not even pass the first requirement of accession. Under WTO rules, countries can only apply if they have full autonomy. “Any state or customs territory having full autonomy in the conduct of its trade policies is eligible to accede to the WTO on terms agreed between it and WTO Members”. (Article XII of the WTO Agreement).

At the time of approval of observer status,

which then WTO Director General Supachai Panitchpakdi declared as a first step to WTO membership,<sup>4</sup> it hardly had autonomy, it was still being run by Paul Bremer’s Coalition Provisional Authority (CPA).

But this did not deter the US’ determination to make Iraq a member of the multilateral institution. On September 30, 2004, Iraq submitted its request for accession to the Director General of the WTO. Before the year ended, in the December General Council of the WTO, a working party was established to examine Iraq’s membership application. Iraq also started the drafting of its Foreign Trade Regime Memorandum and the creation of a national committee for WTO accession, the third step to accession. Step two was in the bag and three was on the way.

And to make sure that Iraq would stay the course of accession, the US generously offered to help Iraqis prepare for negotiations. “The US government supports the Iraqi interim government’s efforts. To that end, we have invited a team of senior Iraqi officials and experts to the US to discuss trade issues, including preparation for WTO accession negotiations.”<sup>5</sup>

## INITIATION RITES

But what exactly does it mean when they say a country is going through the accession process of the WTO? Like any other entry process into an elite club, the accession process is highly secretive and is all about giving everything the club wants. As Jane Kelsey, renowned expert on the accession process of Pacific islands into the WTO, explains, “The accession process has no rules, except precedent and power, and is the very antithesis of what the members publicly state to be the intention and design of the WTO.”<sup>6</sup>

The whole process is shrouded in secrecy, with documents reviewed by the accession working party remaining restricted until negotiations are over. In many cases, both parliamentarians and citizens do not know what is at stake.

The accession process is all about the

applicant country giving away as many concessions as possible and being prepared to change their domestic and national regulations in order to conform to the new agreements. In the case of the small Pacific island of Samoa, the working party even demanded for concessions that Samoa can't afford. "They can ask for all sorts of commitments which Samoa isn't in a position to offer. If they insist, there are two options: we will never become a member or we have to give in to that request."<sup>7</sup>

This is because accession to the WTO is ultimately a process of negotiation. Article XII of the WTO Agreement states that accession to the WTO will be "on terms to be agreed" between the acceding government and the WTO.<sup>8</sup> This means that those "terms to be agreed" can be a wish-list that goes beyond current WTO commitments or negotiations. According to Kelsey, "It is important to recognize that most of what the South is rejecting (in the Doha round of negotiations) has already been forced, arrogantly and invisibly, onto some of the world's smallest, poorest and most vulnerable countries."<sup>9</sup>

Member countries who join the accession working party can then push the applicant as far as they can. And whatever concessions they get are then enjoyed by the rest of the membership under the non-discrimination policy of the WTO. These talks cover everything from tariff rates to market access to policies in goods and services. For Iraq, it is expected that the US will lead the negotiations as it has shown the greatest interest in Iraq becoming a member of the multilateral body.

In fact, since day one, the US had already planned Iraq's entry into the WTO. Iraq's reconstruction has been geared towards becoming WTO-compliant. According to one researcher, "The US ordered Bearing Point, the contractor tasked with the economic reconstruction of Iraq, to "create a WTO-consistent trade and investment legal framework which will both promote competitive development of domestic business... and lay the groundwork for greater integration into international financial and trading networks."<sup>10</sup> This means that Iraq's laws have to be re-written to become

## HOW TO BECOME A MEMBER OF THE WTO

### 1. Get observer status at the WTO

### 2. Request for accession

– The accession process commences with the submission of a formal written request for accession by the applicant government. This request is considered by the General Council which establishes a Working Party to examine the accession request and, ultimately, to submit the findings of the Working Party to the General Council for approval. The Working Party is open to all Members of the WTO.

### 3. Submission of a memorandum on the Foreign Trade Regime

– The applicant government presents a memorandum covering all aspects of its trade and legal regime to the Working Party. This memorandum forms the basis for detailed fact finding by the Working Party.

### 4. Meeting conditions of entry

– Terms and conditions include commitments to observe WTO rules and disciplines upon accession and transitional periods required to make any legislative or structural changes where necessary to implement these commitments.

### 5. Bilateral negotiations

– The applicant government engages in bilateral negotiations with interested Working Party members on concessions and commitments on market access for goods and services. The results of these bilateral negotiations are consolidated into a document which is part of the final "accession package".

### 6. Accession package

– The working party then finalizes the terms of accession. These appear in a report, a draft membership treaty ("protocol of accession") and lists ("schedules") of the member-to-be's commitments.

### 7. Approval of the accession package

– The final package, consisting of the report, protocol and lists of commitments, is presented to the WTO General Council or the Ministerial Conference. If a two-thirds majority of WTO members vote in favour, the applicant is free to sign the protocol and to accede to the organization. In many cases, the country's own parliament or legislature has to ratify the agreement before membership is complete.

### 8. Full membership

– Thirty days after the applicant government notifies the WTO Secretariat that it has completed its ratification procedures, the applicant government becomes a full Member of the WTO.

Source: World Trade Organization, [www.wto.org](http://www.wto.org)

WTO compliant and to transform Iraq's formerly state-controlled economy to a complete market-controlled economy with international trade at its center.

Bremer also made sure that Iraq would become a member of the WTO. Bremer Order number 12 or the "Trade Liberalization Policy" was one of the now infamous Bremer Orders, which, in one stroke, transformed the economy of Iraq. This trade liberalization order set the target date of February 2004 for joining the WTO. And of course, come February 2004, Iraq was unanimously granted observer status at the WTO.

Bremer also made sure that even if the CPA was no longer there, it would take short of a miracle to overturn his orders. "The Bremer Orders would remain – repealing them would be near impossible – because to do so would require the approval of two-thirds to three-fourths of a future assembly."<sup>11</sup>

Accession processes for other countries have taken years. For Iraq however, it seems to be on fast-track as it has moved from observer status to drafting its Foreign Trade Regime Memorandum, which is the starting point of the intensive negotiations of accession, in no time at all.

This was all part of the US' grand plan for Iraq. Clearly, the reason why the US has been in a mad rush to push Iraq's accession into the WTO is to lock in the economic transformation of Iraq and its commitments to the WTO, just as the Bremer Orders have been locked in to the laws of Iraq. By binding them internationally, the US closes the door to any future policy changes by any future government of Iraq. It not only limits, but removes the ability of future governments to introduce public interest policies or legislation.

### **FREE TRADE IS A GIFT...**

In all this time however, the US has continuously projected the benevolent occupier image as it generously helps Iraqis get on the glorious road of free trade and democracy. It has taken Iraq out of the stone age and into modern society. Al-Mukhtar declares Iraq's accession into the WTO as

its first step towards integration into the global economy. "After decades of isolation, Iraq is beginning to rejoin the international community and your decision today sends a positive signal to the people of Iraq that they are welcomed back and that the world really cares about their welfare," al-Mukhtar said.<sup>12</sup>

Free trade supporters have even hailed this as a blessing to countries like Iraq. As Daniel Griswold of the libertarian think-tank Cato Institute based in Washington DC states, "What do Libya, Sudan, Syria, Iraq, Iran and Afghanistan have in common? Besides all of them being ongoing or recent sponsors of terrorism, not one of them belongs to the WTO."<sup>13</sup> Making the generalization that if you are not a member of the WTO, you therefore are a sponsor of terrorism.

The US then went ahead and outlined a plan similar to that of Iraq for the rest of the region. "The Middle East Free Trade Area (MEFTA) was billed as part of a plan to fight terrorism – in this case, by supporting the growth of Middle East prosperity and democracy through trade," an analyst with the Congressional Research Service wrote.<sup>14</sup> And the first step to becoming a part of MEFTA is joining the WTO.

### **...WITH STRINGS ATTACHED**

What is the reason for the push to make Iraq, and later on, other countries in the Middle East, members of the WTO? The US says it's the way to fight terrorism. However, what they're not saying is what's really in it for them and their corporations.

The goal has always been the oil. "With the US expected to depend on other countries for 70% of its oil needs by 2025 – securing access to oil was both a matter of survival and a source of great power."<sup>15</sup> And gaining control would mean changing the current system as 70 percent of the world's oil is still distributed through national oil companies.

As a US analyst explains, a key pillar of the Bush Administration strategy is to consolidate control over global energy services and the principal way to achieve that is through the services negotiations under the WTO.<sup>16</sup> The WTO is still the best arena because of its

legally binding agreements. The US is a few steps closer to its goal of control once Iraq becomes a member of the WTO. As US Vice President Richard Cheney states, "While many regions of the world offer great oil opportunities, the Middle East, with two-thirds of the world's oil and the lowest cost is still where the prize ultimately lies."<sup>17</sup>

The real winners of this will be the US oil giants, who have been eyeing Iraq's sea of oil even before the invasion. A recent report by Global Exchange states, "Billions of dollars in contracts have been handed out to multinational corporations with ties to the Bush administration like Halliburton, Bechtel and Harken Energy Company for services such as getting the oil from the earth to the market."<sup>18</sup> The same report asserts that energy services have become more profitable than the oil itself.

## **THE MAIN AGENDA: ENERGY SERVICES**

Through the North American Free Trade Agreement (NAFTA), the US was able to remove Canada's control over its vast energy resources by, among other measures<sup>19</sup>:

- establishing rights of foreign companies to invest in the energy sector;
- stripping Canada's National Energy Board of its powers and dismantling the "vital-supply safeguard" that required Canada to maintain a 25-year surplus of natural gas (the US maintained its 25-year reserve for national security purposes)
- banning export taxes (a major source of government revenue exports)

The NAFTA however only covers Mexico, Canada and the US. The US therefore has proposed to expand the services negotiations in the WTO to include energy. "The US has called upon WTO members to open markets eligible for private participation in the entire range of energy services, from exploration to the final customer..."<sup>20</sup>

The plan would be to pry open the energy services sector and shift the control over oil from national governments to oil service

corporations. According to Victor Menotti of the International Forum on Globalization, "If the Bush White House gets its way with energy services negotiations, the control of the global economy's primary energy source could shift from national governments to oil services giants like Halliburton."<sup>21</sup>

In the recently concluded 6<sup>th</sup> Ministerial Conference of the WTO, the US and its allies, succeeded in expanding the services negotiations and including Energy Services in the sectors to be negotiated. This covers all activities composing the energy services sector across all modes of supply and a whole range of activities under the oil and gas sector, from exploration services, services incidental to mining, technical testing and analysis and refining services.<sup>22</sup>

Under the new expanded services mandate, there will be plurilateral negotiations on various sectors, including energy, which will open up these services to privatization and corporate control.

## **REVERSING THE TREND**

As it looks now, it all seems to have fallen into place. The US grand plan for Iraq and its oil is coming to fruition. Iraq will soon become a member of the WTO and energy services have been included in the WTO mandate. The US just has to simply count the days before its corporations all control Iraq's oil and soon, the rest of the world's oil.

However, as the resistance in Iraq grows and the anti-war and anti-globalization movements maintain the international pressure, there is still a chance to turn things around.

Iraq's accession may well be underway but it is not yet complete. The legitimacy of the whole process should be questioned as in the first place Iraqis do not have autonomy over their country, let alone trade policies. The accession process began before the country even had elections. And even with the new Iraqi government in place, its legitimacy and autonomy are still under question because the country is still under occupation by the US. Observer status was granted to Iraq while the country was still under the CPA. The Iraqi

minister which pursued the accession process was handpicked by the US government. The country effectively was still under occupation when it took its first step towards WTO membership.

The US, or any occupying force, has no right to alter and implement new policies and legislation. As stated by many legal analysts, in altering Iraq's economic policies, the US violated international law. Article 43 of the Hague Regulations of 1907 states "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." This means that the US had no right to restructure Iraq and turn it into a WTO-compliant economy. Even the UK Attorney General, Lord Peter Goldsmith advised Prime Minister Tony Blair, "The imposition of major structural economic reforms would not be authorized under international law."<sup>23</sup>

Iraq's accession must be stopped. Only a legitimate and truly sovereign Iraqi government should be able to determine its future.

The occupation of Iraq has become two ugly heads of military and economic occupation. Even if the Iraqi's peoples' resistance is successful in ending the occupation and driving out the US-led military forces, the US and its allies' would still have gotten their way through the restructuring of Iraq's economy and its membership into the WTO where they can continue controlling and exploiting Iraq's resources.

If Iraq's occupation is to be truly ended and the right to self-determination restored to the Iraqi people, the links must be made between military and economic interests and the campaigns must be fought on both levels.



## Notes

<sup>1</sup> BRIDGES Weekly Trade News Digest Vol 8, Number 35, Iraq Seeks WTO Membership, 20 October 2004.

<sup>2</sup> Lubetkin, Wendy Iraq granted observer status at the WTO. 2005

<sup>3</sup> BBC News. "Iraq granted WTO observer status" 11 February 2004

<sup>4</sup> "Iraq took the first step towards joining the 148-member organization when the General Council approved Iraq's request for observer status on 11 February 2004." BRIDGES Weekly Trade News Digest Vol 8, Number 35, Iraq Seeks WTO Membership, 20 October 2004.

<sup>5</sup> BRIDGES Weekly Trade News Digest Vol 8, Number 35, Iraq Seeks WTO Membership, 20 October 2004.

<sup>6</sup> Kelsey, Jane. Accessing countries as pawns in a power play: A case study of the pacific islands. Focus on Trade No. 103, August 2004

<sup>7</sup> Interview with Tuala Falani Chan Tung, Sunline, April 2004. quoted in Kelsey, Jane. Accessing countries as pawns in a power play: A case study of the pacific islands. Focus on Trade No. 103, August 2004

<sup>8</sup> World Trade Organization website: [www.wto.org](http://www.wto.org)

<sup>9</sup> Kelsey, Jane. Accessing countries as pawns in a power play: A case study of the pacific islands. Focus on Trade No. 103, August 2004

<sup>10</sup> Docena, Herbert. "Shock and Awe" Therapy: How the United States is attempting to control Iraq's oil and pry open its economy. Presentation at the World Tribunal on Iraq June 2005

<sup>11</sup> Docena, Herbert. "Shock and Awe" Therapy: How the United States is attempting to control Iraq's oil and pry open its economy. Presentation at the World Tribunal on Iraq June 2005

<sup>12</sup> Speech by Mr. Ahmad Al-Mukhtar, Director General of Foreign Economic Relations, Iraq Ministry of Trade, to the General Council of the World Trade Organisation - 11 February

<sup>13</sup> Griswold, Daniel. Can Free Trade Promote Peace in the Middle East? Capitol Hill Forum 20 June 2003.

<sup>14</sup> Boelle, Mary Jane. Middle East Free Trade Area: Progress Report. CRS Report for Congress February 8, 2005

<sup>15</sup> Docena, Herbert. "Shock and Awe" Therapy: How the United States is attempting to control Iraq's oil and pry open its economy. Presentation at the World Tribunal on Iraq June 2005

<sup>16</sup> No Iraq-ification of the World: Oil out of the WTO. Global Exchange. 2005

<sup>17</sup> Docena, Herbert. "Shock and Awe" Therapy: How the United States is attempting to control Iraq's oil and pry open its economy. Presentation at the World Tribunal on Iraq June 2005

<sup>18</sup> No Iraq-ification of the World: Oil out of the WTO. Global Exchange. 2005

<sup>19</sup> A complete list of measures and more on NAFTA can be found in IFG Special Report "The Free Trade Area of the Americas" by Maude Barlow. Quoted in Menotti, Victor. The WTO and Oil. International Forum on Globalization. October 2004

<sup>20</sup> Menotti, Victor. The WTO and Oil. International Forum on Globalization. October 2004

<sup>21</sup> Menotti, Victor. The WTO and Oil. International Forum on Globalization. October 2004

<sup>22</sup> JOB(05)/237/REV.2 Sectoral and Modal Objectives as Identified by Members, Council for Trade in Services Special Session, World Trade Organization, 17 November 2005.

<sup>23</sup> Stated in a leaked memo dated March 26<sup>th</sup> 2003. Quoted in Press Release Economic Occupation of Iraq on Trial 22 August 2005

# Turbo-Charging Investor Sovereignty

## *Investment Agreements and Corporate Colonialism*

**BY NICHOLAS HILDYARD AND GREG MUTTITT**

*“We got a horrible contract with BP, horrible”*

-President Saakashvili of Georgia, August 2004<sup>1</sup>

*“Without having to amend local laws, we went above or around them by using a treaty.”*

-George Goolsby, Baker Botts Architect of legal regime for BP’s Baku-Tbilisi-Ceyhan oil pipeline.<sup>2</sup>

*Reconstruction and construction do not take place only in bricks and mortar. Long before the first foundation stone is laid for a major pipeline, road, mine or oilfield development, the project is constructed on the hard drives of investors, built of financial spreadsheets and legal agreements. Certainly, no less effort goes into engineering these aspects than the physical project itself, and their impacts on communities and the environment can be at least as profound.*

*But it is here that the analogy with bricks and mortar ends. For corporate investors, the body of project and financial law is a frontier against which they continually aim to advance. Reconstruction*

*of a country’s economy, whether following war or dramatic political change, is an opportunity not just to make profits, not even just to apply draconian measures to protect those profits – but to push forward accepted investment practice, setting precedents to be rolled out around the world.*

Corporate power never stands still. Blocked from getting what they want in one arena, companies quickly move to develop new mechanisms for bypassing whatever obstacles have been put in their way. Working simultaneously at the national,

regional and international level, corporations and their institutional allies in government are constantly assessing and exploiting the political space available to them, never taking it for granted and forever seeking opportunistically to expand its boundaries. Legal and other constraints on corporate behaviour are probed and challenged;<sup>3</sup> policy bodies assiduously monitored, courted and cajoled; and old alliances that no longer achieve the corporate goals of minimum regulation and taxes ruthlessly ditched in favour of new groupings that can deliver the goods. Pragmatic to the last, and operating against an endless and varied background of resistance, corporate power takes what is available to it and builds on it to establish precedent, expand its practice, and claim it as the norm, shoring up the gains made through changes in the law. Successes follow set-backs and set-backs follow successes: nothing is ever taken for granted except the need to rework the framework in which corporations operate in order to reinforce and expand their political base.

For the last three decades, for example, corporate power has lobbied aggressively to liberalise investment rules by removing “distorting” domestic regulations (such as performance standards<sup>4</sup> and constraints on repatriation of profits<sup>5</sup>) and empowering private investors to extract compensation from foreign governments for any legislation that adversely affected inward investments. For companies, the Holy Grail has long been a global investment regime, imposing binding rules favouring investors worldwide – a regime that enhances the companies’ powers of retaliation in the event of their “investment rights” being infringed by elevating a simple contract dispute into a breach of international law, thus enabling their home governments to weigh in on their behalf.

To date, the companies have been denied that goal by civil society resistance. In the early 1970s, the USA pushed to include investment in the Tokyo Round of the General Agreement on Tariffs and Trade (GATT).<sup>6</sup> When that failed, due to opposition from developing countries, corporations pressed their national governments to secure corporate investment interests through

bilateral agreements<sup>7</sup> and regional initiatives, including rights for companies to take their disputes with States to international arbitration. In the early 1990s, the companies moved back to the international stage, this time seeking to push a binding investment Treaty – known as the MAI or Multilateral Agreement on Investment – through the Organisation for Economic Co-Operation and Development (OECD).<sup>8</sup> When the negotiations collapsed following massive public opposition, corporate power returned to GATT’s successor, the World Trade Organisation (WTO), only to be rebuffed once again.<sup>9</sup> This is unlikely to be the last attempt.

Unable as yet to achieve what they wanted through multilateral negotiations, corporations have reverted to Plan B (or perhaps it was always Plan A), once again relying on bilateral and regional Treaties to push their investment interests. On the one hand, companies are increasingly using the arbitration clauses of Bilateral Investment Treaties (BITs) to challenge national laws (including environmental laws), local administrative regulations, taxes and other governmental actions that are deemed detrimental to the value of their investments,<sup>10</sup> or to push through new obligations such as the requirement to “protect” intellectual property rights<sup>11</sup>. On the other, company lawyers are using existing or specially-negotiated BITs to turbo-charge standard concession agreements, imposing project-specific legal regimes – known as Host Government Agreements (HGAs) – that give companies effective control over the legislation and regulations that apply to their activities and require States to compensate them for *any* new laws that affect corporate profits.

Meanwhile, oil, gas and other extractive industry companies are also using and evolving legal instruments first developed in the 1960s – Production Sharing Agreements (PSAs) – and imposing new or tightened conditions which have allowed corporate power to gain almost complete control not just over the laws that apply to their activities but over the very development of the host States’ natural resources. Having used Host

Government Agreements and Production Sharing Agreements to win hugely favourable investor rights in the countries of the former Soviet Union and in West Africa, corporate power is now applying the same legal instruments to impose a new era of resource colonialism in Iraq.

### **From Colonial to Neo-colonial**

It is not new for investment agreements to give corporations extensive rights, prodigious profits and minimal obligations: where recently-negotiated investment agreements differ from those in the past is in the extent of their enforceability and their dominance over international, national and municipal law.

Generous agreements were signed during the colonial period, either by direct rulers, or by their local puppets. For example, in 1936, the British Governor of Nigeria, Sir Bernard Bourdillion, granted a consortium of BP and Shell rights to all of the oil in the entire country. In Iraq, the British-installed monarch Faisal in 1925 signed a concession with a consortium of British and French (later joined by American) companies. The Iraqi concession was for a period of 75 years, and along with two further concessions signed in the 1930s (one with a subsidiary of the same consortium; the other to a company which it subsequently bought out), the consortium obtained, like in Nigeria, rights to all of the oil in the entire country.

In the middle of the twentieth century, as colonial empires were crumbling, corporations had to seek new means to defend their investments, in particular from the growing nationalist movements. In the case of the oil industry, the collapse of empire was followed by the setting of tougher terms by host governments, the renegotiation of existing agreements, and in many cases nationalisation of assets.

A key test came in Iran, when populist leader Muhammad Mossadegh nationalised BP's (then known as the Anglo-Iranian Oil Company) oil operations in 1951, in a move reflecting popular frustration at the unfair terms of the 60-year concession agreement with the company.

As lawyer Anthony Sinclair has documented, BP lobbied hard to persuade its major shareholder, the British Government, to take up the defence of its contracts in the international courts.<sup>12</sup> Although the Government complied, its case failed because the company's contracts were deemed insufficiently rigorous to allow the International Court of Justice to hear the case.<sup>13</sup> Unable to achieve what they sought through the courts, the UK Government, together with the US, staged a MI6 and CIA sponsored coup.<sup>14</sup>

BP – and other companies – learned major lessons from this experience in Iran. Having failed to fend off nationalisation in the courts, BP was advised by its legal counsel that in future the company should include a special clause (known as an “umbrella clause”) in its new contracts with Iran that would nestle the contracts within a UK-Iran treaty, thus ensuring that they would automatically be governed by international law.<sup>15</sup> A dispute between the company and Iran would thus be transformed into a dispute between the Government of the UK and the Iranian Government.<sup>16</sup>

In the event, such umbrella clauses were not included in the new contracts – although they were considered during the drafting – largely because it was deemed unlikely that the UK government would wish to become embroiled in the minutiae of every dispute under the contract. Nonetheless, the idea of “umbrella clauses” had been seeded – and over the coming decades, companies would further explore their potential, along with other legal instruments, to achieve greater corporate control over investments in an age of “decolonisation” and increasing nationalism.

By the 1990s, the avenues first developed by BP's legal advisors were beginning to bear fruit. With public funding for development through the multinational development banks declining, southern countries were under increasing pressure to agree to investment terms that were highly advantageous to companies in order to attract inward investment. Indeed, the companies and the MDBs repeatedly told them that they had no option but to do so.

Encouraged by this, companies began to expand the scope of investment contracts to gain exemptions a range of environmental and other legislation.

But the companies went beyond simply demanding exemptions to local law. Spearheaded by the multinational oil companies – or more accurately their lawyers<sup>17</sup> – corporate power began pioneering new legal arrangements (known as Host Government Agreements) which closely mimicked those first suggested by BPs lawyers in the 1950s.

The collapse of the Soviet Union, and the subsequent rapid liberalisation of its economy under conditions where the state was relatively weak and corporations strong, presented the ideal opportunity to roll out the new approach. New-style agreements were signed in the 1990s, not just in the former Soviet republics, but also (following the end of the Cold War and the discovery of deepwater oil extraction technology) across West Africa.

Learning the lessons of Iran, the new agreements explicitly sought to “internationalise” the investment contracts being signed with foreign states<sup>18</sup>, thereby elevating contract disputes into violations of international law. In some cases, this has been achieved by invoking clauses in the new Bilateral Investment Agreements or regional trade agreements that have proliferated since the 1980s. In others, new treaties have been signed with the specific aim of shrouding individual contracts within their protective cloak. This has not only enabled the companies whose “rights” have been infringed to remove investor-state disputes from the jurisdiction of national courts, but also to mobilize the entire diplomatic weight of their home government against the offending host state to remedy the breach.<sup>19</sup>

### **THE CASE OF THE BAKU-TBLISI-CEYHAN OIL PIPELINE**

As in Iran, BP has been at the forefront in designing and promoting the new agreements. Indeed, the legal regime which the BP-led consortium negotiated for the Baku-Tbilisi-Ceyhan oil pipeline project, which will transport oil from BP’s Caspian oil fields via

Georgia to Turkey’s Mediterranean coast, has broken new ground in the use of international investment agreements to exempt companies from regulation and insulate them from local legal accountability. The agreements thus merit close analysis, not least because BP and other companies are promoting them as a template for future oil pipeline projects.

The legal agreements for the projects were drawn up in secret – when western non-governmental organisations investigating the project visited Azerbaijan in 2001, a year after the agreements had been ratified by Azerbaijan, the project documents were not even available to parliamentarians, let alone members of the public.<sup>20</sup>

The legal regime for the project consists of two layers of agreements: first an Inter-Governmental Agreement (IGA) between Azerbaijan, Georgia and Turkey, which has the status of a Treaty; and second, three separate Host Government Agreements between the companies in BTC Co, the consortium which owns and will operate the pipeline, and each of three countries. The HGAs are defined as private law contracts.

Under the agreements, which are specifically aimed at guaranteeing the “freedom of petroleum transit”, a formulation that effectively claims rights for oil itself,<sup>21</sup> the three governments have all but surrendered sovereignty over the pipeline route to the oil consortium.<sup>22</sup> Not only do the agreements trump all existing and future laws in the three countries, other than the respective constitutions, but they also impose obligations that severely limit the State’s ability to act in the interest of its citizens. Moreover, they go far beyond the norms of traditional concession agreements (see below).

### **Using Treaty Status to Trump National Law**

Standard concession agreements are invariably subject to national host State law.<sup>23</sup> The HGAs for the BTC pipeline, by contrast, have been drawn up under (and therefore nest within) the framework of what is in effect an international investment treaty. The companies therefore claim that

HGAs automatically assume the status of international public law while simultaneously remaining private contracts.<sup>24</sup>

The internationalisation of the concession agreements for BTC reveals how well BP has learned the lessons of Iran. As “treaties”, the HGAs have a privileged status since, as the European Bank for Reconstruction and Development (EBRD) notes, “in general, a treaty takes precedence over inconsistent domestic law, even subsequent domestic law.”<sup>25</sup> The provisions in the HGA thus trump all domestic law. Moreover, as a “treaty”, the HGA is far more difficult for a new government to overturn than an ordinary Act of the national legislature.

Although BP argues that a treaty between the three countries was necessary in order to ensure that the pipeline was subject to a uniform legal regime, other cross-border projects – notably many existing trans-border pipelines<sup>26</sup> – have long been operated without being subject to specially-negotiated treaties. Moreover, the regulations to which the pipeline is subject under the agreements differs significantly from country to country: for example, land acquisition is carried out differently in Turkey and Georgia, with affected citizens in Georgia receiving higher compensation. If uniformity was initially the avowed aim, therefore, it was quickly jettisoned once the pipeline began to be built. Indeed, the true explanation for placing the HGAs within a Treaty is revealed by James Goolsby of Baker Botts, the Houston-based energy-sector law firm which was the legal architect of the agreements: “Without having to amend local laws, we went above or around them by using a treaty.”

In effect, BP specifically married two legal instruments – a BIT (or more accurately, given the three countries involved, a Trilateral Investment Treaty) and a private contract concession agreement – specifically in order to circumvent local law.<sup>27</sup>

### **Corporate Sovereignty**

Until recently, exemptions from specified laws – usually those that companies find most onerous – used to be rare in investor-

state contracts. Increasingly, however, there is a growing trend for exceptions and exemptions to be included in concession and other agreements.<sup>28</sup> Recently, for example, the Government of Belize not only exempted the proposed Chalillo Dam from any environmental laws other than those which the Canadian-owned project developer<sup>29</sup> had agreed to follow<sup>30</sup> but also to waive all taxes<sup>31</sup>, except payroll taxes. An Act was also passed into law which put the project beyond legal challenge by any court<sup>32</sup> – thereby arguably violating the protection of judicial rights guaranteed under the Inter-American Human Rights Convention.<sup>33</sup>

But the exemptions gained by BTC Co go several steps further – exemptions which, as the project lawyers themselves have hinted, had to be pushed through over objections by the host governments.<sup>34</sup> Under the Host Government Agreements, the BTC consortium is exempted from *any* obligations under Azerbaijan, Georgian and Turkish law, aside from the Constitutions of the three countries, where those laws conflict with the terms of the agreements. In signing those agreements, the host governments have effectively abrogated<sup>35</sup> their executive and legislative powers to protect their citizens from potential environmental damage and associated health and safety hazards or to improve the regulatory regime. By locking themselves into a frozen and drastically weakened regulatory environment, the governments are thus less able to respond to new environmental and other threats or to the evolving understanding of risk.

The HGAs have already been invoked to override Georgian environmental laws and to force the Georgian Minister of the Environment to sign off on the pipeline route despite grave reservations about its legality under Georgian environmental law.<sup>36</sup> Both BP and the US government put pressure on the Minister, through then President Shevardnadze.<sup>37</sup> The Minister was forced first to concede the routing with environmental conditions, and then water down her conditions. Since the project agreements have a higher status than other Georgian laws, the environment laws the Minister referred to were simply irrelevant.

Ultimately, on the day of the deadline, the President called the Minister into his office, and kept her there until she signed, which was at about 4 o'clock in the morning.<sup>38</sup>

In Turkey, too, the HGAs have been invoked to set aside stricter environmental and social legislation. Critically, provisions in the HGA were invoked to truncate the “scoping period” for the Environmental Impact Assessment. In a letter to BTC Co, dated 29<sup>th</sup> November 2001, the Ministry of Agriculture and Rural Affairs waived the requirement for site investigations (despite an almost total absence of on-the-ground data on flora and fauna along the pipeline route) before granting approval for the pipeline route “in accordance with the Host Government Agreement”.<sup>39</sup> The normal requirement, under Turkey’s environmental regulations, for a 60-day period for the Ministry of the Environment to review and approve the final draft of the EIA, in order to give a development consent, was also reduced to 30 days for BTC, in order to ensure that BOTAS, the Turkish company contracted to build the Turkish section of the pipeline, could complete the project in the period specified under the project agreements.<sup>40</sup> The project agreements also overrode key provisions in Turkey’s Expropriation Law which require the price for expropriated property to be negotiated: instead, it was compulsorily purchased, under an emergency law normally invoked only in times of national disaster or war, under the terms of the agreements.<sup>41</sup>

BP has countered that the exemptions it obtained were nothing out of the ordinary and are common to other concession agreements. The company states: “The creation of a prevailing legal framework is not unusual and has been used by extractive projects even in nations with highly developed legal systems, such as Chile, Canada and Australia.”<sup>42</sup> Justifying the BTC Host Government Agreement, it adds: “The Prevailing Legal Regime (PLR) is designed to *supplement* the existing framework, rather than replace existing laws and regulations”.<sup>43</sup>

In fact, the HGAs for the BTC project go far beyond simply “supplementing”

existing legislation. As the term “Prevailing Legal Regime” (PLR) accurately reflects, they *prevail* over such legislation: indeed, their express intent is to provide investors with the right to exempt their projects from specified laws and regulations. BP is fully aware of this: indeed, BTC’s own Citizens Guide to the Project Agreements explicitly acknowledges that the legal regime that the company has crafted for the project grants investors the power to “supersede provisions that directly conflict with project agreement requirements.”<sup>44</sup>

### **Substituting Corporate Standards for National and International Law**

Although BP accepts that the agreements trump local law,<sup>45</sup> it insists that they set out a more stringent and coherent environmental and social regulatory regime than would otherwise be available.

In fact, the Agreements replace hard law with voluntary, vague, and unenforceable corporate guidelines. Under the Intergovernmental Agreement,<sup>46</sup> the “floor” requirements for the project are a set of non-binding, loosely-worded and largely technical petroleum industry pipeline “standards”. Where these “standards” conflict with local environmental and labour law, the “standards” win out.<sup>47</sup> <sup>48</sup> “Soft” industry guidelines have thus been allowed to replace “hard” law, with the environment and human and labour rights the losers.

As Amnesty International notes: “Instead of referring to internationally recognised human rights standards, the agreement between the state and the consortium says that the project is to be regulated by ‘the standards and practices generally prevailing in the international petroleum industry for comparable projects.’ Apart from the fact that on BP’s own admission these standards have never been formulated, this is not a substitute of like for like. It jettisons the carefully worked out balances made by the regional and international bodies charged with fixing the dimensions of basic rights and instead the reference point becomes the consensus among actors in the petroleum industry on how things should be done.”<sup>49</sup>

BP cites a clause in the Intergovernmental Agreement<sup>50</sup> to argue that the project *must* comply with “EU standards”,<sup>51</sup> implying that the body of EU law will be honoured.<sup>52</sup> In reality, however, the IGA’s commitments only extend to those (unspecified) “standards” that relate to “technical, safety and environmental” practices within the petroleum industry. Beyond this, the phrase “European Standards” remains undefined in any of the legal agreements or project documents which form the legal regime for the project.<sup>53</sup>

If (as BP has argued) the phrase is taken to refer to “European Union Directives”,<sup>54</sup> the project falls below this floor in a number of important areas. For example, the “applicable EU Directives” listed in the Environmental and Social Impact Assessment (the project document that sets the legally-binding standards for the project<sup>55</sup>) do not include such key EU Directives as the Strategic Environmental Impact Assessment Directive (2001/42/EC), reflecting a “pick and mix” approach to the applicability of standards. In addition, the Supplementary Lenders Information Pack for Turkey makes no mention of either “EU standards” or “EU Directives” as the floor for the project. Instead it states: “The BTC project standards will adhere to Turkish and/or World Bank standards, whichever is the more stringent”.<sup>56</sup>

Further confusion arises from many project standards falling below those that would be required under relevant EU Directives. The Environmental Impact Assessment’s Matrix of Environmental Standards and Guidelines clearly indicates, for example, that emission standards for the pipeline would exceed (or would be likely to exceed) three applicable European Union directives<sup>57</sup>: in the case of nitrous oxide, permitted emissions exceed relevant EU directive standards by 78% and the EU sulphur directive standards by 283%.<sup>58</sup>

The claim that “EU standards” provide a floor for the project also conflicts with the choice of field joint coating system for the pipeline in Azerbaijan and Georgia. Far from meeting “generally applicable industry practice in the European Union”, the chosen

coating is entirely experimental. As has now been confirmed by the UK government,<sup>59</sup> the coating (known as SPC 2888) has never previously been used on a similar operational pipeline anywhere else in the world – and is therefore outside the experience of industry practice whether in Europe or elsewhere.

The coating, which was not tested in field conditions on a polyethylene-coated pipeline (such as is being used in the BTC project) until after it had been selected by BP,<sup>60</sup> was chosen despite strong objections from Derek Mortimore, BP’s own expert consultant, and in the face of criticism from within the industry. Reviewing the specification for the selected coating, Mr Mortimore, warned: “I am at a loss to understand why this specification has been issued. Purely as a coating it is underdeveloped and incomplete. As a field joint coating specification, it is utterly inappropriate as it does not confirm a protective system that can be successfully applied in all the conditions under which this pipeline will be constructed, nor does it confirm the integrity of the protection for the design life of the pipeline.”<sup>61</sup> The pipeline coating system has since experienced multiple failures in the Azerbaijan and Georgia sections of the pipeline.<sup>62</sup> Recent press reports indicate that such failures continue despite remedial measures undertaken by BTC Co.<sup>63</sup>

### **Freezing out New Social and Environmental Legislation**

“Stabilisation” clauses – under which governments agree to compensate concessionaires for changes in legislation that adversely affect their business – are now common to many concession agreements. When first introduced, companies sought to use the clauses to freeze the legal framework of the host State once-and-for-all by *prohibiting* changes to the law.<sup>64</sup> However, this quickly fell foul of the courts. As Marcos Orellana of the Centre for International Environmental Law comments: “This extreme construct was challenged on several grounds, including fundamental principles of self-determination and the permanent sovereignty over natural resources. After early arbitration cases

involving Libya revealed that this rigid model broke in the face of political and economic crises, greater flexibility was introduced to stabilisation clauses, including obligations to negotiate if circumstances changed or to compensate if legal changes radically altered the expected economic returns of the project.”<sup>65</sup>

That need for flexibility and the accompanying emphasis on negotiation is reflected in the model investment agreement that has been drafted by the United Nations Commission on International Trade Law (UNCITRAL), the inter-governmental body that makes recommendations on investment rules. UNCITRAL makes the rather obvious point that corporations, like citizens, should expect changes in the law: <sup>66</sup> indeed, such change is part and parcel of democracy. Stabilisation clauses should therefore be limited in their scope, only covering “specific legislative changes that target the particular project, a class of similar projects or privately financed infrastructure projects in general”<sup>67</sup> or changes in economic circumstances that could not reasonably have been foreseen at the time of the contract being signed.<sup>68</sup> The OECD similarly recommends that stabilisation clauses should not grant blanket rights to compensation for any new legislation that might adversely affect an investment but should be restricted to legislation that is clearly specified.<sup>69</sup> In addition, the OECD rejects the demand for generalised, unspecific damages in the event of new legislation incurring economic costs: the financial costs that are to be covered must be “clearly and precisely described”.<sup>70</sup>

Moreover, in keeping with the stabilization clauses in standard contracts are generally “two-way” in their application. India’s model concession agreement, for example, allows for the company to negotiate new terms where a change in law leads to a rise in costs – but equally for the government to seek amendments where new laws reduce the concessionaire’s expenses.<sup>71</sup> Generic claims – such as “disruption to the economic equilibrium” of a project (the phrase used in the BTC stabilization clause)<sup>72</sup> – would not therefore be acceptable.

Indeed, the stabilization clauses in the BTC contract completely disregard both

the letter and the spirit of UNCITRAL’s recommendations: not only are they so broad brush as to effectively cover any new changes in social and environmental legislation<sup>73</sup> but they allow for no equality of treatment. Under the HGAs, the host governments are bound by the HGAs to compensate the BTC Consortium for *any* changes in the law that the three countries may introduce over the 40-year lifetime of the project (including changes aimed at improving protection of human rights or the environment) where such changes adversely affect the profitability of the project.<sup>74</sup>

The broad, sweeping nature of the BTC’s stabilisation clauses led Amnesty and other human rights groups to warn that the clauses were likely to have a “chilling effect” on the State’s adherence to human rights standards – the fear of having to pay compensation causing the three states not to implement new human rights obligations.<sup>75</sup>

Amnesty also warned that other clauses in the Intergovernmental Agreement and the HGAs could further freeze out action by the three governments to protect the public interest. In particular, Amnesty and others expressed grave reservations about: the HGA’s stipulation that the pipeline may only be shut down in the event of an “imminent, material threat”; the specific denial within the Intergovernmental Agreement that the project has any public purpose (thus preventing governments from invoking a public interest defence for intervening to protect the public); and the wording of the clauses relating to security along the pipeline route, which could be used to justify severe human rights abuses.<sup>76</sup>

In September 2003, in an effort both to assuage concerns within the legal community and to ensure the support of the World Bank and other public funders, the BTC Co. published a Deed Poll, entitled the BTC Human Rights Undertaking,<sup>77</sup> in which it undertook not to invoke the compensation clauses in the HGA in the event of new laws being introduced for human rights or environmental reasons. Legal opinion, however, is divided on the efficacy of the Deed Poll, not least because it is only signed by the BTC Co. and does not form part

of the bundle of documents that constitute the prevailing legal regime. Indeed, the HGAs and Intergovernmental Agreement remain unaltered.<sup>78</sup>

Moreover, BTC Co. has since qualified its commitments under the Deed Poll, stating that it reserves the right to invoke the stabilisation clauses if it deems new legislation to constitute “rent-seeking”.<sup>79</sup> The Deed Poll also makes it clear that it does not apply where legislation introduced by the three governments is more stringent than EU standards, World Bank Group standards and existing international and human rights treaty obligations.<sup>80</sup> In effect, the Deed Poll places an explicit cap on the ability of the host governments to regulate as they (rather than BP) see fit, severely constraining their ability to pioneer new legislation that is more protective of the public interest than that in the European Union.

### **All the Powers of a State – without the Liabilities**

Susan Leubuscher, the researcher who first alerted the international NGO community to the colonial nature of the new legal arrangements being put in place by oil companies under the umbrella of BITs, through her work on Exxon’s Chad Cameroon oil pipeline, has warned that HGA-type contracts have the power to transform “multinational enterprises into *ad hoc* legal institutions with the power to dictate the law that governs their own relations with States and their activities within States.”<sup>81</sup>

Such powers are evident from the provisions of the HGAs negotiated for the BTC pipeline. But whilst the companies have imposed obligations on the states – and taken over a number of prerogatives of the state (for example, in the case of Exxon-Mobil’s Chad-Cameroon pipeline, the power to derogate from obtaining permits to enter private land<sup>82</sup>) – they themselves have been assiduous in protecting themselves from liability. Whilst, for example, the project agreements oblige the states to take any action necessary to protect the pipeline – a highly worrying prospect given the human rights record of the three states<sup>83</sup> – they also absolve the BTC consortium from

any liability for any human rights abuses that might arise.

The consortium has also sought considerable protection for itself in the event of a pipeline leak – which many consider an inevitability, particularly given the controversy over the choice of anti-corrosion coating for the pipeline.<sup>84</sup> The rights of individuals to sue for damages that arise from the operation of the pipeline are minimal and the chances of a fair hearing are slim. In addition, individuals are likely to have to act against not only the companies but also their own national governments, since investment agreements place the onus on the states to ensure that the pipeline is operated safely. In all three states, such a challenge by ordinary citizens – particularly if it was likely to result in major costs to the state – is likely to result in political pressure being exerted on the courts.

Indeed, whilst the Agreements have created legal certainty for the companies, they have only been able to do so by causing legal mayhem for ordinary citizens. The layer upon layer of agreements, coupled with the hybrid public/private nature of the contracts, have severely muddied the waters of redress for third parties, potentially denying citizens access to justice. Indeed, the European Bank for Reconstruction and Development, in a commentary on the agreements, itself acknowledges the uncertainties. “Clearly [a right of action for local citizens if BTC Co. breaches the environmental or social standards set out in the HGA] cannot accrue as a matter of contract, since the third party is not part of the HGA. However, the argument is that, by virtue of the ratification of the HGA as a part of local law, the right becomes part of domestic legislation. *Presumably* on this basis such a right would also be enforceable in domestic courts, not just through the mechanism of international arbitration set out in the HGA. This provision granting rights to third parties in this manner is unusual in the context of such agreements and an *interesting* development”<sup>85</sup> (emphasis added). Interesting perhaps for lawyers, but a matter of livelihood for those directly affected – and an issue on which citizens have a right to expect clarity, not experimentation.

## Undermining the Rule of Law

The use of HGAs is now openly endorsed by the multilateral development banks, such as the World Bank, which raised no public objections to the BTC contracts. On the contrary, the World Bank funded the BTC project, just as it had previously funded the Chad Cameroon pipeline, in the face of similar public concern over the project agreements.

Yet HGAs and the BITs under which they are being negotiated threaten more than just an increase in the power of already powerful corporations – problematic as this undoubtedly is. By allowing companies to supersede the state’s national and international human rights and environmental obligations, as built up through years of domestic and international negotiation and civil society pressure, they also threaten to undermine the comprehensive international, national and local legal frameworks that have been patiently and painfully established over the years – a comprehensive framework which, as Kofi Annan has stated, “makes the modern world a far better place to live than before.”<sup>86</sup>

Indeed, by lending their support to HGA-type project agreements, governments and multilateral institutions are taking foreign direct investment and corporate accountability in a direction that is precisely the opposite of that being encouraged by the UN. In that regard, the July 2003 report by the UN Commission on Human Rights on *Human Rights Trade and Investment* specifically recommends that investment agreements – far from overriding human rights law – should include among their objectives “the promotion and protection of human rights”.<sup>87</sup> It also recommends that States should “avoid the situation where a requirement to pay compensation might discourage States from taking action to protect human rights.”

## DELIVERING THE INDUSTRY WISH LIST

If HGAs are being used – in conjunction with BITs – to allow corporate power to dictate the laws that frame its infrastructure investment projects, Production Sharing

Agreements (PSAs) are being used to establish control over a state’s natural resources. And, like HGAs, PSAs are now being adapted to guarantee corporate profits at the expense of states.

PSAs were first developed in Indonesia in the late 1960s, at a time when the European empires around the world were collapsing. PSAs were seen by many as reflecting a new era of national control over resources, and a rejection of the colonial-era concession agreements that had persisted for more than 50 years previously. In response, industry insiders reportedly viewed PSAs as having “something Communist” about them.<sup>88</sup>

But, compared with the nationalisations that took place in most major oil-producing countries just a few years later, PSAs quickly seemed rather more appealing. Now they are oil companies’ contract of choice in most developing countries.

## Symbolic sovereignty

It was not long after the introduction of PSAs that oil companies realised that – despite their apparent differences – PSAs could deliver just the same results as the old concessions. In particular, PSAs can provide oil companies exactly what they most seek when investing in a country: guaranteed access to oil reserves; predictability of tax and regulation; and the opportunity to make large profits. And like the colonial-era concessions, they can do this through either reasonable or draconian legal measures.

Professor Thomas Wälde, an expert in oil law and policy at the University of Dundee, has described PSAs as “A convenient marriage between the politically useful symbolism of the production-sharing contract (appearance of a service contract to the state company acting as master) [combined with] the material equivalence of this contract model with concession/licence regimes in all significant aspects”.<sup>89</sup> He explains, “The government can be seen to be running the show – and the company can run it behind the camouflage of legal title symbolising the assertion of national sovereignty.”

PSAs refer to the private investor as a

“contractor”, while the state remains the owner or client. The implication is that the state calls the shots. However, in practice, the lead private company within the consortium is still the “operator”, making day-to-day decisions, while the rights and obligations of either side are at least as closely specified in a PSA contract as in a standard concession contract, and any not explicitly specified are not actionable. Like with HGAs, this may go so far as to deny the state the right to regulate or legislate.<sup>90</sup> As a result, the change from concessionaire to “contractor” is essentially a terminological, more than a substantive, one.<sup>91</sup>

Most PSAs specify that any disputes would be resolved not in the courts of the country concerned, but in international arbitration tribunals administered by the International Centre for Settlement of Investment Disputes (ICSID) in Washington, DC or the International Chamber of Commerce in Paris. These arbitration hearings are generally closed to other than contract parties and are presided over by tribunals consisting generally of corporate lawyers and trade negotiators – as such, they tend to narrowly favour commercial interests rather than broader issues of national interest or sovereignty. As Susan Leubuscher comments, “[The] system assigns the State the role of just another commercial partner, ensures that non-commercial issues will not be aired, and excludes representation and redress for populations affected by the wide-ranging powers granted [multinationals] under international contracts”.<sup>92</sup>

Also like HGAs, PSAs frequently contain stabilisation clauses, protecting the investor’s profits from future changes in regulation. Often this is done by requiring the state partner (usually the state oil company) to bear the “risk” arising from legislative change. Whereas formerly, such provisions were applied to changes in taxation, by making the state oil company liable for taxes (payable out of the state share of profit oil), more recent contracts apply the same approach to reduced profitability arising from legislation as well.<sup>93</sup>

The majority of PSAs are ratified as Acts of parliament, making them laws in their own right, and many are negotiated within the framework of the Energy Charter Treaty, or

make reference to BITs, thus nestling them within international agreements. Like the BTC Host Government Agreements, the provisions of PSAs generally include clauses setting out exemptions to national laws and obligations to compensate companies in the event of new legislation interfering with profits.<sup>94</sup>

### **Maintaining the economic status quo**

PSAs also have profound economic implications for states, in the extraction of their non-renewable resources.

PSAs appear to shift the ownership of oil from companies to state, and invert the flow of payments. The mechanism is based on the division of the extracted oil into ‘cost oil’, which is used to repay development and production costs, and the remaining ‘profit oil’, which is shared between company and state in agreed proportions.

Whereas in a concession system, foreign companies are granted rights to the oil, and must compensate host states through royalties and taxes, in a PSA, the oil is defined as the property of the state, and the foreign companies are compensated both for the costs they have expended (through ‘cost oil’), and for the risk they have taken in investing their capital (through their share of ‘profit oil’).

But just as a concession system can set any rate of tax and royalty (in theory, anywhere between 1% and 99%), so in a PSA, the profit oil can be split in any proportion (as can other features of the PSA).

There is a clear parallel with the legal aspects discussed above. In one of the standard textbooks on petroleum fiscal arrangements, industry consultant Daniel Johnston comments:<sup>95</sup> “At first [PSAs] and concessionary systems appear to be quite different [from each other] symbolic and philosophical differences, but these serve more of a political function than anything else. The terminology is certainly distinct, but these systems are really not that different from a financial point of view”.

Importantly, PSAs are like concession systems in giving oil companies the potential for enormous profits. Unlike technical service contracts, where a contractor (often

a company like the US oil services company Halliburton) receives a fixed fee for services carried out for a client (for example, a state oil company), or risk service contracts, where the contractor receives a specified rate of return on capital invested, in PSAs a company receives a share of overall profits from the venture.

In a project to extract natural resources, there are high risks that resources may not be found (exploration risk), that the development may not go to plan, or may over-run on costs (development risk), or that the project may be made unprofitable by changes in commodity prices (price risk). Meanwhile, large up-front capital investment is required to develop the infrastructure to extract the resource. The theory behind the PSA and concession models – and the model under which major oil companies like BP, ExxonMobil and Shell operate, in contrast to service companies like Halliburton – is that capital is risked by an investor. In some cases the project will be unsuccessful and the capital will be lost; these cases are offset by the successful ones, where very large profits are obtained.

While this model may be appropriate in some cases where risks are too high for a state to bear itself, or where a project is beyond the state's technical competence, they are increasingly being applied to lower-risk situations, in particular in the states of the Former Soviet Union. In countries such as Russia, Kazakhstan and Azerbaijan, PSAs – contracts designed to deal with high risk – are being applied to fields that were already discovered during the Soviet era, where the exploration risk is reduced to nil, in states that already possess considerable technical competence from their long history in the oil industry. As we shall see, much the same process is now being pushed – even more inappropriately – in Iraq.

### **Complexity as a weapon**

Oil companies consistently argue for taxation to be based on profits, not on production. They argue that profit taxes can respond more effectively to economic circumstances, and ensure that the state obtains a share of

any excess profits. This may be true, but there is another respect in which systems such as PSAs appeal to investors: that they are more complex.

At the other end of the scale from PSAs, the simplest system of payment to a state by a private investor which extracts its natural resources is the royalty, whereby a percentage of the total value of the resource is paid to the state, effectively 'buying' the resource. In this case, the amount owed by the company is readily and easily reckoned – it is a straight percentage of the output volume, multiplied by oil price.

But in a PSA, the system's very complexity throws up numerous ways in which companies can reduce their tax payment by the clever use of accountancy techniques. Not only do multinationals have access to the world's largest and most experienced accountancy companies, they also know their business in more detail than the government which is taxing them, so a more complicated system tends to give them the upper hand.

Thus a company can obtain profit not just from the *profit oil*, but also from *cost oil*. Although that is not intended in the deal, careful accounting and financial management can allow the companies to exploit loopholes in the tax rules. For this reason, the details of how profits are calculated, what costs are allowable and so on are very important.

Furthermore, while it is possible to devise ever more sophisticated tax systems, which respond better to both circumstances and policy priorities, the drawback is that complexity removes transparency: if the tax system is understandable only to experts, there is little chance of public accountability. Production sharing agreements often consist of several hundred pages of technical, legal and financial language. Even when they are not treated as commercially confidential (which they often are), they do not lend themselves to public scrutiny.

One result of this complexity can be that even when a government thinks it has got a good deal, it may later find itself receiving rather less income than it had bargained for – even in countries with long experience of oil development.

For example, in the Sakhalin II project in Russia's Far East, currently being developed by a Shell-led consortium, the way the PSA is written, all cost over-runs are effectively deducted from the state's revenue, not the consortium's profits.<sup>96</sup> During the planning and early construction of the project, costs have inflated dramatically. In February 2005, the Audit Chamber of the Russian Federation found that, as a result of the terms of the PSA, cost over-runs had already cost the Russian state \$2.5 billion.<sup>97</sup>

### **Guaranteeing profits**

Russia's Sakhalin II and Azerbaijan's Azeri-Chirag-Guneshli (ACG) PSAs are examples of a newer form of PSA, designed to guarantee private investors' profits. As explained above, PSAs divide 'profit oil' between state and private company in agreed proportions. In a more complex form, this split is not fixed at one level, but is given a sliding scale, intended to reflect the profitability of the venture.

The theory is that the more profitable a venture, the quicker costs are recovered, and so, the more is available for the state. Initially, the sliding scale was set according to the rate of production or cumulative production from a field. For example, in Syria, the state's share of profit oil ranges from 79% for fields producing less than 50,000 barrels per day, to 87.5% for fields producing more than 200,000 barrels per day.

Within these, production rates were used as a proxy for profitability – in general, the larger a field, the more profitable it is. A newer innovation was to base the sliding scale more directly on profitability – either the company's internal rate of return, or an 'R'-factor, which is defined as the ratio of cumulative receipts to cumulative expenditures.<sup>98</sup>

In the ACG PSA, the Azerbaijan state only gets 30% of the profit oil until the BP-led consortium has achieved 16.75% rate of return – a comfortable level of profits. After that, the state's share goes up to 55%. Only after the consortium has achieved a 22.75% rate of return – a high level of profits – does the state's share of profit oil go up to a more normal 80%.<sup>99</sup>

The Sakhalin II PSA goes even further. In that case, the Russian state gets no profit oil until the Shell-led consortium has achieved 17.5% rate of return. The state then receives just 10% for a further two years, and then 50% until the consortium has obtained 24% rate of return, after which the state receives 70%.<sup>100</sup>

Much as with the opposition to royalties, the argument for rate-of-return style PSAs is based on allowing the state to capture a reasonable share of profits, but in practice the impact can favour the investor. Effectively, there are three consequences:

1) the investor's profits are effectively guaranteed, by denying the state a fair share of revenue until the specified profit has been achieved;

2) while the specified level of profits is assured, this does not preclude the investor from obtaining much higher profits (at the more normal, lower share of profit oil);

3) it is in the investor's interests to inflate costs (a process known as 'gold-plating'), especially if the company can sub-contract operations to another company in the same group (for example, from one Shell subsidiary to another Shell subsidiary) – as the subcontractor profits from its work, the project operator still profits according to the PSA, and the state gets little or nothing.

As such, investors transfer much of their risk back to the state. The investor has achieved the gambler's dream – guaranteed comfortable profits, with a opportunity if successful of enormous profits.

### **FROM THE CASPIAN TO IRAQ**

Having used PSAs and HGAs to establish control over the production and transport of oil out of the Former Soviet Union, oil companies see Iraq as a new frontier to push the approach out more widely.

Indeed, this move can be seen in one of the key players that pushed corporate-friendly tax and investment regimes in the Former Soviet Union, the lobby group International Tax and

Investment Center (ITIC).<sup>101</sup> Since its launch in 1993, ITIC has primarily focused on the former Soviet Union, and has offices in Baku, Almaty, Astana, Moscow and Kiev. More recently, it has expanded its work to lobbying for the use of PSAs in Iraq's oil industry.<sup>102</sup> Its 2004 strategy review concluded that this project "should be continued and considered as a "beachhead" for possible further expansion in the Middle East."<sup>103</sup>

Although oil was excluded from the sweeping privatisations enacted by US administrator Paul Bremer in 2003, major moves to open the sector to multinational oil companies are now imminent. A Petroleum Law will be enacted soon after the elections in early 2006, which according to sources in the government, will allocate all of Iraq's oilfields that are not currently in production to multinational oil companies. This is most likely to be through production sharing agreements (PSAs), the mechanism favoured by the oil companies.

Only 17 of Iraq's 80 known fields, and 40 billion of its 115 billion barrels of known reserves, are currently in production.<sup>104</sup> Thus the policy potentially allocates to foreign companies 64% of known reserves. If a further 100 billion barrels are found, as is widely predicted, the foreign companies would control 81% of the total, and if 200 billion were found, as some suggest, they would have 87%.

Officials in the Oil Ministry have publicly announced that long-term contracts will be signed with foreign oil companies during the first nine months of 2006.<sup>105</sup> In order to achieve this goal, officials have stated that negotiations should begin with the companies during the second half of 2005, in parallel with the writing of the Petroleum Law, in order to be able to sign soon after the law is enacted.<sup>106</sup>

These policies have been pushed heavily by the USA and the UK. Their roots lie in the US State Department prior to the 2003 invasion. In 2002, the State Department established its Future of Iraq project, in which Iraqi exiles and members of the then opposition, including current Oil Minister Ibrahim Bahr al-Uloum, met with US officials to plan for

the future of Iraq after regime change. One of the group's key recommendations was the use of PSAs, with favourable terms to attract the companies.<sup>107</sup>

The Coalition Provisional Authority (CPA) appointed former senior executives from oil companies to begin setting up the framework for long-term oil policy. The first advisers were appointed in January 2003, before the invasion even started, and were stationed in Kuwait ready to move in. First, there were Phillip Carroll<sup>108</sup>, formerly of Shell, and Gary Vogler, of ExxonMobil, backed up by three employees of the US Department of Energy and one of the Australian government. They were replaced in October 2003 by former executives of BP and ConocoPhillips. Shell itself was lobbying for the use of PSAs.<sup>109</sup>

During his first period as Oil Minister under the CPA and the Iraqi Governing Council, Bahr al-Uloum told the *Financial Times* that he was preparing plans for the privatisation of Iraq's oil sector, but that no decision would be taken until after the 2005 elections. He commented that: "The Iraqi oil sector needs privatisation, but it's a cultural issue", noting the difficulty of persuading the Iraqi people of such a policy. He further announced that he personally supported production-sharing agreements for oil development, giving priority to US oil companies "and European companies, probably".<sup>110</sup>

In August 2004, Interim Prime Minister Ayad Allawi issued a set of guidelines to the Supreme Council for Oil Policy, from which the Council was to develop a full petroleum policy – a policy that would eventually develop into the Petroleum Law. Allawi's guidelines specified that existing fields would be developed by the Iraq National Oil Company (INOC) and new fields by private companies through production sharing agreements.<sup>111</sup> He added that the Iraqi authorities should not spend time negotiating good deals with the companies, but should proceed quickly with terms that the companies will accept, while leaving open the possibility of later renegotiation.

In June 2005, Ministry officials announced

that they were actively seeking discussions with multinational oil companies on the development of 11 oilfields in the south of Iraq, remaining open as to what type of contract would be used, and had held preliminary talks with BP, Chevron, Eni and Total.<sup>112</sup> The following month, the Ministry announced that alongside these direct discussions, it was also considering a licensing round, in which oil companies would bid for production sharing agreements on both known fields and exploration blocks.<sup>113</sup>

The precise terms of PSAs are subject to negotiation; however, once signed, they are fixed for 25-40 years, preventing future elected governments from changing the contract. Thus the contractual terms for the following decades will be based on the bargaining position and political balance that exists at the time of signing – a time when Iraq is still under military occupation. In Iraq's case, this could mean that arguments about political and security risks in 2006 could land its people with a poor deal that long outlasts those risks, and denies large chunks of revenue to a potentially more stable, and independent, Iraq of the future.

Given the central role of oil in Iraq's economy, and the long-term nature of the contracts, Iraq's rapid moves towards handing its undeveloped oilfields to multinational oil companies through production sharing agreements are a cause for concern. That this is occurring without public debate is wholly unacceptable. It is up to the people of Iraq how they choose to develop their oil; transparency and the provision of accurate information to inform debate are absolutely crucial.

### **BIT BY BIT: ESTABLISHING INTERNATIONAL LAW BY DEFAULT**

As the use of PSAs, HGAs and BITs proliferate, so corporate power's institutional allies are once again pushing for a binding international investment agreement, arguing that the provisions established in BITs are now so generalised that they effectively constitute international customary law<sup>114</sup> – and that a new international framework is necessary to avoid the development of “multiple, bespoke regimes rather than a

generic legal structure”.<sup>115</sup>

BIT by BIT, agreement by agreement, the path is being laid to what corporate power has sought since the early 1970s – an international agreement, backed by the retaliatory measures available to bodies such as the World Trade Organisation, that would lock countries into an investment regime that puts investors' rights above those of the host country, its citizens and its environment.

There is, however, nothing inevitable about the process – much as corporate power would like to portray it as such. HGAs, BITs and PSAs are now major obstacles in the struggle for economic democracy. Supporting the emerging opposition to the corporate takeover of Iraq's oil wealth is perhaps one of the best starting points for a more general, globalised resistance. ■

### **Notes:**

<sup>1</sup> “We won't be bullied”, Transitions Online, 9 August 2004

<sup>2</sup> Quoted in Eviatar, D., “Wildcat Lawyering”, *American Lawyer*, 4 November, 2002

<sup>3</sup> Between 1991 and 2000, national governments introduced 1,185 regulatory changes, 95% of which were intended to create a more favourable legal regime for inward investment by foreign companies. See: Leubuscher, S., *Multinational Enterprises – Masters of the Legal Universe*, EU Forest Watch, June 2003, available from [www.fern.org](http://www.fern.org).

<sup>4</sup> Performance standards are measures which require foreign investors to achieve certain outcomes to foster investment, such as reinvesting a portion of profits domestically or undertaking to transfer technology. For discussion, see: Oxfam International, “The Danger of an investment agreement in the WTO”, in Seattle to Brussels Network, *Investment and Competition Negotiations in the WTO – What's wrong with it and what are the alternatives?*, October 2002, p.5.

<sup>5</sup> Companies view constraints on transferring capital related to their investments out of a host country as a violation of what they consider a fundamental right. However, such constraints on capital transfers are a critical tool of economic management for governments during times of financial difficulties and are recognized as such in many bilateral investment agreements. See: Peterson, L.E., *UK Bilateral Investment Treaty Programme and Sustainable Development: Implications of bilateral negotiations on investment regulation at a time when multilateral talks are faltering*, Royal Institute for International Affairs, February 2004, p.8.

<sup>6</sup> For a brief history of investment agreements, see: Singh, K., “Multilateral Investment Agreement in the WTO: Issues and Illusions”, *Public Interest Research Centre/Asia Pacific Research Centre*, 2003, pp.10-12.

<sup>7</sup> Between 1985 and 2000, the number of Bilateral Investment Treaties (BITs) quadrupled, rising from 385 at the end of the 1980s to a total of 2,265 in 2003, involving 176 countries. Typically, such BITs require non-discrimination against foreign investors; place constraints on the rights of States to

expropriate foreign investments and guarantee compensation where expropriation takes place; and guarantee the right of investors to transfer capital abroad, albeit with certain exemptions. See: [http://www.unctadxi.org/templates/Page\\_1007.aspx](http://www.unctadxi.org/templates/Page_1007.aspx); UNCTAD, *Bilateral Investment Treaties 1959-1999*, UNCTAD/ITE/IIA/2, New York and Geneva, 2000; UNCTAD, *World Investment Report 2003: FDI Policies for Development, National and International Perspectives*, United Nations, New York and Geneva, 2003; Cosbey, A., Mann, H., Peterson, L.E., von Moltke, K., *Investment and Sustainable Development: A guide to the Use and Potential of International Investment Agreements*, Institute for Sustainable Development, 2004, p.1; *International Human Rights in Bilateral Investment Treaties and in Investment Treaty Arbitration: A research paper by the International Institute for Sustainable Development (IISD) for the Swiss Department for Foreign Affairs*, April 2003.

<sup>8</sup> The Organisation for Economic Cooperation and Development is a grouping of the world's 29 richest countries. The MAI was roundly rejected by national parliaments and the public after its contents were leaked to non-governmental organisations and broadcast on the internet. Branded a "corporate charter" by its critics, due to concerns over its social and environmental implications, the MAI provoked demonstrations on the streets of several OECD capitals. Opponents ranged from environment and development NGOs to consumer groups, human rights bodies, trade unions, local governments, parliamentarians and church groups. The MAI negotiations, initiated in 1995, finally fell apart in 1998. The MAI was criticised for protecting the interests of the investor without any corresponding attention being paid to establishing legally-binding investor obligations and accountability. Its proposed "investor-state" dispute mechanism, involving closed tribunal hearings, was also seen as biased in favour of companies and lacking in mechanisms which would give effective legal standing to citizens to bring actions.

<sup>9</sup> At the 2003 Ministerial Conference of the World Trade Organisation in Cancun, the European Union pressed for negotiations on investment to be included in the Doha Round of the WTO but opposition from southern countries led to the EC withdrawing its demand.

<sup>10</sup> Most BIT disputes are conducted in closed session. However, research by the International Institute for Sustainable Development has identified BIT disputes challenging environmental regulation, land-planning and government oversight of essential public services such as water and sanitation. See: Peterson, L.E., *Emerging Bilateral Investment Treaty Arbitration and Sustainable Development*, Research Note, International Institute for Sustainable Development, 2003, available from: [http://www.iisd.org/pdf/2003/investment\\_investsd\\_note\\_2003.pdf](http://www.iisd.org/pdf/2003/investment_investsd_note_2003.pdf)

<sup>11</sup> For a discussion on the use of BITs to promote corporate-friendly intellectual property regimes, see: Correa, C. M., *Bilateral Investment Agreements: Agents of new global standards for the protection of intellectual property rights*, GRAIN, August 2004, available from <http://www.grain.org/briefings/?id=186>. Correa's study concludes that the intellectual property clauses in BITs and investment chapters of free trade agreements "go beyond international norms since they extend to intellectual property rights not covered by the World Trade Organisation (WTO) TRIPS Agreement and incorporate the 'national treatment' principle without the exceptions provided for under international treaties".

<sup>12</sup> Sinclair, A.C., "The Origins of the Umbrella Clause in the International Law of Investment Protection", *Arbitration International* 20, 2005.

<sup>13</sup> See: Sinclair, A.C., "The Origins of the Umbrella Clause in the International Law of Investment Protection", *Arbitration International* 20, 2005; "The International Court of Justice

declined jurisdiction because the terms of Iran's acceptance of the Court's compulsory jurisdiction under the Optional Clause was considered insufficiently wide to include a case that raised allegations of breaches of customary international law, rather than treaties: *Case covering the Anglo-Iranian Oil Company Limited (United Kingdom v Iran) (Preliminary Obligations) Judgment of 22 July 1952, 1952, ICJ Pleadings, Oral Arguments and Documents* 93."

<sup>14</sup> See, for example, Yergin, D., *The Prize*, pub Simon & Schuster, 1991, pp.450-478

<sup>15</sup> See Sinclair, A.C., "The Origins of the Umbrella Clause in the International Law of Investment Protection", *Arbitration International* 20, 2005.

<sup>16</sup> As Sinclair reports, "[The proposal was for] two instruments: (1) a contractual 'Consortium Agreement' between the Iranian Government and the National Iranian Oil Company, on the one hand, and on the other a consortium of oil companies including AIOC that would continue to operate a sector of the oil industry; and (2) an umbrella treaty that would incorporate the Consortium Agreement by annex and that would contain a provision by which the Iranian Government guaranteed on behalf of itself and NIOC to fulfill its terms." See: Sinclair, A.C., "The Origins of the Umbrella Clause in the International Law of Investment Protection", *Arbitration International* 20, 2005.

<sup>17</sup> For a description of the role played by international law firms, notably Baker Botts, the Houston-based energy law specialists, see: Eviatar, D., "Wildcat Lawyering", *American Lawyer*, 4 November, 2002

<sup>18</sup> Such contracts – known as "state contracts" or "investment agreements" – come in many forms, from procurement contracts to turnkey agreements, Build-Operate-Transfer (BOT) agreements and Production Sharing Agreements.

<sup>19</sup> Reyes, A.S., "Protecting the 'Freedom of Transit of Petroleum': Transnational Lawyers Making (Up) International Law in the Caspian", *Berkeley Journal of International Law* 24, (forthcoming June 2006) (manuscript on file with author).

<sup>20</sup> Subsequently, after pressure from NGOs on the multilateral development banks and export credit agencies funding the project, the agreements were made public. They are now available from: [www.caspindevelopmentandexport.com](http://www.caspindevelopmentandexport.com)

<sup>21</sup> Reyes, A.S., "Protecting the 'Freedom of Transit of Petroleum': Transnational Lawyers Making (Up) International Law in the Caspian", *Berkeley Journal of International Law* 24, (forthcoming June 2006) (manuscript on file with author).

<sup>22</sup> For detailed analysis of the legal implications of the agreements, see: Carrion, M., "Preliminary Analysis of the Implications of the Host Government Agreement between Turkey and BTC Consortium", *Baku Ceyhan Campaign*, October 2002, [www.baku.org.uk](http://www.baku.org.uk); Susan Leubuscher, 2 June 2003, "The privatisation of justice: international commercial arbitration and the redefinition of the state". <http://www.fern.org/pubs/reports/dispute%20resolution%20essay.pdf>; Amnesty International, *Human Rights on the Line – The Baku-Tbilisi-Ceyhan pipeline project*, London, May 2003; Reyes, A.S., "Protecting the 'Freedom of Transit of Petroleum': Transnational Lawyers Making (Up) International Law in the Caspian", *Berkeley Journal of International Law* 24, (forthcoming June 2006) (manuscript on file with author).

<sup>23</sup> For examples, see: Peoples' Republic of China, *Draft Concession Agreement, Article 26* – "The validity, interpretation and implementation of this agreement shall be governed by the laws of the Peoples' Republic of China", [www.chineseinfrastructure.com/pg45\\_e.htm](http://www.chineseinfrastructure.com/pg45_e.htm); Government of Macedonia, *Law on Concession, Article 8* – "The concession shall not be used contrary to the law and international agreements ratified by the Republic of Macedonia", [www](http://www)

[libertas-institut.com/de/MK/nationallaws/concession.pdf](http://libertas-institut.com/de/MK/nationallaws/concession.pdf); Government of India, National Highways Authority Concession Agreement, Jaipur-Kishangarh Highway, Article 43.1 – “This agreement shall be construed and interpreted in accordance with and governed by the laws of India”, [www.nhai.org/fvb.pdf](http://www.nhai.org/fvb.pdf)

<sup>24</sup> For further discussion, see: Susan Leubuscher, 2 June 2003, ‘The privatisation of justice: international commercial arbitration and the redefinition of the state’, <http://www.fern.org/pubs/reports/dispute%20resolution%20essay.pdf>; Leubuscher, S., ‘The Privatisation of Law’ MRes thesis, Birkbeck College, 2003;; Amnesty International, Contracting out of Human Rights – The Chad-Cameroon Pipeline Project, 2005, [http://web.amnesty.org/library/pdf/POL340122005ENGLISH/\\$File/POL3401205.pdf](http://web.amnesty.org/library/pdf/POL340122005ENGLISH/$File/POL3401205.pdf); Boyd-Carpenter, H. and Labedi, W., “Striking a balance: Intergovernmental and host government agreements in the context of the Baku-Tbilisi-Ceyhan pipeline project”, LIT Online, EBRD, 2004, [www.ebrd.com/pubs/legal/OL04e.pdf](http://www.ebrd.com/pubs/legal/OL04e.pdf); Reyes, A.S., “Protecting the ‘Freedom of Transit of Petroleum’: Transnational Lawyers Making (Up) International Law in the Caspian”, Berkeley Journal of International Law 24, (forthcoming June 2006) (manuscript on file with author).

<sup>25</sup> Boyd-Carpenter, H. and Labedi, W., “Striking a balance: Intergovernmental and host government agreements in the context of the Baku-Tbilisi-Ceyhan pipeline project”, LIT Online, EBRD, 2004, [www.ebrd.com/pubs/legal/OL04e.pdf](http://www.ebrd.com/pubs/legal/OL04e.pdf) <sup>26</sup> Many pipelines have “umbrella” or “framework” agreements between the governments of the countries concerned but as Boyko Nitzov, Senior Expert (Investment) of the Energy Charter Secretariat, notes of those for Turkmenistan, Kazakhstan, China and Russia, “such agreements are often just non-binding political declarations that do not have much of an impact on national pipeline laws and regulations or investor risks”. See: Nitzov, B., “The Energy Charter view on financing barriers, options, strengths and weaknesses – what is need (sic)”, <http://www.cbss.st/basrec/conferences/dbaFile4184.doc>.

<sup>27</sup> The project agreements set up a legal hierarchy in which local law is relegated to the bottom rung. The main categories of the hierarchy are listed below: 1) The Constitution of the Republic of Turkey; 2) The Inter-Government Agreement (IGA); 3) The Host Government Agreement (HGA); 4) Turkish domestic law not superseded by the IGA or HGA; 5) Other regulatory requirements such as Governmental Decrees, Regulations, Communiqués, Ministerial Orders, Instructions, to the extent that they do not conflict with the IGA or HGA.

<sup>28</sup> For examples of exemptions to environmental impact assessment regulations being granted in the forestry sector, see: Miranda, M. with Blanco-Urbe, A., Hernandez, L., Ochoa J. G., and Yerena, E., All that glitters is not Gold: Balancing conservation and development in Venezuela’s frontier forests, World Resources Institute, 1998, [http://forests.wri.org/pubs\\_description.cfm?PubID=2912](http://forests.wri.org/pubs_description.cfm?PubID=2912).

<sup>29</sup> The project was developed by the Belize Electric Company (BECOL), which at the time was 90 per cent owned by Fortis Inc of Newfoundland Canada. For further details of the project, see <http://www.stopfortis.org>

<sup>30</sup> Third Master Agreement between Government of Belize and Belize Electric Company Limited and Belize Electricity Limited, Franchise Agreement, Section 7.1, p.27: “The government covenants and agrees to waive, or cause to be waived, and indemnify the Producer against any private action under or with respect to, any or all environmental laws, rules or regulations now existing, or created hereafter, to which the Mollejon Project and the New Project may be subject other than any laws, rules or regulations set forth in the Mollejon Project Compliance Plan and the New Project Compliance Plan, as the case may be, to which the Producer

has agreed to be bound.” The project documents are available from <http://www.stopfortis.org/3rdMasterAgreement.pdf>

<sup>31</sup> Ibid, Section 12.1, p.29.

<sup>32</sup> Government of Belize, Macal River Hydroelectric Development Act 2003, Para 4 (d): “For the avoidance of doubt and for greater certainty, BECOL [Belize Electric Company Limited] shall proceed with the design, financing, construction and operation of the Chalillo Project in accordance with paragraphs (a), (b) and (c) of this section notwithstanding any judgment, order or declaration of any court or tribunal, whether heretofore or hereafter granted, issued or made” (emphasis added).

<sup>33</sup> Orellana, M., Personal communication, 29 September 2005.

<sup>34</sup> The resistance of host governments to the agreements is indicated by Stuart Schaffer, an international tax partner at Baker Botts: “We had to say to the government a lot, ‘If you don’t create a usable legal structure, no one will invest in this.’” See: Eviatar, D., “Wildcat Lawyering”, American Lawyer, 4 November, 2002.

<sup>35</sup> Center for International Environmental Law, “The Baku-Tbilisi-Ceyhan Pipeline Project Compromises the Rule of Law”, Washington DC, October 2003.

<sup>36</sup> Letter of 26 November 2002 from Nino Chkhobadze (Georgian Minister for the Environment) to BP CEO John Browne

<sup>37</sup> Letter of November 7 2002, from David Woodward (BP Azerbaijan) and Natiq Aliyev (Socar) to Eduard Shevardnadze. The US special envoy on energy, Steven Mann, was called in to “mediate” the dispute, and began by saying that if Georgia did not approve the routing within the deadline, it would not get investment in other big energy projects [Rustavi-2 TV, 25 Nov 02, reported on BBC Monitoring, ‘Georgian environment minister under pressure to back pipeline impact report’].

<sup>38</sup> AFP, ‘Georgia approves \$2.9bn oil pipeline’, 2 December 2002

<sup>39</sup> Letter from Dr. Huseyin Sungur, Ministry of Agriculture and Rural Affairs (General Directorate of Protection and Control) to General Directorate of Petroleum Pipeline Corporation, “BTC Crude Oil Pipeline Project EIA Activities”, 29 November 2001, in EIA, Appendix A8 – Consultation Results, October 2002: “It is stated that regarding the Baku-Tbilisi-Ceyhan crude oil pipeline project, site investigation is not required by the Ministry of Environment, General Directorate of Environmental Impact Assessment and Planning, in accordance with the Host Government Agreements . . .”

<sup>40</sup> Letter from Prime Ministry Undersecretariat of Maritime Affairs, General Directorate of Marine Transportation, to Petroleum Pipeline Corporation, 30 November 2001, in EIA, Appendix A8 – Consultation Results, October 2002, A8-30. The letter states: “. . . our country undertook some commitments by means of the completion of the project on time according to the statements of the project agreement, accordingly, in order to assure that the project activities would be carried out as determined in the agreements and within the designated period, we are under the obligation of taking the required permission, licence and documents within 30 days beginning from the presentation date of the project stipulations, in that context the EIA Report studies was started, the EIA Procedure was carried out different than the EIA Regulations . . .” (italics added).

<sup>41</sup> Article 8 of Turkish Expropriation Law states that “the administration [in this case, BOTAS] shall assign one or more than one reconciliation commission ... for the purpose of executing and completing the purchasing works through bargaining over the estimated cost and through barter... the

bargaining negotiations shall be held on a date designated by the commission.” (Italics added)

By contrast, the Resettlement Action Plan explicitly rules out any bargaining or bartering in the negotiation process. In its clearest explanation of the procedure that has been adopted, it states: “The Negotiations Commission begins discussions with landowners based on the range of land values established by the Valuation Commission. The “negotiation” process does not consist of bargaining. Indeed, as mentioned in Chapter 2, the negotiation commission has no room for bargaining. Rather, this commission explains the basis of valuation to affected communities and each of the affected titled deed owners. It provides detailed information obtained from each source specified under the Law and shows how valuation decisions have been reached.” See: RAP Turkey Final Report, Chapter 5: Land Acquisition Procedures, 5.2.2, pp.5-12, November 2002. For more instances of this nature see Baku-Ceyhan Campaign, International Fact-Finding Mission: Baku-Tbilisi-Ceyhan Pipeline—Turkey Section, June 2003.

<sup>42</sup> BP, Response to NCP Request Filed by Friends of the Earth Against Project, unpublished, March 2004, p. 9.

<sup>43</sup> BP, Response to NCP Request Filed by Friends of the Earth Against Project, unpublished, March 2004, p.9.

<sup>44</sup> BTC, Citizens Guide to the BTC Project Agreements: Environmental, Social and Human Rights Standards”, p.6: “It is important to note that the legal arrangements for BTC do not replace existing laws and regulations but are designed to build on and supplement the legal framework, and only supersede provisions that directly conflict with the project agreement requirements.”

<sup>45</sup> BTC, “Citizens Guide to the BTC Project Agreements: Environmental, Social and Human Rights Standards”, [www.caspiandevlopmentandexport.com](http://www.caspiandevlopmentandexport.com). The Guide acknowledges (p.6) that the project’s legal regime grants investors the power to “supersede provisions that directly conflict with project agreement requirements.”

<sup>46</sup> Intergovernmental Agreement, [www.caspiandevlopmentandexport.com](http://www.caspiandevlopmentandexport.com), Article 4. The standards specified are “international standards and practices within the Petroleum pipeline industry”. Although the Agreement sets a floor by requiring that such standards should “in no event be less stringent than those generally applied within member states of the European Union”, BP has acknowledged in meetings with NGOs that there are no “petroleum pipeline industry standards” (EU or otherwise) covering social and human rights – and that such standards as exist are primarily technical.

<sup>47</sup> BTC Co., Briefing note on environmental standards, Applicability and Enforcement, Supplementary Lenders Information, Final, June 2003.

<sup>48</sup> See for example, Host Government Agreement (Turkey), Appendix 5, Paras 3.3 / 4.2: “If any regional or intergovernmental authority having jurisdiction enacts or promulgates environmental standards relating to areas where Pipeline Activities occur, the MEP Participants and the Government will confer respecting the possible impact thereof on the Project, but in no event shall the Project be subject to any such standards to the extent they are different from or more stringent than the standards and practices generally prevailing in the international Petroleum pipeline industry for comparable projects.

<sup>49</sup> Amnesty International, Human Rights on the Line – The Baku-Tbilisi-Ceyhan pipeline project, May 2003.

<sup>50</sup> Intergovernmental Agreement, Article IV: “Each State shall cooperate and coordinate with the others and the applicable Project Investors in the formulation and establishment of uniform technical, safety and environmental standards for

the construction, operation, repair, replacement, capacity expansion or extension (such as laterals) and maintenance of the Facilities in accordance with international standards and practices within the Petroleum pipeline industry (which shall in no event be less stringent than those generally applied within member states of the European Union) and the requirements as set forth in the relevant Host Government Agreement, which shall apply notwithstanding any standards and practices set forth in the domestic law of the respective State” (italics added).

<sup>51</sup> BTC Supplementary Lenders Information Pack, “BTC Briefing Note on Environmental Standards, Applicability and Enforcement, Final”, June 2003, p. B3. The SLIP states: “The reference to EU standards provides a benchmark and floor for what must be considered ‘international standards and best practices’ for the purpose of the Project. As a result, the IGA [Intergovernmental Agreement] ensures that the BTC project must meet or exceed EU standards” (emphasis added).

<sup>52</sup> In fact, the only binding EC law relating to pipelines is Directive 94/22/EC on the conditions for granting and using authorizations for the prospecting, exploration and production of hydrocarbons. Its Article 6(2) states that ‘Member States may, to the extent justified by national security, public safety, public health, security of transport, protection of the environment, protection of biological resources and of national treasures possessing artistic, historic or archaeological value, safety of installations and of workers, planned management of hydrocarbon resources (for example the rate at which hydrocarbons are depleted or the optimization of their recovery) or the need to secure tax revenues, impose conditions and requirements on the exercise of [hydrocarbon activities]’. Since neither the BTC host States nor the corporation involved in the project are Member States of the European Union, however, the Directive will not apply to them.

<sup>53</sup> Neither the IGA nor the individual Host Government Agreements (HGAs) nor the Environmental and Social Impact Assessment define the meaning of the phrase “European standards”. Although BTC Co’s Human Rights Undertaking specifically equates “European Standards” with “European Union Directives”, the document does not form part of the legal regime for the project. BTC Co has therefore replaced the clear-cut, legally-binding framework provided by enforceable host government legislation with a floor that lacks legally-enforceable definition.

<sup>54</sup> This interpretation is suggested by the Environmental and Social Impact Assessment’s statement that: “All aspects of the Project will be undertaken in accordance with . . . EC Directives.” See: EIA Commitments Register, unpaginated, ID APCiE17. See also: ID APCiE16: “The guidelines and standards set by the following organisations will also apply to the BTC project . . . European Union Directives and Guidance.”

<sup>55</sup> BTC Co has confirmed that “the standards referenced [in the Environmental and Social Impact Assessment] are part of the prevailing legal regime governing the BTC project in each of the host countries.” See: BTC Supplementary Lenders Information Pack, “BTC Briefing Note on Environmental Standards, Applicability and Enforcement, Final”, June 2003, p.B3.

<sup>56</sup> BTC Environmental Impact Assessment, Supplementary Lenders Information Pack, Part D: Turkey, “Para 4.3.2 Environmental standards”, p.51.

<sup>57</sup> The three directives are: Directive 1999/32/EC Limiting Sulphur Content in Certain Liquid Fuels; Directive 78/659/EEC; and the LCP Directive 2001/80/EC.

<sup>58</sup> BTC Pipeline Project – Matrix of Environmental Standards and Guidelines, March 2003, [www.caspiandevlopmentand](http://www.caspiandevlopmentand)

xport.com

<sup>59</sup> As the UK Export Credits Guarantee Department (ECGD) stated in oral evidence to the Trade and Industry Committee on 16th November: “It is the first time [SPC 2888] has been used on a pipe with the polyethylene coating”. [Minutes of Evidence taken before Trade and Industry Committee: ECGD Support for the Baku-Tbilisi-Ceyhan Pipeline, 16 November 2004, Tuesday 16th November 2004, Q 23.

<sup>60</sup> Gillard, M., Evidence to UK Trade and Industry Committee, Second Submission, 1st October 2004. Gillard points out: (i) All but one of the eight studies carried out on SPC 2888 to ensure it was the right choice were done long after BP awarded the contract (para 33); (ii) cold weather and curing tests of SPC 2888 were only conducted in the region in August and September 2003 (para 91); and (iii) a curing regime was only developed in December 2003 – after the coating had been applied and failed (para 89). Significantly, the results of the testing did not prove the SPC coating was fit for its intended purpose.

<sup>61</sup> Mortimore, D, AGT Pipeline Project, Review of Field Joint Coating Specification, November 2002. See also: Mortimore, D, Evidence to Select Committee on UK Trade and Industry, House of Commons, 2004.

<sup>62</sup> As predicted by Mortimore, the SPC 2888-coated sections of the pipeline have been subject to extensive cracking (26 per cent in Georgia alone).

<sup>63</sup> Mihailescu, A., “Cracks revealed in BTC oil pipeline”, 21 September 2005

<sup>64</sup> Orellana, M, personal communication, 29 September 2005.

<sup>65</sup> Orellana, M, personal communication, 29 September 2005.

<sup>66</sup> United Nations, UNCITRAL – Legislative Guide on Privately Financed Infrastructure Projects, Prepared by the United Nations Commission on International Trade Law, New York, 2001, [www.uncitral.org/pdf/english/texts/procurem/pfip/guide/pfip-e.pdf](http://www.uncitral.org/pdf/english/texts/procurem/pfip/guide/pfip-e.pdf) The recommendations made with regard to stabilisation clauses are found at pp.140-142. UNCITRAL notes: “All business organizations, in the private and public sectors alike, are subject to changes in law and generally have to deal with the consequences that such changes may have for business . . . General changes in law may be regarded as an ordinary business risk . . .” (para 123, p.141)

<sup>67</sup> United Nations, UNCITRAL – Legislative Guide on Privately Financed Infrastructure Projects, Prepared by the United Nations Commission on International Trade Law, New York, 2001, [www.uncitral.org/pdf/english/texts/procurem/pfip/guide/pfip-e.pdf](http://www.uncitral.org/pdf/english/texts/procurem/pfip/guide/pfip-e.pdf) , para 125

<sup>68</sup> United Nations, UNCITRAL – Model Legislative Provisions on Privately Financed Infrastructure Projects, Prepared by the United Nations Commission on International Trade Law, New York, 2004, [www.uncitral.org/pdf/english/texts/procurem/pfip/model/annex1-e.pdf](http://www.uncitral.org/pdf/english/texts/procurem/pfip/model/annex1-e.pdf)., Model provision 40, para 1 (c), p.27, Model provision 40. UNCITRAL sets out two model provisions (38 and 39) for addressing stabilisation clauses. These state: “The concession contract shall set forth the extent to which the concessionaire is entitled to compensation in the event that the cost of the concessionaire’s performance of the concession contract has substantially increased or that the value that the concessionaire receives for such performance has substantially diminished, as compared with the costs and the value of performance originally foreseen, as a result of changes in legislation or regulations specifically applicable to the infrastructure facility or the services it provides”; and “. . . the concession contract shall further set forth the extent to which the concessionaire is entitled to a revision of the concession contract with a view to providing compensation in the event that the cost of the concessionaire’s performance

of the concession contract has substantially increased or that the value that the concessionaire receives for such performance has substantially diminished, as compared with the costs and the value of performance originally foreseen, as a result of: (a) Changes in economic or financial conditions; or (b) Changes in legislation or regulations not specifically applicable to the infrastructure facility or the services it provides; provided that the economic, financial, legislative or regulatory changes: (a) Occur after the conclusion of the contract; (b) Are beyond the control of the concessionaire; and (c) Are of such a nature that the concessionaire could not reasonably be expected to have taken them into account at the time the concession contract was negotiated or to have avoided or overcome their consequences.”

<sup>69</sup> Multilateral Centre for Private Sector Development Istanbul, Basic Elements of a Law on Concession Agreements, OECD and Federation of Euro-Asian Exchanges, [www.oecd.org/dataoecd/41/20/33959802.pdf](http://www.oecd.org/dataoecd/41/20/33959802.pdf), p.21, para18 (a): The OECD states: “The nature of the legislation must be described”

<sup>70</sup> Multilateral Centre for Private Sector Development Istanbul, Basic Elements of a Law on Concession Agreements, OECD and Federation of Euro-Asian Exchanges, [www.oecd.org/dataoecd/41/20/33959802.pdf](http://www.oecd.org/dataoecd/41/20/33959802.pdf), p.21, para18 (a):

<sup>71</sup> See Government of India, National Highways Authority Concession Agreement, Jaipur-Kishangarh Highway, <http://www.nhai.org/fvb.pdf> , Articles 36.1 and 36.2

<sup>72</sup> Host Government Agreement (Turkey), para 7.2 (xi), available from [www.caspiandevelopmentandexport.com](http://www.caspiandevelopmentandexport.com)

<sup>73</sup> The stabilisation clause (para 7.2 (xi) of the Host Government Agreement for Turkey reads: “The State Authorities shall take all actions available to them to restore the Economic Equilibrium established under the Project Agreements if and to the extent the Economic Equilibrium is disrupted or negatively affected, directly or indirectly, as a result of any change (whether the change is specific to the Project or of general application) in Turkish Law (including any Turkish Laws regarding Taxes, health, safety and the environment).”

<sup>74</sup> See: Host Government Agreement (Turkey), Article 7.2 (vi) and (xi); Georgia Host Government Agreement (HGA), Article 7.2 (vi) and (x); Azerbaijan HGA, Article 7.2 (vi) and (x), available from [www.caspiandevelopmentandexport.com](http://www.caspiandevelopmentandexport.com). The Turkey HGA states: “The Government hereby covenants and agrees (on its behalf and acting on behalf of and committing the State Authorities) that throughout the term of this Agreement:

“if any domestic or international agreement or treaty; any legislation, promulgation, enactment, decree, accession or allowance; any other form of commitment, policy or pronouncement or permission, has the effect of impairing, conflicting or interfering with the implementation of the Project, or limiting, abridging or adversely affecting the value of the Project or any of the rights, privileges, exemptions, waivers, indemnifications or protections granted or arising under this Agreement or any other Project Agreement it shall be deemed a Change in Law under Article 7.2(xi).

“the State Authorities shall take all actions available to them to restore the Economic Equilibrium established under the Project Agreements if and to the extent the Economic Equilibrium is disrupted or negatively affected, directly or indirectly, as a result of any change (whether the change is specific to the Project or of general application) in Turkish Law (including any Turkish Laws regarding Taxes, health, safety and the environment).”

<sup>75</sup> Amnesty International, Human Rights on the Line, 2003.

<sup>76</sup> Amnesty International, Human Rights on the Line:

The Baku-Tbilisi-Ceyhan Pipeline Project, May 2003, p.5. Article 12 (Security) of the Turkish HGA requires the State Authorities to “ensure the safety and security of the Rights to Land, the Facilities and all Persons within the Territory involved in Project Activities and shall protect the Rights to Land, the Facilities and those Persons from all Loss or Damage resulting from civil war, sabotage, vandalism, blockade, revolution, riot, insurrection, civil disturbance, terrorism, kidnapping, commercial extortion, organised crime or other destructive events.” The inclusion of the broad concept ‘civil disturbance’ could be used to justify serious human rights breaches at the hands of the state in its attempts to ensure the stability of the project. The companies are absolved from any damages, including human rights abuses, arising from the security forces’ actions.

<sup>77</sup> BTC Co, Human Rights Undertaking, [www.caspiandevlopmentandexport.com](http://www.caspiandevlopmentandexport.com)

<sup>78</sup> For further concerns, see: Amis de la Terre et al., Review of BTC Environmental Impact Assessment – Legal Regime, [www.baku.org.uk](http://www.baku.org.uk)

<sup>79</sup> BP, Response to NCP Request Filed by Friends of the Earth Against Project, unpublished March 2004, p.20. BP states: “The economic equilibrium clause will not apply unless . . . the Project files an arbitration claim against the Government (a decision the Project is unlikely to take absent evidence that Government action is motivated by rent seeking behaviour and not environmental or social benefits”. The company’s response to Friends of the Earth was written after the promulgation of the Deed Poll.

<sup>80</sup> BTC Co, BTC Human Rights Undertaking, [www.caspiandevelopmentandexport.com](http://www.caspiandevelopmentandexport.com). See for example Para 2(a) “. . . provided that such domestic law is no more stringent than the highest of European Union standards as referred to in the Project Agreements, including relevant EU directives (“EU standards”), those World Bank Group standards referred to in the Project Agreements and standards under applicable international labour and human rights treaties.”

<sup>81</sup> Leubuscher, S., ‘The Privatisation of Law’, 2003

<sup>82</sup> Susan Leubuscher, 2 June 2003, ‘The privatisation of justice: international commercial arbitration and the redefinition of the state’. <http://www.fern.org/pubs/reports/dispute%20resolution%20essay.pdf>.

<sup>83</sup> In Turkey, the Gendarmerie, a police force which has been repeatedly criticized for its human rights abuses by the European Court of Human Rights, will be responsible for policing the project.

<sup>84</sup> For details, see: [www.baku.org.uk](http://www.baku.org.uk)

<sup>85</sup> Boyd-Carpenter, H. and Labedi, W., “Striking a balance: Intergovernmental and host government agreements in the context of the Baku-Tbilisi-Ceyhan pipeline project”, LIT Online, EBRD, 2004, [www.ebrd.com/pubs/legal/OLo4e.pdf](http://www.ebrd.com/pubs/legal/OLo4e.pdf)

<sup>86</sup> Annan, K, UN General Secretary, Speech to United Nations Millennium Summit, September 2000.

<sup>87</sup> United Nations Commission on Human Rights, Human Rights, Trade and Investment, E/CN.4/Sub.2/2003/9, 2 July 2003. The principle recommendations are summarised at pp 3-4 and at pp.30-32, with a fuller discussion in ‘Section III: The Human Rights Implications of Investment Liberalisation’ (pp.17-24). The Report recommends: “(a) Including the promotion and protection of human rights among the objectives of investment agreements. Given States’ international responsibilities with regard to the promotion and protection of human rights, States should consider including an explicit reference to the promotion and protection of human rights among the objectives of investment liberalization agreements; (b) Ensuring States’ right and duty to regulate and the flexibility to induce new

regulations to promote and protect human rights and the environment . Broad interpretations of expropriation provisions could affect States’ capacity and willingness to regulate for health, safety or environmental reasons. Therefore interpretations, or even explicit declarations by parties to agreements, that recognize and protect States’ responsibility to fulfil human rights are encouraged; (c) Promoting investors’ obligations alongside investors’ rights. There is a need to balance the strengthening of investors’ rights in investment liberalization agreements with the clarification and enforcement of investors’ obligations towards individuals and

<sup>88</sup> Thomas W Wälde, Editorial, in OGEL (Oil, Gas & Energy Law Intelligence), Volume III, issue #01 - March 2005

<sup>89</sup> Thomas W Wälde, July 1995, ‘The current status of international petroleum investment: regulating, licensing, taxing and contracting’, in CEPMLP Journal, Vol 1, no.5, pub. University of Dundee

<sup>90</sup> For example, the PSA for the Azeri-Chirag-Guneshli field in Azerbaijan states “Upon approval by the Parliament of the Azerbaijan Republic of this Contract, this Contract shall constitute a law of the Azerbaijan Republic and shall take precedence over any other current or future law, decree or administrative order (or part thereof) of the Azerbaijan Republic which is inconsistent with or conflicts with this Contract except as specifically otherwise provided in this Contract.” [Article XXIII, clause 23.1]

<sup>91</sup> That is not to say that there was no change in the middle of the Twentieth Century: rather, that the increased bargaining power of host states at that time was reflected more in the economic terms of contracts, than in the contractual form itself. Now, however, the pendulum of bargaining power has swung back in favour of investors.

<sup>92</sup> Susan Leubuscher, ‘The privatisation of justice: international commercial arbitration and the redefinition of the state’. <http://www.fern.org/pubs/reports/dispute%20resolution%20essay.pdf>, 2003.

<sup>93</sup> For example, in Azerbaijan’s ACG PSA [Article XXIII, clause 23.2]: “In the event that the Government or other Azerbaijan authority invokes any present or future law, treaty, intergovernmental agreement, decree or administrative order which contravenes the provisions of this Contract or adversely or positively affects the rights or interests of Contractor hereunder, including, but not limited to, any changes in tax legislation, regulations, administrative practice, or jurisdictional changes pertaining to the Contract Area the terms of this Contract shall be adjusted to re-establish the economic equilibrium of the Parties, and if the rights or interests of Contractor have been adversely affected, then SOCAR shall indemnify the Contractor (and its assignees) for any disbenefit, deterioration in economic circumstances, loss or damages that ensue therefrom.”

<sup>94</sup> A case in point is the PSA for Shell’s Sakhalin II oil developments in Russia. Appendix E exempts the project from, amongst other laws, the Russia Water Code which forbids discharge of flows and drainage waters into spawning and wintering areas for valuable and protected fish species and into the habitats of Red Book protected wildlife and plant species. Destruction of salmon spawning sites as a result of oil spillage is a major concern in the project. Article 24 (f) also provides blanket compensation for breach of Shell’s Article 24 (f) The Russian Party shall compensate the Company for any damage caused to the consortium’s “commercial position” by “adverse changes in Russian laws, subordinate laws and other acts taken by Government bodies after December 31, 1993 (including changes in their interpretation or their application procedure by government bodies and by the courts in the Russian Federation).”

<sup>95</sup> Daniel Johnston, 1994, International petroleum fiscal

systems and production sharing contracts, pub. Pennwell, p.39

<sup>96</sup> Ian Rutledge, The Sakhalin II PSA – A production ‘non-sharing’ agreement, November 2004, Pub. PLATFORM et al available at <http://www.carbonweb.org/documents/SakhalinPSA.pdf>

<sup>97</sup> See Associated Press, 10 February 2005, ‘State Audit Chamber accuses Shell consortium of overspending’

<sup>98</sup> This approach is designed for exploration and production contracts, in which case it is not known how large or profitable any fields found will be. However, this has not stopped them being applied to pure production contracts on known fields – ACG and Sakhalin being two prime examples.

<sup>99</sup> ACG PSA, article XI, clause 11.6

<sup>100</sup> Sakhalin II PSA, section 14. For detailed analysis, see Ian Rutledge, November 2004, ‘The Sakhalin II PSA - A production non-sharing agreement’ (pub CEE Bankwatch Network, PLATFORM, Friends of the Earth, Sakhalin Environment Watch, Pacific Environment, WWF)

<sup>101</sup> Almost all of ITIC’s 110 listed sponsors are large corporations, with roughly a quarter of these in the oil sector. ITIC’s Board of Directors contains representatives from Shell, BP, ConocoPhillips, ExxonMobil and ChevronTexaco.

<sup>102</sup> International Tax & Investment Centre (ITIC), Petroleum and Iraq’s Future: Fiscal Options and Challenges, Fall 2004

<sup>103</sup> International Tax & Investment Centre (ITIC), Strategic Questions For Our Future, undated [2004] [www.iticnet.org/publications/StrategicQuestions.pdf](http://www.iticnet.org/publications/StrategicQuestions.pdf)

<sup>104</sup> US Department of Energy, Energy Information Administration, Iraq – Country Analysis Brief, June 2005

<sup>105</sup> Christian Schmollinger, International Oil Daily, 15 June 2005, ‘Iraqi officials hopeful foreign oil firms will return in 2006’

<sup>106</sup> Glen Carey & Faleh al-Khayat, Platts Oilgram News, June 22 2005, ‘Iraq looks to woo majors for field revivals’

<sup>107</sup> US State Department Future of Iraq Project, Oil and Energy Working Group (Oil Policy Subgroup), April 2003, ‘Iraqi oil policy recommendations after regime change’, published in Middle East Economic Survey, 5 May 2003, pp.D1-D11

<sup>108</sup> Carroll described his role as not only to address short-term fuel needs and the initial repair of production facilities, but also to: “Begin planning for the restructuring of the Ministry of Oil to improve its efficiency and effectiveness; [and] begin thinking through Iraq’s strategy options for significantly increasing its production capacity.” [Philip J Carroll, November 2004, ‘Personal commentary’, in Oxford Energy Forum (pub Oxford Institute for Energy Studies)]

<sup>109</sup> For example, Walter van der Vijver, then Chief Executive Officer of Shell Exploration and Production, stated in 2003 that “...international oil companies can make an ongoing contribution to the region [the Persian Gulf]... However, in order to secure that investment, we will need some assurance of future income and, in particular, a supportive contractual framework. There are a number of models which can achieve these ends. One option is the greater use of Production Sharing Agreements, which have proved very effective in achieving an appropriate balance of incentives between Governments and oil companies. And they ensure a fair distribution of the value of a resource while providing the long term assurance which is necessary to secure the capital investment needed for energy projects” [Speech to ECSSR conference, A new era for international oil companies in the Gulf: opportunities and challenges, Abu Dhabi, 19 October 2003].

<sup>110</sup> Pelham, N., Financial Times, 5 September 2003, ‘Oil to be privatised but not just yet, says Iraqi minister’

<sup>111</sup> “For new development of undeveloped oil and gas fields, and for exploration, all of which must start as soon as possible and in tandem with INOC’s efforts, these should be accomplished through private sector investment via competent international ... oil companies... However, these new ventures should specifically not be allowed to partner with any state-owned enterprises, including INOC, in order to ensure state impartiality and avoid the pitfall of state interference in corporate enterprise management”. [Cited in Middle East Economic Survey, 13 September 2004, ‘Allawi outlines new Iraqi petroleum policy: INOC for currently producing fields/IOCs for new areas’, pp. A1-A4]

<sup>112</sup> Middle East Economic Survey, 20 June 2005, ‘Iraq fast tracks upstream contract talks with IOCs’, pp.5-6

<sup>113</sup> Middle East Economic Survey, 11 July 2005, ‘Iraq mulls bid round alongside direct talks with IOCs’

<sup>114</sup> Prosper Weil, a former President of the World Bank’s Administrative Tribunal, has already claimed this status for the World Bank’s own Guidelines on the Treatment of Foreign Direct Investment: “Looking beyond their limited objective and ostensibly low profile, the Guidelines may already be considered to constitute the written expression of rules of customary law. They are, therefore, to serve as a substitute for the major international convention which it has not been possible to elaborate thus far.” See: Weil, P., “The State, the Foreign Investor and International Law”, ICSID Review 15 (2000), p. 414, cited in Leubuscher, S., “Multinational enterprises – Masters of the legal universe”, EU Forest Watch, June 2003, available from [www.fern.org](http://www.fern.org) Likewise, Professor Thomas Walde, energy specialist at the University of Dundee, writes: “The common core of BITs can now be considered to be indicative of state practice and customary international law”. However, it has also been argued that the provisions of BITs vary from one to another and that no general norms can therefore be derived from them.

<sup>115</sup> Boyd-Carpenter, H. and Labedi, W., “Striking a balance: Intergovernmental and host government agreements in the context of the Baku-Tbilisi-Ceyhan pipeline project”, LIT Online, EBRD, 2004, [www.ebrd.com/pubs/legal/OLo4e.pdf](http://www.ebrd.com/pubs/legal/OLo4e.pdf) Labedi, the senior counsel for the European Bank for Reconstruction and Development, and his co-author Harry Boyd-Carpenter of the legal firm Allen & Overy do not explicitly call for an international investment Treaty but nonetheless argue: “In the long term, it will be preferable for countries to evolve a framework, both specifically for concessions and generally for infrastructure works that can operate as a level playing field for all participants and across all projects, both concession-based and otherwise.”



# From 9/11 to Hurricane Katrina

## *War, the 21st Century and America's Future*

BY TOM REIFER<sup>1</sup>

**H**urricane Katrina touched down in an America that for decades has been spending greater and greater resources on debt-financed wars abroad to the great detriment of urban areas and the minority poor at home. Moreover, the storm in the Gulf Coast states is intimately related to overseas militarism, notably the wars in the Persian Gulf, from Desert Storm to the current storm of the Iraq war. The linkage between overseas militarism and domestic decline and inequality is the deep structural context for the failures of the government response to and after Hurricane Katrina. Thus, explored herein are the linkages between U.S. militarism, Hurricane Katrina and the U.S. system of political economy, especially as it affects America's declining cities and their increasingly minority populations.

Well before the terrorist attacks of September 11, 2001, the Bush administration was pursuing an increasingly aggressive foreign and military policy. In this context, as Mary Kaldor notes

it can be argued that the cuts of the early 1990s are equivalent to the reductions that can be expected in the normal post-1945 US military procurement cycle... During the

downturns, military R&D [research and development] is always sustained, designing and developing the systems to be procured in the next upturn. As new systems reach the more expensive development and procurement phases, this has always coincided with renewed preoccupations with threats of various kinds.<sup>2</sup>

Such a focus on new threats long antedated the terrorist actions of September 11, 2001. In fact, the attacks of that day and the real threat from Al Qaeda presented neoconservative hawks with a perfect opportunity to implement ambitious plans for high U.S. military spending and aggressive overseas policies outlined long before, including pulling out of international treaties and moving forward with plans for the militarization of space.

Recently, the Air Force has been pressing the Bush administration to formally embrace an aggressive strategy for space, the past and future costs of which are truly astronomical. Here, the Air Force is essentially following the trajectory set by the recommendations of the 2001 Rumsfeld commission which urged that the military give the President the option to deploy weapons in space, and the 2002 U.S. withdrawal from the Anti-Ballistic Missile Treaty which banned such space-based weapons. This trajectory, however, is not simply a Republican Party program, but is widely embraced by the Democratic Party and elite circles more generally as well, including in the Clinton era. Pentagon space warfare, like the late 19th, early 20th century Navy or later programs of the Air Force, serves both as a form of public subsidy of private profit, though funding high technology industry, as well as a way to build the military forces to protect increased U.S. investments, for control of worldwide resources and to manage related geopolitical alliances overseas. U.S. technology, from aerospace, electronics, to computers and telecommunications, is largely an offshoot of this Pentagon system of industrial planning, a state-corporate capitalism which serves to incubate high-technology industry until it can be privatized by being turned over to for

profit corporations. Thus, a major function of the first Gulf War in 1991 was to protect the Pentagon budget by showing the relevance of the military in the aftermath of superpower confrontation. Revealed here was the extent to which the Cold War was largely a pretense for the Northern domination of the global South and the larger U.S. war against the Third World.<sup>3</sup>

Many of these connections are explicitly recognized by the Pentagon. In the words of U.S. Space Command's own Vision For 2020 under President Clinton, "U.S. Space Command-dominating the space dimensions of U.S. military operations to protect U.S. interests and investments...During the early portion of the 21st century...space forces will emerge to protect military and commercial national interests and investments in the space medium due to their increasing importance."<sup>4</sup> Such plans continue today in the Bush administration.

A new Air Force strategy, Global Strike, calls for a military space plane carrying precision-guided weapons armed with a half-ton of munitions. General Lord told Congress last month that Global Strike would be "an incredible capability" to destroy command centers or missile bases "anywhere in the world."

Pentagon documents say the weapon, called the common aero vehicle, could strike from halfway around the world in 45 minutes...

Another Air Force space program, nicknamed Rods From God, aims to hurl cylinders of tungsten, titanium or uranium from the edge of space to destroy targets on the ground, striking at speeds of about 7,200 miles an hour with the force of a small nuclear weapon.

A third program would bounce laser beams off mirrors hung from space satellites or huge high-altitude blimps, redirecting the lethal rays down to targets around the world. A fourth seeks to turn radio waves into weapons whose powers could range

“from tap on the shoulder to toast,”  
in the words of an Air Force plan.<sup>5</sup>

The current trajectory of neoliberal militarization at home and abroad is the refocusing of the U.S. government on the “war on terror,” including a substantial reorganization of the Federal Government, replete with a new Department of Homeland Security. Indeed, in the 36 month Comprehensive Homeland Security Exercise Schedule, covering July 2004 to September 2007 of the Department of Homeland Security, only two of the 222 exercises dealt with hurricanes, and those only looked at what if a terrorist attack happened during such an event; for the seven national exercises in Louisiana and Mississippi, none involved hurricanes.<sup>6</sup>

Yet in the aftermath of the invasion of Iraq and growing insurgency there, ultimately it was the rains of Hurricane Katrina and floods that followed that exposed the deeper fault lines of race, class and gender running right through the heart of U.S. society. Years of neglect of the nation’s human capital and physical infrastructure - after recurrent decades of tax cuts for the wealthy and deficit-financed militarization funded by offshore borrowing, most recently for the Iraq war - were also dramatically exposed in the failure of the government planning for and response to Hurricane Katrina. The disaster in the Gulf Coast of the U.S. was a massive one, and some 90,000 square miles are now covered under a federal disaster declaration, an area roughly the size of Great Britain.

The embrace of multiple wars in the 21<sup>st</sup> century against the so-called Axis of Evil, notably Iraq and Al Qaeda, led to enormous rises in US military-related spending, now totaling well over \$500 billion annually, when one includes not only the formal military budget, but money for ongoing operations and the Homeland Security Department, under which a host of agencies, including the Federal Emergency Management Agency (FEMA) are now housed.<sup>7</sup>

The economic stimulus of federal spending, notably increases in the military budget, are believed by many experts to have clearly

minimized the period of economic recession in the early years of the 21<sup>st</sup> century, though with less of an effect than during past bouts of military Keynesianism.<sup>8</sup> In the second quarter of 2003, from April to June, the war with Iraq and related U.S. military actions led to the biggest increase in military spending - some 44.1% - since Fall 1951, the time of the enormous leap in military spending ushering in the Korean War boom. Military spending accounted for a full 1.69% of the rise in G.D.P. in the second quarter of 2003, or some 70% of the total increase.<sup>9</sup> In the first quarter of 2004, the economy grew at a 4.2%, with military spending again making up a significant portion of the rise, accounting for up to \$17.4 billion of the G.D.P. increase of \$108.5 billion in the first quarter, after adjusting for inflation.<sup>10</sup>

As one commentator recently noted:

The military is now the de facto welfare state. The armed forces and the Department of Veterans Affairs are the two largest health care providers in the United States. The military is also a major bankroller of higher education through the G.I. Bill.<sup>11</sup>

Nevertheless, today, as during the new Cold War (beginning in the late Carter years), the trillions of dollars for the new militarism, financed regressively through offshore borrowing and from the wealthy awash in tax cuts, has mortgaged public investment, in the words of Mike Davis, “the fiscal equivalent of several New Deals” - for generations.<sup>12</sup> According to one recent estimate, while Vietnam cost U.S. taxpayers some \$600 billion (in current dollars), the costs for the Iraq war could be over \$700 billion, assuming the U.S. stays there for ten more years; another estimate, looking at operation in Afghanistan, Iraq and America’s presence in the Middle East calculates even higher costs:

...if American military presence in the region lasts another five years,

the total outlay for the war could stretch to more than \$1.3 trillion, or \$11,300 for every household in the United States.<sup>13</sup>

And as during late 1970s and 1980s, America's debt-financed militarization has been accompanied by continuing declines in federal aid to the cities and disaster protection, this at a time when millions of whites were moving from America's largest metropolitan centers to suburbs, while millions of Latinos, Asians and Blacks were moving into increasingly impoverished, abandoned and decaying metropolises.<sup>14</sup> Metropolitan New Orleans is something of a statistical anomaly here, being the only large metropolitan region of the country where African-American out-migration has occurred in each decade since 1965, according to the Brookings Institution.<sup>15</sup> Nevertheless, the city of New Orleans still had an overwhelmingly black majority population, all the more so with the substantial white-flight from the metropolitan region. Thus, like other large cities, the overlay of race and class concentrated in space – an American apartheid – meant that federal cutbacks to urban areas would hit these groups the hardest.<sup>16</sup>

Estimates by Demetrios Caraley and others indicate that cutbacks in federal aid of some 64% cost cities an average amount of \$26 billion annually from 1980-1990 (in constant 1990 dollars); during part of this same period, from 1979 to 1985, deficit-financed military spending rose from some \$150 to \$300 billion annually, financed by the most regressive possible means, though tax-cuts for the rich and overseas borrowing.<sup>17</sup>

Spent on cities and human resources, these immense sums would have remade urban America into the Land of Oz instead of the urban wasteland it has become.

The social burden of servicing this deficit may be measured by comparison to the annual combined budgets of America's fifty largest cities. In 1980 the interest payments

on the federal debt were twice as large as the aggregate big-city budgets; today they are six times larger. Alternately, the \$300 billion 1990 deficit was simply equal to the annual interest costs on a federal debt soaring toward \$5 trillion.<sup>18</sup>

While the speculative boom of the 1990s led to fantasies of permanent economic nirvana among the well-to-do, the bursting of the bubble – except in the housing market, still waiting to pop – it was thought, would bring fiscal reality to bear among sentient beings. Not so for the Bush administration, content to continue on a relentless path of ever higher military spending and tax cuts for the wealthy, seeking what commentators called a “Gucci and guns budget,” the President and Republican Congress’ answer to the Johnson administration’s program of Guns and Butter.<sup>19</sup> Yet it was on the battlefields of Indochina that the hopes of the Great Society were ultimately buried, as President Johnson presented Congress with spending request after spending request for war. Today, another round of bills for Presidential war is again leading to drastic devaluations of citizenship in the U.S., most especially among urban constituencies of color. Once again, the true costs of the war and the bombs, as Martin Luther King, Jr., argued in the case of Vietnam, are exploding in the ghettos of America, or you could say in the fallen levees of the Gulf Coast, being felt both in the widespread flooding of the region as well as dramatically with massive federal cuts in health, education, human services and disaster preparedness at home, especially to the nation’s metropolitan areas.<sup>20</sup>

With the overlap of race and class, the burden of America's late 20th century wars fell most heavily on Latinos, Blacks and Asians in urban areas, as federal monies to cities dropped to a mere trickle. New Orleans is 67.3% African-American and out of a total poverty rate of roughly 28% (relative to roughly 12% in the U.S. as a whole), some 84% of those living in poverty are Black; 35% of Blacks were in poverty in the city in 2000, compared to just 11% of whites, with some 50,000 households without cars, 35% of Black

households and only 11% of whites.<sup>21</sup> In the New Orleans Metropolitan region, almost 15% of persons lived in poverty and over a quarter of the children; only seven other U.S. cities had higher incidences of poverty, with New Orleans ranking 64th in median household income among the country's 70 largest cities.<sup>22</sup>

As far as "acts of god" or "nature" are concerned, many scientists believe the intensity of hurricanes are increasing due to global warming, a condition of course related to human induced climate change as a result of greenhouse gas emissions, not helped of course, by the U.S. refusal to join the Kyoto Protocol to the United Nations Framework Convention on Climate Change, a widely adhered to international treaty on global warming.<sup>23</sup> And then of course there is the devaluing of citizenship in America's urban areas, as money flowed away from these areas and instead went into lily-white suburbs and edge cities.<sup>24</sup> And in New Orleans, as is widely known, "money flows away from water," as wealthier citizens take the higher ground and leave the poor to fend for themselves in the face of approaching hurricanes. The results of Hurricane Katrina were part of the end result of this process of the political and social enfranchisement of white suburban-citizens, in inverse proportion to the disenfranchisement of poor urban constituencies of color, replete with the federal neglect of much-needed protection against hurricanes, dangers made more intense by development and ever-increasing coastal populations encroaching on and steadily eroding wetlands.<sup>25</sup> Yet money for tax cuts for the rich, highway projects, military spending and wars abroad - benefits from which accrued largely to suburbs and edge cities - continued unabated.

Moreover, as Mike Davis said, this was arguably the one of the most predicted and foreseen disasters, perhaps in the history of the world.<sup>26</sup> The path of damage was modeled extensively on computers before the event and surveys were taken, indicating that a sizeable portion of the poor, those without cars, the disabled and elderly, would not be able to evacuate on their own. FEMA considered a hurricane hitting New Orleans

one of the three most likely disasters to affect the U.S. - the others being a terrorist attack in New York and an earthquake in San Francisco - and modeled this in a five day exercise called Hurricane Pam in July 2004, with over 250 officials from 50 state, federal, local and volunteer agencies. Much of the destruction and loss of life was foreseen, as was the need to evacuate anywhere from hundreds of thousands to over a million people. And in reality, with Hurricane Ivan, as with Hurricane Katrina, while middle and upper income whites and persons of color were able to leave the city and surrounding suburbs, the largely poor black population, as well as the rest of the poor, the disabled and elderly - in the tens of thousands and perhaps more - were trapped. FEMA spokesman David Plassey, when asked after the Hurricane Pam exercise how many people might die in such a storm, said "We would see casualties not seen in the United States in the last century"; John Clizbe, national vice president for disaster services at the American Red Cross, said that between 25,000 to 100,000 persons would die. The Report on Hurricane Pam estimated there would be 61,000 fatalities.<sup>27</sup>

Starting as early as January 2005, when then acting FEMA director Michael Brown returned back from touring the devastation caused by the Asian tsunami in late December 2004, "New Orleans was the No. 1 disaster we were talking about," recalled Eric L. Tolbert, then a top FEMA official. "We were obsessed with New Orleans because of the risk."<sup>28</sup> Nevertheless, tens of thousands of evacuees crammed into the Superdome and convention center, many of whom were bereft of food and water for some three to four days. Reporters and others noted that local, state and federal officials were often nowhere to be found. Even on day five, sufficient help had not arrived. The majority black city, as important culturally for African Americans and the U.S. as Harlem, with over a fifth of the population living in poverty, mostly black, was left to bear the brunt of the hurricane on its own, with funding for flood prevention continuously cut before the storm, as more and more resources were diverted to the war in Iraq. In the end, some 80% of the city was under water, and substantial portions of

the rest of the Gulf Coast. Over a thousand persons died as the city of New Orleans and substantial portions of the Gulf Coast were flooded. The costs of inaction were tragic in both human suffering and loss of life. Hurricane Rita then added to the misery, leading to widespread flooding of the city of New Orleans again in late September.

In addition to these life and death disparities of race, class and power along the suburban-edge city urban divide, there is the stagnation or decline in U.S. household incomes as a whole, with attendant poverty and social ills. While the economy grew by 3.8% in 2004, median household income was flat at \$44,389, while some 1.1 million additional persons fell into poverty, thus increasing the ranks of the official poor to some 37 million. Meanwhile another 800,000 workers lost their health insurance, bringing the total to some 45.8 million, a figure that would be greatly exacerbated without the Veteran's welfare state, along with Medicaid and Medicare. Yet Congress is getting ready to cut some \$35 billion to social programs in the coming five years, including for Medicaid, which gives the poor access to health care. At the same time, the top 20% of income groups increased their share of the national income to 50.1% of the total, though only the top 5% experienced income gains, while income stagnated or fell for the other 95% of households. Despite these trends, Congress stood ready to repeal the estate tax affecting the richest families in America, while simultaneously looking to make deep cuts in student loans, Medicaid, and other social programs for the poor, the working class and middle income groups.<sup>29</sup>

In fact, real wages have been stagnating for the majority since the late 1970s, following the dismantling of the Bretton Woods systems of fixed exchange rates and the related ability of governments to control capital flows in the early 1970s. This was part of a more general elite counterattack on what the Trilateral Commission called the "crisis of democracy," referring to the rising activism of the 1950s and 1960s, akin to Wilson's Red Scare or McCarthyism during the Truman years. These years saw the rise of the civil rights, anti-war, feminist and Black

and Chicano power movements, to name but a few, part of the increased concern with the interconnected issues of peace and social justice, especially inequalities of race, class and gender. Wilson's Red Scare, Truman's McCarthyism and the response to the "crisis of democracy" were all part of more general attacks by the state-corporate community in response to the threat of expanding democratic activism during these periods. The Bush administration represents the culmination of this larger structural process of the mobilization of state-corporate elites against the threat of democratic activism and the possibilities for real democracy in the 1960s and beyond.<sup>30</sup>

Coming back to the present, the mobilization of the Iraq issue which forced a vote in Congress on the war before the 2002 mid-term Congressional elections was also a way to divert attention away from the class war at home, as evidenced in widening inequality replete with rising military spending and concomitant cuts to health, education and human services. Once again, National Security ideology proved crucial in the bitter class war not only against the Third World, but against the domestic population at home. And today, while the nation's attention and fiscal resources turned towards the war in Iraq and terrorism, domestic disaster preparedness for events other than terrorism suffered, much as the new Cold War took resources and attention away from the nation's increasingly impoverished cities and decaying infrastructure, as noted above.

Senior regional officials in the U.S. Army Corp of Engineers had long warned of the dangers of a Hurricane on the Gulf Coast, particularly the vulnerable city of New Orleans, sitting largely below sea level and sinking, along with the levees. Congress did authorize money for the Southeast Louisiana Urban Flood Control Project or SELA, in the 1990s, aimed at shoring up the levees that protected New Orleans and the Gulf Coast states and constructing pumping stations; yet after 2003, money tapered off, with cuts proposed by the Bush administration for 2005 as well, despite the fact that some \$250 million in outstanding projects were left to be done. "As early as 2004, the New

Orleans *Times-Picayune* began to report that local officials and Army Corps of Engineers representatives attributed the funding cuts to the rising costs of the war in Iraq.

Facing record deficits, the Bush administration cut costs – and cut corners – by including in its 2005 budget only about a sixth of the flood-prevention funds requested by the Louisiana congressional delegation.<sup>31</sup> Essentially, as costs for the Iraq war grew, money for hurricane and flood control efforts declined. Moreover, some 30% of the National Guard and roughly half of their equipment are in Iraq, including a sizeable number from the Gulf Coast States, from one-third of those in the Louisiana National Guard and even great numbers from Mississippi. Many of those in the National Guard have full time jobs as firefighters, police officers and medical personnel and so would ordinarily function as first responders during crises such as Hurricane Katrina. The Governmental Accountability Office noted in July 2005 that fully one-third of the units of the National Guard were low on essential equipment, as this had gone to units getting ready to go to Iraq in upcoming months, thereby taking them away from the Army's forces capable of dealing with homeland security and disaster relief.<sup>32</sup> Moreover, when the Army Corps of Engineers requested some \$105 million for hurricane preparation and flood relief programs, the Bush administration shaved that money to some \$40 million, though President Bush and Congress did agree on passage of a \$284.2 billion “pork-filled highway bill with 6,000 pet projects, including a \$231 million bridge for a small, uninhabited Alaskan island.”<sup>33</sup>

Among those concerned with the budget cuts for SELA and New Orleans was Alfred C. Naomi, senior project manager for the Army Corps of Engineers, frustrated as an intense hurricane season was predicted at the same time as \$71 million was cut from the New Orleans district budget, to prepare for exactly these type of storms: “A breach under these conditions was ultimately not surprising,” Naomi said. Since 2001, the Louisiana congressional delegation had pushed for far more money for storm protection than the Bush administration has accepted. Now,

Mr. Naomi said, all the quibbling over the storm budget, or even over full Category 5 protection, which would cost several billion dollars, seemed tragically absurd.

“It would take \$2.5 billion to build a Category 5 protection system, and we're talking about tens of billions of losses, all those lost productivity, and so many lives and injuries and personal trauma you'll never get over,” Mr. Naomi said.<sup>34</sup> As the *Wall Street Journal* noted: “Despite decades of repeated warnings about a breach of levees or failure of drainage systems that protect New Orleans from the Mississippi River and Lake Pontchartrain, local and federal officials now concede there weren't sufficient preparations for a catastrophe of this scale.”<sup>35</sup> Mainstream news organization in the U.S. and abroad openly commented that they had seen better disaster relief in the Third World.<sup>36</sup>

In the Gulf Coast of the U.S., tens of thousands of citizens were abandoned, unable to evacuate, and left for days and days without food, water, protection, or medical attention by local, state and federal officials, who seemed unaware or uncaring of their plight, with President Bush not even cutting his vacation short until days after Hurricane Katrina struck. The Pentagon, occupied in Iraq, with critical equipment and National Guard units away, was initially nowhere to be found, even though according to a 1993 Government Accounting Office Report, for disasters such as Hurricane Katrina, the “DOD is the only organization capable of providing, transporting, and distributing sufficient quantities of items needed.”<sup>37</sup> As many observed, the pictures of the suffering, stranded and abandoned seemed more reminiscent to many of scenes from Bangladesh, Haiti or Baghdad (after the U.S. invasion) in the Third World than of the United States of America. In a turning of the tables, scores of countries now turned around to give aid to the U.S., including some of the poorest countries on the planet.

The U.S. Federal Government response was widely criticized, as were the actions of local and state officials. Singled out for criticism in particular was the head of FEMA, Michael Brown, former commissioner of the International Arabian Horse Association,

with no disaster management experience but importantly, a friend of Joe M. Allbaugh, manager of Bush's 2000 Presidential campaign and his first director of FEMA. FEMA became a dumping ground for Bush's cronies, despite the President's rhetoric about securing the homeland. Hurricane Katrina had touched down on Monday, August 29. On September 2, Bush's hailed Brown's work by saying, "Brownie, you're doing a heck of a job," even though Brown was to admit on the fourth day of the flooding of New Orleans that "the federal Government did not ever know about the convention center people until today," something also revealed in an extraordinary National Public Radio interview with Homeland Security Director, Michael Chertoff, in which it appears he first heard of the plight of these tremendous numbers of suffering people.<sup>38</sup> Days after the Hurricane touched down though, on August 31, Chertoff said: "We are extremely pleased with the response at every level of the Federal government."<sup>39</sup> Eventually the incompetence and embarrassment was too much even for the administration and at least Brown was relieved of overseeing the post-storm relief effort, a job which was then given to Admiral Thad W. Allen of the Coast Guard.<sup>40</sup> Soon thereafter, Brown resigned.

Still there was good news for some in the aftermath of the destruction, much as with the bungled occupation of Iraq. Many of the same players that profited from the invasion and reconstruction of Iraq stood to benefit immensely from reconstruction efforts after Hurricane Katrina, notably Vice President Cheney's old firm Halliburton, its subsidiary Kellogg, Brown and Root (KBR), and the Shaw Group, a firm making some \$3 billion annually, which announced it had gotten two contracts of up to \$100 million each in early September 2005, one from FEMA and the other from the Army Corps of Engineers; in this they were helped along by the former FEMA director Mr. Allbaugh, now a highly-paid consultant for private corporate firms such as these. Other firms getting lucrative work include Bechtel and the Fluor Corporation, each of them receiving contracts for \$100 million. Danielle Brian, head of the Project on Government Oversight, said "Katrina, like

Iraq before it, would bring the greedy and the self-interested out of the woodwork."

"This is very painful," Ms. Brian said. "You are likely to see the equivalent of war profiteering-disaster profiteering."<sup>41</sup> Indeed, President Bush was quick to suspend the Davis-Bacon Act, a 1931 law which mandates prevailing wages for federally funded contracts, for the work of the reconstruction of the region, though wages in the area are already low, often under \$10 an hour. When it comes to workers wages, it seems the costs are too high; when it comes to corporate contracts, however, it appears no profits are too high. In addition, the President suspended laws requiring that federal contractors file plans for affirmative action.

Yet while on one side the President was quick to overturn prevailing wage and affirmative action for working class people and persons of color, already many of the questionable practices used in the reconstruction of Iraq are now being implemented in this largest effort at reconstruction in the history of the U.S. - which could total several hundred billion dollars - including non-competitive contracts and cost-plus provisions that guarantee profit regardless of the amount a firm spends, with contracts going to many politically well connected companies.<sup>42</sup> Somehow, when it comes to money for the nation's cities, its poor, persons of color, or disaster preparedness, costs must be cut, while tax cuts are given to the rich; for corporate America, its war profiteers and military-corporate vultures of disaster-reconstruction capitalism, however, it seems that money from taxpayers is no object. Subsequently it was announced that no-bid contracts would be re-bid - though the news is still out on the process - given the storm of criticism, and Bush was forced by his Republican allies to end his suspension of the Davis-Bacon Act; still, the initial moves of the President in the wake of Katrina shows the leanings of the Bush administration's "compassionate conservatism."

After decades of underinvestment in the nation's cities, including human capital and physical infrastructure, Hurricane Katrina exposed many of the problems of U.S.

society once thought solved, with widening inequality, poor jobs and a faltering system of health, education and human services. Yet the wars of the late 20th and 21st century – from the new Cold War to the Gulf Wars – their capital intensive nature, their legions of corporate mercenary soldiers, their financing from offshore borrowing and from tax cuts for the wealthy, instead are serving to increase poverty in the Global South, both at home and abroad.<sup>43</sup>

The task now is to seize upon this exposure of the shame of America revealed in its vulnerable poor, impoverished persons of color and poor whites, to take up the clarion call for peace with social justice once again. What is needed to begin with is the withdrawal of U.S. troops in Iraq and the using of the resources gained for true democratic reconstruction at home and abroad, including in Iraq, in ways that benefit the people, not market hungry military-corporate profiteers. As the daily death toll mounts the time for mobilization is now.<sup>44</sup> And in a hopeful sign, already Katrina is eroding support among the American public for the Iraq War.<sup>45</sup>

What is needed, as during the New Deal, when massive public works helped to lift some of the poorest of the nation's citizens out of poverty – notably second-generation immigrants on the white side of the color line and their parents, some 40 million in all – is a broad commitment to democratic reconstruction and renewal at home and abroad. Yet this time, a bolder strategy of reform would need to include persons of color, notably African-Americans and the burgeoning population of Latinas and Latinos. And now is also the time to make the connections between the war at home and abroad, between the struggle for peace, civil rights, and social justice, as did Martin Luther King, Jr. before he was assassinated. For the disaster of America's wars in the Persian Gulf are intimately related with the disaster in the Gulf Coast of the U.S. Thus the largest U.S. anti-war coalition, United for Peace and Justice, put out a statement on the aftermath of Katrina entitled: "After Katrina, Fund Full Recovery on Gulf Coast, Not War on Iraq."<sup>46</sup>

The period of Reconstruction after the

Civil War was a time of great hope, especially for African Americans. With the defeat of Reconstruction in the late 19th century, as with the turning back of the much hoped for second Reconstruction in the late 1960s and beyond, and with it the demise of the civil rights movement and the black freedom struggle, the clock was turned back on African Americans and the struggle against poverty and for social justice in the other America.<sup>47</sup> President Bush announced that the reconstruction of the Gulf Coast would be among the largest such efforts in world history. Yet Bush continues to press for making his tax cuts for the wealthiest permanent, a move that would cost some \$1.5 trillion over the next decade, while Congressional conservatives revealed a host of policy initiatives from school vouchers that would further privatize public schools to tax breaks in the Gulf Coast states as their preferred policy initiatives in the hurricane's aftermath. These facts, along with other news coming out about the planned reconstruction, including the possible suspension of environmental laws, and of Bush's chief political advisor Karl Rove's prominent place as the official in charge of plans to rebuild the region, indicate how far Bush's plan is from the vision of the New Deal.<sup>48</sup> Not surprisingly, Jesse Jackson spoke of a "Hurricane for the poor and a windfall for the rich."

There is, however, another path. Now, as part of the broader movement for global peace and justice, perhaps the African American freedom struggle could be taken up once again, to renew "America's unfinished revolution" of Reconstruction, so as to benefit not only the descendants of slavery but all residents of the U.S. and the rest of the world as well. Such an alternative democratic vision is one consonant with the call to action and solidarity of the World Social Forum meetings. The time for peace and social justice is now. For these are the challenges of our times. ■

## Notes

<sup>1</sup> Thanks to Gar Alperovitz, Noam Chomsky, Tom Dobrzeniecki, Elaine Elliott, Judith Liu, Rafik Mohamed and my colleagues and students at the University of San Diego (USD) for assistance with this piece. I also benefited from the public forum with Mike Davis and others, "Disasters in the Aftermath of Hurricane Katrina," Activist San Diego, September 12, 2005, San Diego, California. The final content is my responsibility alone though.

<sup>2</sup> Mary Kaldor, "Beyond Militarism, Arms Races and Arms Control," Social Science Research Council, 2002. pp. 6-7. <http://www.ssrc.org/sept11/essays/kaldor.htm>.

<sup>3</sup> See Noam Chomsky, *Deterring Democracy*, New York: Verso, 1991. See also William S. Borden, *The Pacific Alliance: United States Foreign Economic Policy and Japanese Trade Recovery, 1947-1955*, Wisconsin: University of Wisconsin Press, 1984.

<sup>4</sup> United States Space Command, *Vision for 2020*, February 1997 ([http://www.gsainstitute.org/gsi/docs/vision\\_2020.pdf](http://www.gsainstitute.org/gsi/docs/vision_2020.pdf)).

See also Ann Markusen & Joel Yudken, *Dismantling the Cold War Economy*. New York: Basic Books, 1992; Frank Kofsky, *Harry Truman & the War Scare of 1948: A Successful Campaign to Deceive the Nation*. New York: St. Martin's Press, 1993; Kenneth Flamm, *Targeting the Computer: Government Support and International Competition*, Washington D.C.: Brookings, 1987; Kenneth Flamm, *Creating the Computer: Government, Industry, and High Technology*, Washington D.C.: Brookings, 1988; John L. Boies, *Buying for Armageddon*, Rutgers University Press, 1994; Christopher Layne & Robert S. Metzger, "Reforming Post-cold War US Arms Sales Policy: the Crucial Link between Exports and the Defence Industrial Base", *The Journal of Strategic Studies*, Vol. 18, No. 4, December 1995, pp. 1-32; Strategic Command, StratCom, *Essentials of Post-Cold War Deterrence*, 1995 (<http://nautilus.org/archives/nukestrat/USA/Advisory/essentials95.PDF>).

<sup>5</sup> Air Force Seeks Approval for Space Weapons Programs," Tim Weiner, *New York Times*, May 18, 2005. <http://www.commondreams.org/headlines05/0518-02.htm> In another recent development, the Pentagon is working on its own more advanced internet, the Global Information Grid (GIG), that aims to give "a God's-eye-view" of future battlefields; estimated to cost hundreds of billions of dollars, a new consortium formed in September 2004 to work on the project "includes an A-list of military contractors and technology powerhouses: Boeing; Cisco Systems; Factiva, a joint venture of Dow Jones and Reuters; General Dynamics; Hewlett-Packard; Honeywell; I.B.M.; Lockheed Martin; Microsoft; Northrup Grumman; Oracle; Raytheon; and Sun Microsystems" (*New York Times*, "Pentagon Envisioning a Costly Internet for War," Tim Weiner, Saturday, November 13, 2004, pp. A1, B2). See also *New York Times*, "An Officer & a Gentleman: In Corporate Jobs, Old Generals Find a Hero's Welcome," Leslie Wayne, Saturday, June 19, 2005, Section 3, pp. 1, 11.

<sup>6</sup> William Arkin, "Early Warning: Natural Disasters Perfumery Concerns," *Washington Post*, September 15, 2005 ([http://blogs.washingtonpost.com/earlywarning/2005/09/exercising\\_to\\_d.html](http://blogs.washingtonpost.com/earlywarning/2005/09/exercising_to_d.html)). See the Comprehensive Homeland Security Exercise Schedule, July 15, 2004 (<http://media.washingtonpost.com/wp-srv/nation/nationalsecurity/earlywarning/HLSExerciseScheduleJul2004.pdf>).

<sup>7</sup> James Dao, "Bush Sees Big Rise in Military Budget for Next 5 Years; Up to \$451 Billion By '07; Proposed Buildup Would Rival Reagan's—Sharp Increase in Money for Supplies," *New York Times*, pp. A1, A9.

<sup>8</sup> Louis Uchitelle, "Sharp Rise in Federal Spending May Have Helped Ease Recession," *New York Times*, March 23, 2002, pp. A1, B4. John D. McKinnon and Anne Marie Squeo, "Shaky Economic Times Limit Bang of New Defense Spending," *Wall Street Journal*, April 15, 2003, pp. A1, 12.

<sup>9</sup> Bureau of Economic Analysis, "Gross Domestic Product: Second Quarter 2003 (Advance)," <http://www.bea.gov/beahome.html>. Louis Uchitelle, "Faster 2<sup>nd</sup>-Quarter Growth Fuels Optimism," *New York Times*, Friday, August 1, 2003, pp. C1, 10. Jon E. Hilsenrath, "GDP Data Spark Hopes Recovery Is Strengthening: Economy Grew at 2.4% Pace in the Second Quarter: Military Spending Surges," *Wall Street Journal*, August 1, 2003, pp. A1, 6.

<sup>10</sup> Paraphrasing Louis Uchitelle, "U.S. Economy Grows 4.2%; War Spending Provides Push," *New York Times*, April 30, 2004, pp. C1, 3. Bureau of Economic Analysis, "Gross Domestic Product: First Quarter 2004 (Advance)," <http://www.bea.gov/bea/newsrel/gdpnewsrelease.htm>.

<sup>11</sup> Dalton Conley, "Turning the Tax Tables to Help the Poor," *New York Times*, November 15, 2004, p. A23.

<sup>12</sup> On the new Cold War, see Noam Chomsky, *Towards A New Cold War: Essays on the Current Crisis and How We Got There*, New York: Pantheon, 1982.

<sup>13</sup> *New York Times*, "The Trillion-Dollar War," Linda Bilmes, Saturday, August 20, 2005, p. A27. *The Iraq Quagmire: The Mounting Costs of the Iraq War and the Case for Bringing the Troops Home*, A Study by the Institute for Policy Studies and Foreign Policy in Focus. By Phyllis Bennis and Eric Leaver and the IPS Iraq Task Force, August 31, 2005. <http://www.ips-dc.org/iraq/quagmire/IraqQuagmire.pdf>, p. i.

<sup>14</sup> Mike Davis, *Dead Cities*, p. 253.

<sup>15</sup> See The Brookings Institution Metropolitan Policy Program: Katrina: Issues and Aftermath. <http://www.brookings.edu/metro/katrina.htm> The other large city in which black out-migration occurred in every decade since 1965 is Pittsburgh (see William H. Frey, *The New Great Migration: Black Americans Return to the South, 1965-2000*, May 2004), especially pp. 5, 13. [http://www.brookings.edu/metro/publications/20040524\\_frey.htm](http://www.brookings.edu/metro/publications/20040524_frey.htm)

<sup>16</sup> On white flight, see *New York Times*, "What Happens to a Race Deferred," Jason DeParle, Sunday, September 4, 2005, Section 4, pp. 1,4, and <http://www.gnocdc.org/tertiary/white.html>. Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation & the Making of the Underclass*, Cambridge: Harvard University Press, 1993. For a visual representation and statistics on this system of residential segregation and related elevation levels, showing how upper-income whites occupy the high ground, giving them more protection against the floods, while many Blacks live in lower-lying areas, see The Greater New Orleans Community Data Center. <http://www.gnocdc.org/> See also U.S. Census Bureau, *Racial & Ethnic Residential Segregation in the United States: 1980-2000*, Issued August 2002 (<http://www.census.gov/prod/2002pubs/censr-3.pdf>). On the resegregation of public schools and the restoration of apartheid schooling some 50 years after *Brown versus Board of Education*, see Gary Orfield and Chungmei Lei, "Brown at 50: King's Dream or Plesy's Nightmare," January 2004, The Civil Rights Project, Harvard University (<http://www.civilrightsproject.harvard.edu/research/resego4/brown50.pdf>). See also Jonathan Kozol's *The Shame of the Nation: The Restoration of Apartheid Schooling in America*. New York: Crown Publishers, 2005). See also Peter Irons, *Jim Crow's Children: The Broken Promise of the Brown Decision* (New York: Viking, 2002).

<sup>17</sup> Demetrios Caraley, "Washington Abandons the City," *Political Science Quarterly*, 107 no. 1 (1992), pp. 8-11, cited in Mike Davis, *Dead Cities*, p. 247. See also Demetrios Caraley, "Dismantling the Federal Safety Net: Fictions Versus Realities," *Political Science Quarterly*, Vol. 111, No 2, Summer, 1995, pp. 225-258.

<sup>18</sup> Mike Davis, *Dead Cities*, Ch. 13, p. 259, 253, and pp. 239-273.

<sup>19</sup> It should be noted, though, that the freezing of domestic spending goes back to President Carter and the Democratic Congress of 1978 during the period of the mobilization of the

have coalition against the have-nots, part of the rise of the broader New Right culminating in Reaganism. “1978 was the first year of Reaganomics. A congress two-thirds controlled by Democrats endorsed the legislative agenda of the Business Roundtable by freezing social spending, deregulating the transport and phone industries, and supporting Carter’s move towards higher interest rates.” Mike Davis, *Prisoners of the American Dream*, New York: Verso, 1986, p. 137. Welding together Reagan’s New Right coalition was military Keynesianism and the financial overaccumulation its regressive financing allowed for. The vast expansion of money capital was fueled here by the doubling of the military budget, deregulation and tax cuts, and the regressive financing of the U.S. deficit, especially from the issuance and rollover of some \$13.5 trillion in marketable securities by the Federal Government from 1981 to 1990, ushering in the hegemony of Wall Street, the global capital markets, hedge funds, the IMF and World Bank, and the related Washington Consensus, the effects of which were soon seen in recurrent financial crises, from Asia to Latin America. See Roy Smith, *Comeback*, Cambridge, MA: 1993, p. 87. See also Jagdish Bhagwati, “The Capital Myth: The Difference Between Trade in Widgets & Dollars,” *Foreign Affairs*, May/June 1998, pp. 7-12. See also Gordon De Brouwer, *Hedge Funds in Emerging Markets*, Cambridge University Press, 2001. See also Financial Stability Forum Working Group on Highly Leveraged Institutions, Washington, D.C., March 2000. Available at FSF website: <http://www.fsforum.org>. See also E. Ray Canterbery, *Wall Street Capitalism: The Theory of the Bondholding Class*, Singapore: World Scientific Publications, 2000. See also Robin Broad, *Unequal Alliance: The World Bank, the International Monetary Fund & the Philippines*, Berkeley: University of California Press, 1988. See also Robert Wade & Frank Veneroso, “The Asian Crisis: The High Debt Model Versus the Wall Street-Treasury-IMF Complex,” *New Left Review*, March/April 1998, Number 228, pp. 3-24, and Robert Wade and Frank Veneroso, “The Gathering World Slump and the Battle Over Capital Controls,” *New Left Review*, Number 231, September/October 1998, pp. 13-42.

<sup>20</sup> Frances Fox Piven, *The War at Home: The Domestic Consequences of Bush’s Militarism* (New York: New Press, 2004).

<sup>21</sup> Mike Davis, *Dead Cities*, Chapter 13, pp. 239-273. See also *Los Angeles Times*, “Images of Evacuees Spark a Racial Debate,” Thomas Alex Tizon, Saturday, September 3, 2005, p. A11. *New York Times*, “What Happens to a Race Deferred,” Jason DeParle, Sunday, September 4, 2005, Section 4, pp. 1,4. *New York Times*, “A Delicate Balance is Undone in a Flash, and a Battered City Waits,” Peter Applebome, Christopher Drew, Jere Longman and Andrew C. Revkin, pp. A19, 22-23. The census of 2000 indicated the African-American population was 67.3%. A recent *Wall Street Journal* piece, “New Architecture: As Gulf Prepares to Rebuild, Tensions Mount Over Control,” Jackie Calmes, Ann Carns & Jeff D. Opdyke, Thursday, September 15, 2005, A1, 10, estimates the population as “more than 75% African-American.”

<sup>22</sup> *Wall Street Journal*, “New Architecture: As Gulf Prepares to Rebuild, Tensions Mount Over Control,” Jackie Calmes, Ann Carns & Jeff D. Opdyke, Thursday, September 15, 2005, A1, 10.

<sup>23</sup> *New York Times*, “The Storm Next Time,” Nicholas D. Kristof, Sunday, September 11, 2005, p. A15. [nytimes.com/opinion](http://nytimes.com/opinion) See also the references cited there: Kerry Emanuel, “Increasing Destructiveness of Tropical Cyclones Over the Past 30 Years,” *Nature*, Volume 436/4, August 2005, pp. 686-688 (<http://texmex.mit.edu/pub/emanuel/PAPERS/NATURE03906.pdf>). See also Kerry Emanuel, *Divine Wind: A History & Science of Hurricanes* (Oxford University Press, 2005). Pielke, Jr., R.A., C. Landsea, M. Mayfield, J. Laver & R. Pasch, in press, 2005, December, “Hurricanes & Global Warming, *Bulletin of the American Meteorological Society* ([http://sciencepolicy.colorado.edu/admin/publication\\_files/resourse-1766-2005\\_36.pdf](http://sciencepolicy.colorado.edu/admin/publication_files/resourse-1766-2005_36.pdf)); Stefan Rahmstorf, Michael Mann, Rasmus Benestad,

Gavin Schmidt, and William Connolley, “Hurricanes & Global Warming – Is There a Connection?” 2, September 2005. [www.realclimate.org](http://www.realclimate.org) See also Arjun Makhijani & Kevin R. Gurney, *Mending the Ozone Hole: Science, Technology, & Policy* (Cambridge, MA: MIT Press, 1995). Many scientists also believe that the frequency of hurricanes is increasing, as part of alternating cyclical upswings and downswings that occur roughly every thirty years or more, with the current increase part of the beginning of a new perhaps multi-decade long cycle. See also Mike Davis, “Melting Away,” *The Nation*, October 7, 2005 (<http://www.thenation.com/doc/20051024/davis>); See also the reference cited therein, “Arctic Systems on Trajectory to New, Seasonally Ice-Free State,” J.T. Overpeck et al., *EOS, Transactions, American Geophysical Union*, Vol. 86, No. 24, 23 August 2005, pp. 309-316 [http://paos.colorado.edu/~dcn/reprints/Overpeck\\_etal\\_EOS2005.pdf](http://paos.colorado.edu/~dcn/reprints/Overpeck_etal_EOS2005.pdf).

On the political economy and ecology of so-called natural disasters, see Mike Davis, *Ecology of Fear: Los Angeles & the Imagination of Disaster*, New York: Metropolitan Books, 1998. See also Ted Steinberg, *Acts of God: The Unnatural History of Natural Disaster in America*, Oxford University Press, 2003.

<sup>24</sup> On the complexities of this process, see Peter Dreier, John Mollenkopf & Todd Swanstrom, *Place Matters: Metropolitcs for the Twenty-first Century*, Second edition, revised, (University Press of Kansas, 2004).

<sup>25</sup> See also W.G. Peacock, B.H. Morrow, and H. Gladwin, eds., *Hurricane Andrew: Ethnicity, Gender, & the Sociology of Disaster*, Miami: Florida International University, International Hurricane Center, London, New York: Routledge, 1997.

From the 1950s to the present, engineers have destroyed some 8,000 miles (13,000 kilometers) of the canals “through the marsh for petroleum exploration and ship traffic. These new ditches sliced the wetlands into a giant jigsaw puzzle, increasing erosion and allowing lethal doses of salt water to infiltrate brackish and freshwater marshes.” According to Bob Morton, with the U.S. Geological Survey, the loss of the wetlands occurred most rapidly during the peak oil and gas producing times of the 1970s and early 1980s, leading him to conclude “that the removal of millions of barrels of oil and trillions of cubic feet of natural gas, and tens of millions of barrels of saline formation water lying with the petroleum deposits caused a drop in subsurface pressure—a theory known as regional depressurization. That led nearby underground faults to slip and the land above them to slump. “When you stick a straw in a soda and suck on it, everything goes down,” Morton explains. That’s very simplified, but you get the idea” (*National Geographic*, “Gone with the Water,” Joel K. Bourne, October, 2004 (<http://www3.nationalgeographic.com/ngm/0410/features5/>). See also Christopher Hallowell, *Holding Back the Sea: The Struggle for America’s Natural Legacy on the Gulf Coast*, New York: Harper Collins, 2001. See also the important study by the H. Heinz III Center for Science, Economics and the Environment, *Human Links to Coastal Disasters*, 2002 [http://www.heinzctr.org/NEW\\_WEB/PDF/Full\\_report\\_human\\_links.pdf](http://www.heinzctr.org/NEW_WEB/PDF/Full_report_human_links.pdf), and their related publications which can be accessed via their website at <http://www.heinzctr.org/index.htm>.

<sup>26</sup> Mike Davis, Public Forum, “Disasters in the Aftermath of Hurricane Katrina,” Activist San Diego, September 12, 2005, San Diego, California. Mike Davis, “After the Deluge: Poor, Black and Left Behind; Before Killer Katrina, There Was Ivan the Terrible,” (<http://www.laweekly.com/link/05/42/after-davis.php>) is an eloquent indictment of the failure of both Democrats and Republicans to evacuate the black poor in the face of Hurricane Ivan, a prophetic enough piece, in light of our recent experience with Hurricane Katrina. In short, Hurricane Katrina was eminently predictable, and the consequences predicted by experts, despite the lack of action, a fact often revealed in the aftermath of catastrophes.

There was no shortage of documentaries and popular and

scientific articles predicting the disaster. See the video, “New Orleans & the Delta: Disappearing Delta Overview” and “The Mighty Mississippi” <http://www.pbs.org/nov/science/neworleans.html>. A *Scientific American* article in October 2001 by Mark Fischetti had this to say: “New Orleans is a disaster waiting to happen...The low-lying Mississippi Delta, which buffers the city from the gulf, is also rapidly disappearing...Each loss gives a storm surge a clearer path to wash over the delta and pour into the bowl, trapping one million people inside and another million in surrounding communities. Extensive evacuation would be impossible because the surging water would cut off the few escape routes. Scientists at Louisiana State University (L.S.U.), who have modeled hundreds of possible storm tracks on advanced computers, predict that more than 100,000 people could die...A direct hit is inevitable.” The article went on to describe the entirely feasible engineering effort required to save the city from certain disaster. <http://www.sciam.com/article.cfm?articleID=00060286-CB58-1315-8B5883414B7E0000> See also Mark Fischetti, “They Saw it Coming,” *New York Times*, Friday, September 2, 2005, p. A23. See also Thomas Ehrlich Reifer, “Review of Mike Davis, *Dead Cities: And Other Tales*, in *City and Community* (Journal of the Community and Urban Sociology Section of the ASA), Vol. 2, Issue 4, December 2003, pp. 369-370. See also *New York Times*, “Restore the Marsh,” Craig E. Colten, p. A27. See also Craig E. Colten, *An Unnatural Metropolis: Wrestling New Orleans from Nature*, Louisiana State University Press, 2004, and his edited volume, *Transforming New Orleans and Its Environs: Centuries of Change*. See also, Ari Kelman, *A River & Its City: The Nature of Landscape in New Orleans*, University of California Press, 2003. See also Richard Campanella, *Time & Place in New Orleans: Past Geographies in the Present Day*, Pelican Publishing Company, 2002. On the suburban locational bias in military spending, see John H. Mollenkopf, *The Contested City*, Princeton University Press, 1983; see also Mike Davis, *Dead Cities*, Ch. 13, “Who Killed L.A.: A Political Autopsy,” pp. 239-274.

<sup>27</sup> On the Hurricane Pam exercise, see the website of <http://www.globalsecurity.org/security/ops/hurricane-pam.htm> and the related links there, from which the information in this paragraph comes. See also the Report on Hurricane Pam, entitled: *Southeast Louisiana Catastrophic Hurricane Functional Plan*, Draft, August 6, 2004, IEM/TECO4-00, Innovative Emergency Management ([http://msnbcmedia.msn.com/i/msnbc/Components/Interactives/News/US/Katrina/docs/Southeast\\_Louisiana\\_Catastrophic\\_Hurricane\\_Functional\\_Plan.pdf](http://msnbcmedia.msn.com/i/msnbc/Components/Interactives/News/US/Katrina/docs/Southeast_Louisiana_Catastrophic_Hurricane_Functional_Plan.pdf)). Prepared for Sharon Blades, under FEMA BPA HSFHQ-04-A-0288, Task Order 001. The estimate of fatalities is on p. 7. Another report, 448 pages, not yet released to the public, called “Southeast Louisiana Catastrophic Hurricane Plan,” also recognized that significant numbers of residents in New Orleans would be unable to evacuate. See *Wall Street Journal*, “U.S. Had Plan for Crisis Like Katrina,” Robert Block, Monday, September 19, 2005, p. A3-4. See also FEMA’s Southeastern Louisiana Catastrophic Hurricane Plan, <http://www.kucinich.us/phpBB2/viewtopic.php?p=16789&>.

<sup>28</sup> *New York Times*, “Storm Overwhelmed Government’s Preparations,” Scott Shane & Eric Lipton, Friday, September 2, 2005, pp. A1, 14.

<sup>29</sup> This paragraph is drawn from “Life in the Bottom 80 Percent,” Editorial, *New York Times*, Thursday, September 1, 2005, p. A22. The figures on spending cuts, including to Medicaid, comes from *New York Times*, “Bush Rules Out Raising Taxes for Gulf Relief,” David E. Sanger & Edmund L. Andrews, Saturday, September 17, 2005, pp. A1, 10.

<sup>30</sup> See Noam Chomsky, *Turning the Tide*, especially chapter 5, New York: Black Rose Books, 1987, pp. 221-253. See also Noam Chomsky, *Powers and Prospects*, especially chapter 5, Boston, South End Press, 1996, pp. 94-131. See Robert K. Murray, *Red Scare: A Study in National Hysteria, 1919-1920*, Minnesota: University of Minnesota, 1955. See Richard M. Freeland, *The Truman Doctrine and the Origins of McCarthyism: Foreign Policy,*

*Domestic Politics, and Internal Security, 1946-1948*, New York: New York University Press, 1985. Originally published in 1970. See also Elizabeth A. Fones-Wolf, *Selling Free Enterprise: The Business Assault on Labor and Liberalism, 1945-1960*, Urbana: University of Illinois Press, 1994. Alex Carey, *Taking the Risk Out of Democracy*, Sydney: University of New South Wales, 1995. See also Judith Stephan-Norris & Maurice Zeitlin, *Left Out: Reds & America’s Industrial Unions*, Cambridge University Press, 2003. On the dismantling of the Bretton Woods system of fixed exchange rates, the related end of capital controls and some of the consequences of these changes, see John Eatwell, “The Global Money Trap: Can Clinton Master the Markets?,” *The American Prospect*, Winter 1993, #12, pp. 118-126, and John Eatwell & Lance Taylor, *Global Finance at Risk*, New York: New Press, 2000. See also Giovanni Arrighi, *The Long Twentieth Century: Money, Power & the Origins of Our Times*, New York: Verso, 1994.

<sup>31</sup> *Los Angeles Times*, “American Caesar,” Rosa Brooks, Saturday, September 3, 2005, p. B15.

<sup>32</sup> *Wall Street Journal*, “Katrina Will Shape Military Debate: Army Has Resisted Proposal for Guard Disaster Units: Short of People, Equipment,” Monday, September 12, 2005, Greg Jaffe, p. A 5. Government Accountability Office, *An Integrated Plan is Needed to Address Army Reserve Personnel & Equipment Shortages*, July 2005 <http://www.gao.gov/newitems/doi5660.pdf>

<sup>33</sup> *New York Times*, “United States of Shame,” Maureen Dowd, Saturday, September 2, 2005, p. A29. *New York Times*, editorial, “The Man-Made Disaster,” Friday, September 2, 2005, p. A22. On earlier spending for freeways, see Mike Davis, *Dead Cities*, p. 261. The money for the bridge was such an embarrassment it was later taken away, only to be put in the Alaska general fund.

<sup>34</sup> *New York Times*, “Intricate Flood Protection Long a Focus of Dispute,” Andrew C. Revkin & Christopher Drew, Thursday, September 1, 2005, p. A14. *Editor & Publisher*, “Did New Orleans Catastrophe Have to Happen? ‘Times-Picayune’ Had Repeatedly Raised Federal Spending Issues,” Will Bunch, August 31, 2005. [http://www.mediainfo.com/eaandp/news/article\\_display.jsp?vnu\\_content\\_id=1001051313](http://www.mediainfo.com/eaandp/news/article_display.jsp?vnu_content_id=1001051313) Others estimate the costs as much higher, but again, this is a question of fiscal priorities. Action before Hurricane Katrina would undoubtedly have saved minimally tens of billions of dollars and countless lives.

<sup>35</sup> *Wall Street Journal*, “Overwhelmed: As U.S. Mobilizes Aid, Katrina Exposes Flaws in Preparation: Despite Warnings, Officials Say, There Wasn’t Clear Plan for a New Orleans Disaster,” Ann Carns and Chad Tehune in Atlanta, Kris Hudson in Baton Rouge, La., and Gary Fields in Washington, Thursday, September 1, 2005, pp. A1, 6.

<sup>36</sup> For an important study looking at the very different experience of Cuba, see Oxfam, *Cuba: Weathering the Storm: Lessons in Risk Reduction in Cuba*, 2004. [http://www.oxfamamerica.org/newsandpublications/publications/research\\_reports/pdfs/cuba\\_hur\\_eng.pdf](http://www.oxfamamerica.org/newsandpublications/publications/research_reports/pdfs/cuba_hur_eng.pdf) See also the important work of Amartya Sen, on democracy, development and militarization.

<sup>37</sup> GAO, *Disaster Management: Improving the Nation’s Response to Catastrophic Disasters*, July 1993, p. 7. <http://archive.gao.gov/tzpbats/t49631.pdf>

<sup>38</sup> Doug Bandow, “Federal Failure in New Orleans,” *CATO Institute*, September 8, 2005. [http://www.cato.org/pub\\_display.php?pub\\_id=4638](http://www.cato.org/pub_display.php?pub_id=4638) For the NPR interview with Chertoff, see <http://www.npr.org/templates/story/story.php?storyId=4828771> On Brown, see *New York Times*, “Director of FEMA Stripped of Role As Relief Leader: Decision Comes After Lawmakers Put Pressure on President,” Richard W. Stevenson & Anne E. Kornblut, Saturday, September 10, 2005, pp. A 1, 11.

<sup>39</sup> MSNBC Reports, “Katrina: What Went Wrong?” Saturday, September 17, 2005. The dates for the quotes come from

this program. PBS Frontline Documentary, "The Storm," November 22, 2005.

<sup>40</sup> *New York Times*, "Director of FEMA Stripped of Role As Relief Leader: Decision Comes After Lawmakers Put Pressure on President," Richard W. Stevenson & Anne E. Kornblut, Saturday, September 10, 2005, pp. A 1, 11.

<sup>41</sup> This paragraph is drawn from the *New York Times*, "In Storm's Ruins, a Rush to Rebuild and Reopen for Business: Contractors, and Lobbyists, Line Up," John M. Browder, pp. A1, 14. On Brown and Root and the military-corporate complex, see Joseph A. Pratt & Christopher Castaneda, *Builders: Herman & George R. Brown*, Texas A & M University Press, 1999. See also Naomi Klein, "The Rise of Disaster Capitalism," *The Nation*. Posted April 14, 2005. <http://www.thenation.com/doc/20050502/klein>

There is also the question of what will happen to the evacuees. Some are already pushing for the right of return to New Orleans for the evacuees, with guarantees of housing and jobs. The President's mother, Barbara Bush, had a different, more hopeful view, perhaps influenced by her husband's notion of the thousand points of light: "What I'm hearing, which is sort of scary, is they all want to stay in Texas...Everyone is so overwhelmed by the hospitality...And so many of the people in the arena here, you know, were underprivileged anyway, so this is working very well for them." September 5, 2005, American Public Media, National Public Radio (<http://marketplace.publicradio.org/shows/2005/09/05/PM200509051.html>). Then there is the political angle of some who appeared to delight in the fleeing of Blacks: Rep. Richard Baker, a "ten-term Republican from Baton Rouge," was overheard as saying, "We finally cleaned up public housing in New Orleans. We couldn't do it, but God did." *Washington Post*, "Some GOP Legislators Hit Jarring Notes in Addressing Katrina," Charles Bibington, Saturday, September 10, 2005 (<http://www.washingtonpost.com/wp-dyn/content/article/2005/09/09/AR20050909019301pf.html>). Perhaps these views help explain the seeming callous disregard many feel the President and some federal, local and state authorities appeared to show for those left stranded.

<sup>42</sup> *New York Times*, "Liberal Hopes Ebb in Post-Storm Poverty Debate: An Ideological Clash Over How to Help America's Poor," Jason DeParle, Tuesday, October 11, 2005, pp. A1, 18. *Wall Street Journal*, "No-Bid Contracts Win Katrina Work: White House Uses Practices Criticized in Iraq Rebuilding for Hurricane-Related Jobs," Yochi J. Dreazen, Monday, September 12, 2005, A3, 5.

<sup>43</sup> Mike Davis, *Dead Cities*, especially Ch. 13. See also *New York Times*, "From Margins of Society to Center of the Tragedy," Friday, September 2, 2005, A1, 19. P.W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry*, Ithaca: Cornell University Press, 2003. Peter Gowan, *The Global Gamble: Washington's Faustian Bid for World Dominance*, New York: Verso, 1999. Peter Gowan, "The New American Century?," *The Spokesman*, 76, 2002, pp. 5-22.

<sup>44</sup> See the homepage of United for Peace and Justice <http://www.unitedforpeace.org/>

<sup>45</sup> *Wall Street Journal*, "Katrina Erodes Support in U.S. for Iraq War: Bush's Ratings as Crisis Manager Declines in Poll as Pessimism About the Economy Grows," John Harwood, Thursday, September 15, 2005, p. A4.

<sup>46</sup> <http://www.unitedforpeace.org/article.php?id=3094>

<sup>47</sup> W.E.B. Du Bois, *Black Reconstruction in America: An Essay Toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860-1880*, New York: Atheneum, 1969. First published, 1935. Eric Foner, *Reconstruction: America's Unfinished Revolution: 1863-1877*, New York: Harper & Row, 1988. See also Mike Davis, *Prisoners of the American Dream: Politics and Economy in the History of the US Working Class*, New York: Verso, 1986.

<sup>48</sup> *New York Times*, "Bush Rules Out Raising Taxes for Gulf Relief," David E. Sanger & Edmund L. Andrews, Saturday, September 17, 2005, pp. A1, 10. *New York Times*, "Not the New Deal," Paul Krugman, Friday, September 16, 2005, p. A27. See also *New York Times*, "Message: I Care About Black People," Frank Rich, Sunday, September 18, 2005, p. A12. For a series of rich perspectives on these subjects, see the Social Science Research Council's website, "Understanding Katrina: Perspectives from the Social Sciences," <http://understandingkatrina.ssrc.org/>



# Reconstruction's Triple Whammy

## *Wolfowitz, the White House and the World Bank*

BY SHALMALI GUTTAL

When the Bush Administration nominated its Deputy Defense Secretary Paul Wolfowitz for the presidency of the World Bank in March this year, many World Bank watchers reacted with shock. Outrage against Wolfowitz's nomination was certainly to be expected from the left, and the global peace and justice movement. But this was beyond the pale for even liberal academics, the international press and much of the leadership of "old Europe" (with the exception of Tony Blair), who found it inexplicable that the US would take the bold step of nominating one of the chief architects of the US war on Iraq as the head of the world's largest development financier.

### A SUITABLE BOY

The disqualifying marks against Wolfowitz's ability to lead the World Bank were many and included his reputation as a belligerent Pentagon Hawk, his central roles in planning and overseeing the Gulf War and the invasion of Afghanistan and Iraq, his

disregard for internationalism, human rights and democracy, and his proclivity to reward loyalty to the US invasion of Iraq with lucrative commercial contracts. His support for the military dictatorships of Marcos in the Philippines, Chun Doo Hwan in South Korea and Suharto in Indonesia is no secret.

Renowned economists such as Joseph Stiglitz, Jeffrey Winters and even Jeffrey Sachs joined Bank watchers in decrying Wolfowitz's lack of training and experience in economic and financial policy, development planning, financial markets, trade, and social sectors that are upheld by the Bank as central to its fight against poverty such as health, HIV-AIDS, education, water and sanitation.

Widely regarded as one of the core members of the US neo-conservative intelligentsia and one of the most hawkish members of the Bush administration, Wolfowitz served in key political positions under the Reagan, Bush Senior and Bush Junior Administrations. Many voiced the concern that under Wolfowitz's watch, the World Bank would become an explicit instrument of US foreign policy and that it was only a matter of time before Wolfowitz started to steer the Bank in the direction of US interests through Bank policies, staff deployment and financing.

Amid the blaze of attention on how unsuitable Wolfowitz was for the job, a few voices pointed to a more fundamental issue: the fact that developing countries, who borrow from the World Bank and who have to bear the brunt of Bank policies and conditionalities, have absolutely no say in who heads up the institution. As the World Bank's largest shareholder, the US traditionally chooses the World Bank President while it allows the Europeans to nominate the head of the International Monetary Fund (IMF). Dismaying as the choice of Wolfowitz was, it came as no surprise to most Southern analysts that the Bush Administration would exert its muscle to ensure that the Bank more increasingly and compliantly carry out American dictates. Why bother to object or protest? asked many Southern analysts and activists; Wolfensohn or Wolfowitz, it's all the same; at least with Wolfowitz at the helm, the real purpose and agenda of the Bank will become clear to all those who think they can reform the institution.

Europe could have blocked the candidacy — as could have Australia, Japan, Canada and middle income developing countries, who are the Bank's largest borrowers. But Europe

wanted Pascal Lamy as the next Director General of the World Trade Organisation (WTO); Germany, Japan and India wanted permanent seats on the UN Security Council; other OECD countries wanted to stay in the bidding for commercial contracts (which Wolfowitz had already proved to be his specialty); and no developing country was willing to incur the ire of the Bank's most powerful shareholder by pointing out that their candidate was a narrow-minded, ultra-conservative war monger.

The international press drew parallels between Wolfowitz and Robert McNamara, another erstwhile Pentagon hawk, who was forced by the Johnson Administration in 1968 to relinquish his post as US Secretary of Defense and put in charge of the World Bank. McNamara's transfer was widely regarded as a diplomatic maneuver by a beleaguered US President (Lynden B. Johnson) to deflect public attention away from McNamara's role in planning and leading the US' disastrous and unpopular war on Vietnam. McNamara, who displayed little feeling as he planned a US military strategy in Vietnam that would cost over 3 million Vietnamese and 59,000 American lives, led the Bank for the next 13 years; years during which the Bank financed some of the most environmentally, socially and economically destructive infrastructure projects across the world, and launched its now infamous structural adjustment programmes (SAPs).

So why was Wolfowitz — the man in the Bush Administration most associated with spinning a phony case against Saddam Hussein and his supposed weapons of mass destruction; accused of manipulating US public opinion; of having poor judgment about how the Iraqi people would react to the invasion and occupation of their country; of being responsible for political and military failures in Afghanistan and Iraq; and for diminishing US credibility overseas — handed such a plum international position? Well, for starters, Wolfowitz's nomination as World Bank President was not a face saving bid by the Bush Administration. Here, there is an important departure from the McNamara parallel. Rather, it was a calculated move to ensure that the US is

able to continually secure its economic and geopolitical interests even as it plays the game of multilateralism. For what the US wants the World Bank to do, Paul Wolfowitz is an eminently suitable boy for the job.

## **VERTICAL INTEGRATION**

Located a few blocks from the Whitehouse, the World Bank and IMF have long been Washington's preserves in terms of economic and financial policy, operations, governance and management. US professionals (approved by the US Treasury of course) account for at least a quarter of senior management and higher-level professional staff. Regardless of claims of autonomy and independence, the Bank and Fund have consistently proven themselves to be firmly affiliated with US policies and interests. These interests have come together in a global project that has acquired an identifiable shape over the past 25 odd years: post-war reconstruction.

The US' first official foray into external post-war reconstruction was through the Marshall Plan that came into effect immediately after the Second World War, and which laid out an elaborate plan, replete with financing, for the post-World War 2 reconstruction of Europe. Since then, US talent and capacity for post-war reconstruction has expanded considerably, perhaps best showcased today in Afghanistan, Iraq and Haiti. The World Bank also got its head-start in post-war reconstruction in relation to World War 2 Europe as the International Bank for Reconstruction and Development (IBRD), channeling the resources for and overseeing the reconstruction of war-torn Europe. And again like the US, the Bank has also expanded its talent and capacity for reconstruction although the Bank's ambit runs wider and includes countries emerging from and/or in the grips of ongoing wars and violent conflicts (such as Rwanda, Afghanistan, Iraq, Haiti and Cambodia), as well as those "in transition" from communist to market economies (such as the Lao PDR, Vietnam, Kazakhstan and Azerbaijan).

The US approach to post-war reconstruction can be summed up in a single

phrase: *vertical integration*. The US either engineers a coup or invades a country, occupies it literally or by proxy, sets up a government of its choice, makes into law policies that favour US commercial and political interests, and then hands out plum contracts for "rebuilding" and "rehabilitating" the country to its most favoured private corporations. Ground for the vertical integration model is prepared well before invasion. By deploying spin doctors and the media, manipulating intelligence and security briefs, and creating public hype and hysteria against shadowy foes, a case is built to render invasion and occupation inevitable. Everyone comes away with a good chunk of the post-war reconstruction pie, except of course local residents whose homes, families and lives are destroyed by the endless war that the model results in.

The World Bank also has its version of vertical integration, which complements the US model well. In that the Bank has always been a proxy institution of the US through which the US imposes economic and financial conditions on capital needy countries, it flows naturally that when called in to coordinate the reconstruction of a war-torn country, the Bank will continue to defend the interests of the US and its allies, rather than the needs of the people in the affected country. The Bank will first lay down the rules and policies under which aid for reconstruction is to be solicited and used, then it will bring in private sector actors to implement these rules/policies while heaping costs (including debt repayment) on the occupied, and when things go wrong—as they inevitably would under such circumstances—the Bank will declare the affected country to be a failed state that is in need of even more stringent application of the same rules and policies that keep it a state of continuing failure.

## **THE AMERICAN WAY**

After the collapse of the Soviet Bloc, the US emerged as a relatively unchallenged global power, and sought to secure its economic and political interests throughout the world through all possible means: military, commercial, political or institutional. The

US economy is an oil and war economy; oil is necessary to fuel the high consumption that characterizes the American “way of life” and the US will wage war to ensure control over oil reserves, as well as to cement its position of global military and economic supremacy. Economic globalization today is essentially American hegemony: over the clothes we wear, the food we eat, the beverages we drink, the machines and chemicals we use in our industries, the appliances we use in our homes, the drugs we need to save lives, the films we watch, and even the social and political values that many in our societies hold up as necessary for progress and modern advancement.

For the US, ‘reconstruction’ involves setting up systems that advance US ideological and material interests. On the ideological end are promoting a market inspired articulation of “freedom and democracy,” an individualized interpretation of human rights, US style “democratic” values and systems, and a US sense of “moral clarity.” On the material end are securing and consolidating US control over oil and other key resources, expanding US corporate wealth and power domestically and abroad, ensuring US hegemony in global consumption, and establishing market and corporate friendly governance and legal processes and institutions in the world. US capital must expand and advance, no matter the costs.

For Wolfowitz, the end of the cold war offered vast opportunities for spreading US ideology and serving US interests. The use of “American muscle to advance American values around the world”<sup>1</sup> was crucial to ensuring US economic and political dominance globally. Use of the US’ military forces and technologies are central to this strategy and Wolfowitz had no trouble reconciling military power and commercial/economic interests with moral purpose. In a commentary on Wolfowitz’s thinking on post cold war defense policy, Andrew Bacevitch notes, “By taking advantage of vast new opportunities to put U.S. military might to work protecting human rights and advancing the cause of freedom, the United States could actually cement its position of global primacy.”<sup>2</sup>

In pursuit of achieving this primacy, the US has moved seamlessly from directly invading and occupying countries, and engineering and financing political coups (as in Afghanistan, Iraq and Haiti), to promoting “freedom and democracy” (as in Cambodia, Timor Leste and Central Asia), and threatening to withhold financial contributions to multilateral bodies such as the UN system, the Asian Development Bank (ADB) and even the World Bank, unless they establish in aid recipient countries the policies and institutions that the US wants.

US thinking on post-war reconstruction is clearly articulated in the mission statement of the Office of the Coordinator for Reconstruction and Stabilisation (S/CRS). Established in July 2004 in order to develop a more “robust capability”<sup>3</sup> to prevent conflict and “manage stabilization and reconstruction operations in countries emerging from conflict or civil strife,”<sup>4</sup> the S/CRS reports directly to the Secretary of State. The S/CRS mission statement notes:

Until now, the international community has undertaken stabilization and reconstruction operations in an ad hoc fashion, recreating the tools and relationships each time a crisis arises. If we are going to ensure that countries are set on a sustainable path towards peace, democracy and a market economy, we need new, institutionalised foreign policy tools - tools that can influence the choices countries and people make about the nature of their economies, their political systems, their security, indeed, in some cases about the very social fabric of a nation.<sup>5</sup>

The Bush administration has requested \$124.1 million from the US Congress to jump-start S/CRS operations and has asked for ‘flexible spending authority’ in order to allow resources to be used to “maximum effect.”<sup>6</sup> Despite rhetoric about fostering peace, harmony and democracy, securing economic gains ranks high in S/CRS planning. According to Carlos Pasqual, the Coordinator of the S/CRS, the office will build inter-agency, inter-sectoral and military-civilian

teams that can move into conflict situations early in the process and take on bulk of the reconstruction work:

To support the larger and longer-term program requirements, the coordinator's office is assessing and filling gaps across government agencies in contracts and more informal arrangements with organizations that specialize in various aspects of stabilization and reconstruction: mobilizing international civilian police, training indigenous police, developing systems of justice, providing fiscal and monetary advice, stimulating the private sector, and supporting civil society. S/CRS is also assessing the feasibility of a civilian reserve corps that could tap individuals with key skills. The goal is to organize all of these resources so that they can mobilize quickly and efficiently after a conflict to fill all the needed functions and skills.<sup>7</sup>

Pasqual is clear that S/CRS' work would focus on creating laws and institutions for a "market democracy," and that it will devise reconstruction contracts well in advance with private companies and NGOs.<sup>8</sup>

And so we've begun a process of ensuring that we have a global network of contracts and grants and cooperative agreements with firms and individuals and think tanks and universities and NGOs so that these are pre-competed in advance in core skill areas so that individuals are identified and when, indeed, it is necessary to deploy a team of individuals to the field that you can go to those contracts and, perhaps, cut off three to six months in your response time by having these activities pre-competed in advance.<sup>9</sup>

US reconstruction ambitions are perfectly mirrored in the case of Iraq. Between May 2003 and June 2004, Lt. Paul Bremer, the Head of the US established Coalition Provision Authority (CPA) which served as the first occupation authority in Iraq, fired 500,000 state workers (including

soldiers and civilians), opened the country to unrestricted imports, started to privatise state enterprises, and enacted a radical set of laws to entice multinational corporations to set up operations in Iraq. In her research on Iraq's reconstruction, Naomi Klein noted that, "Overnight, Iraq went from being the most isolated country in the world to being, on paper, its widest-open market." Klein reported that according to Joseph Stiglitz, former chief economist at the World Bank, Bremer's reforms were "an even more radical form of shock therapy than pursued in the former Soviet world."<sup>10</sup>

Contracts worth millions of dollars were routinely handed out by the CPA to favoured US corporations while top posts for shaping Iraq's future "sovereign" government and Iraqi civil society were farmed out to highly paid and ideologically motivated professionals from the Bush Administration's pet think tanks and investment banks. Prominent among them are the Research Triangle Institute (RTI), the National Endowment for Democracy (NED) and Bearing Point, all of whom were tasked with constructing economic, social and political structures and institutions most conducive to US corporate interests even after direct occupation ends.<sup>11</sup> Bulk of the contracts for civilian construction, maintenance of the oil fields and procurement went without open competitive bidding to Halliburton, former home of Vice President Dick Cheney, and Kellogg Brown and Root (KBR), a subsidiary of Halliburton.<sup>12</sup>

In an analysis of the final draft of the Iraqi Constitution, Herbert Docena shows how the Constitution has written into law provisions for private ownership of Iraqi assets, including foreign ownership, and binds Iraqis to enforce the neo-liberal policies laid down in the Bremer decrees. Docena notes, "The contents of Iraq's permanent constitution are of critical interest to those committed to reconstruct Iraq's economy along neo-liberal lines."<sup>13</sup> Particularly important among these are the provisions that govern Iraq's oil assets in reference to which, Docena notes, Adil Abdel Mahdi, Iraq's Vice President, told an audience in Washington, just before the Iraqi elections: "[T]his is very promising

to the American investors and to American enterprises, certainly to oil companies.”<sup>14</sup>

### **AT HOME AS ABROAD**

US companies that have benefited from lucrative reconstruction contracts abroad also benefit at home as is evident from the rush towards post disaster relief and rehabilitation in the US’ southeastern Gulf Coast after it was ravaged by Hurricane Katrina. And here too, we see the vertical integration model at work: governmental capacity to respond to disasters is severely undermined by budget cuts; a select group of private companies that have long-standing relationships with key US federal agencies get no-bid contracts for rehabilitation and reconstruction, and former officials who once occupied senior positions in the US government now work as highly paid consultants to private companies, helping them to win contracts from the very agencies in which they once worked.

In the wake of Hurricane Katrina’s destruction, the US Congress approved a series of multi-billion dollar disaster aid packages, bringing disaster relief spending to more than \$62 billion in a week. By mid-September, the US Government was spending about \$2 billion dollars a day to respond to the disaster. In early September, the US Federal Emergency Management Authority (FEMA) and the Army Corps of Engineers (Army Corps) awarded several no-bid contracts, most for up to \$100 million, for post-Katrina clean-up, emergency housing, repair of public works and provision of basic services. Many of these contracts went to politically connected companies such as the Fluor Corporation of California (which is a major donor to the Republican Party), the Shaw Group of Louisiana, Bechtel, Halliburton and KBR. Many of these companies also received no-bid contracts for work in Iraq, particularly Halliburton and KBR. Two other names popped up repeatedly in the post Katrina windfall: Joe M. Allbaugh and James Lee Witt. Both were directors of FEMA under the Bush Junior and Clinton Administration respectively.

KBR is a client of Joe M. Allbaugh, the former head of FEMA from 2001-2003, who now has a private lobbying and consulting

firm.<sup>15</sup> Mr. Allbaugh is a close friend of President Bush and was his campaign manager in 2000.<sup>16</sup> As FEMA Director, Allbaugh called disaster assistance “on over-sized entitlement programme” and cut back many crucial flood and storm mitigation programmes.<sup>17</sup> After his resignation in 2003, Allbaugh became a highly paid consultant to companies looking for contracts in Iraq, and surprise, surprise, showed up in Louisiana after Hurricane Katrina, looking for reconstruction work! Allbaugh had used his years in FEMA well; he more or less laid down the groundwork for disaster to be converted into oversized crony corporate entitlement programme.

Mr. Witt, on his part, is a close ally of former President Bill Clinton, and his company-- James Lee Witt Associates - - employs Wesley Clark, the former North Atlantic Treaty Organization (NATO) commander and Rodney Slater, a former Secretary of Transportation in the Clinton administration. Mr. Witt was Louisiana State Governor Kathleen Babineaux Blanco’s advisor on how to manage the post Katrina crisis, and his clients include Nextel Communications, Whelen Engineering, a manufacturer of warning systems, and the Harris Corporation, a telecommunications equipment company.<sup>18</sup>

One of the most immediate tasks after Hurricane Katrina hit Louisiana was repair of the breaches in the New Orleans levees. Three companies -- the Shaw Group, KBR and Boh Brothers Construction of New Orleans -- were awarded no-bid contracts by the Army Corps to repair the breaches in the New Orleans levees that caused disastrous floods, killing and displacing thousands. Many planners and engineers have pointed out that the levees were weakened in the first place by years of budget cuts and neglect by FEMA and the Army Corps of Engineers.

The Shaw Group -- a \$3-billion-a-year construction and engineering firm based in Louisiana -- received two contracts of up to \$100 million each from FEMA and the Army Corps respectively, to work on levees, pump water out of New Orleans and provide assistance with housing. FEMA suspended normal bidding rules in awarding housing contracts to the Shaw group and

CH2MHill, a Colorado based company. Fluor Corporation, Bechtel, and Dewberry Technologies from Virginia are also doing similar work under longstanding FEMA contracts.<sup>19</sup> Bechtel, with \$17.4 billion in annual revenues globally, is working under an informal agreement setting up housing in Mississippi, with no set payment terms, scope of work or designated total value. It is also performing reconstruction work in Iraq under a large federal contract.<sup>20</sup>

Many of the normal contracting safeguards that should accompany contracts of such sizes were temporarily suspended in post Katrina rehabilitation in an apparent bid to ensure that emergency federal aid reached victims as soon as possible. The Bush administration also waived prevailing wage requirements that ensure government-contracted workers in disaster areas are fairly compensated.<sup>21</sup> The Army Corps awarded another \$1.5 billion in contracts in mid-September for post-Katrina cleanup operations in Louisiana and the Gulf Coast. Although these contracts were to go through competitive bidding, they were given “expedited handling,” i.e., the bidding process could last less than three days.<sup>22</sup>

In a bid to preempt allegations of contract abuse, the Department of Homeland Security decided to send a team of investigators and auditors to the hurricane ravaged Gulf Coast to ensure that federal funds are properly distributed in rescue, relief and rebuilding work. Ironically, the team will not be able to investigate the most controversial of the Katrina contracts: a \$16.6 million contract with KBR for emergency repairs at the Gulf Coast naval and Marine facilities. This money is part of a \$500 million Navy contract that KBR won by competitive bid last July. Homeland Security claimed that it has no authority to audit the contract since it was awarded by the Pentagon. However, KBR has been under scrutiny for receiving a 5 year no-bid contract to restore Iraqi oil fields shortly before the Iraq invasion in 2003, and questions have been raised whether KBR was treated especially favourably because of its connection with Vice President Dick Cheney, who headed Halliburton from 1995 to 2000.<sup>23</sup> Halliburton (KBR’s parent company) also has a 5 year, \$ 500 million contract with the US

Navy to provide emergency repairs at military installations damaged by Katrina.<sup>24</sup>

This dizzying maze of connections is only the tip of the iceberg. The reality is that there are sordid parallels between profit making through war and disaster in Iraq and Louisiana. Another unfortunate example of this is private security. And again, more or less the same faces showed up in New Orleans as in Iraq: private military companies such Blackwater and ISI. Although the city police authorities prohibited civilians from carrying firearms of any kind in New Orleans, the order did not seem to apply to the hundred of private security guards, who openly carried M-16s and other assault rifles, and at times — as in Iraq — engaged as proxies of official law enforcers in skirmishes with local residents.

We would do well to remember that *this* is the milieu and working culture that Paul Wolfowitz comes from cronyism and a shocking lack of accountability. Halliburton in particular, seems to be practically above the law. In a testimony to US Congress on September 16, Christy Watts, who was Chief of Contracting for the Army Corps in Kentucky reported that Halliburton and the Army Corps habitually violate contracting regulations, expect their employees to conceal such abuses from the public, and threaten and intimidate government officials who complain about contract abuse.<sup>25</sup>

Louisiana residents can certainly hold Wolfowitz at least partly responsible for the failure of federal and state systems to respond to the post-Katrina disaster with the timeliness and effectiveness that the scale of the disaster demanded. The Bush Administration made drastic cuts to the budgets for emergency response of FEMA and the New Orleans division of the Army Corps<sup>26</sup> despite sufficient warnings of powerful hurricanes massing in the US’ southern coasts. Where did the money go? Well, mostly to offset the costs of the Wolfowitz-Cheney war on Iraq and Bush’s Department of Homeland Security. The Administration also seriously undermined the capacity of Louisiana’s National Guard — whose job *is* actually homeland security — by shipping more than a third of the National Guard cadres off to Iraq.

In Louisiana-- as in Iraq -- Wolfowitz's war provided great dividends to Bush Administration cronies and brought immeasurable suffering to ordinary people, especially the poor and vulnerable. And the greed just does not seem to end. The Army Corps in New Orleans is now led by the same official who formerly oversaw contracts in Iraq.<sup>27</sup> Talking to the New York Times, Danielle Brian, director of the Project on Government Oversight, a nonprofit government spending watchdog group, observed that in the case of Katrina, "You are likely to see the equivalent of war profiteering -- disaster profiteering."<sup>28</sup>

### **RECONSTRUCTION'S BANKER**

For the World Bank, post-war reconstruction is an opportunity to apply the most egregious form of structural adjustment to countries emerging from war or natural disasters, undergoing violent internal conflicts, under foreign occupation, and/or undergoing "transition" from communism to capitalism. The Bank is playing a significant role in shaping the economic, social and political climates in Afghanistan, Cambodia, Africa's Great Lakes region, the Balkans, Liberia, Nepal, Sierra Leone, Timor Leste, Sri Lanka, the West Bank and Gaza, and other areas torn by war, conflicts and disasters. Common to all World Bank reconstruction programmes is the immediate application of free market reforms, including legal provisions for foreign investment, full repatriation of profits for foreign investors, private property rights, zero subsidies for food and essential services, and the now ubiquitous "good governance" which means pro-market and pro-corporate regulatory and legal systems.

The World Bank is one of the most influential institutions involved in post-conflict and war reconstruction. "Mitigating the effects of war" accounts for about 16 percent of the Bank's total lending,<sup>29</sup> and over the past twenty odd years, it has developed an incredibly complex array of systems through which it carries out its reconstruction activities. These include programmes for needs assessments, political, economic and conflict analyses, technical assistance,

monitoring and assessment, best practice documentation, donor and aid coordination and of course, financing. In 2003, the United Nations Development Programme (UNDP) and the World Bank commissioned the German Agency for Technical Cooperation (GTZ) to prepare a practical guide to Post-Conflict Needs Assessments (PCNAs) based on a review and analysis of past experiences and assessment methodologies in the context of humanitarian aid, conflict analyses and development cooperation. The Guide draws strongly from recent needs assessments in Timor-Leste, Afghanistan, Sri Lanka, Iraq and Liberia, and is intended as the base reference for UNDP-Bank staff as well as a source of information for bilateral donors, NGOs, civil society and government representatives to nudge them along the same programmatic direction as the Bank. The Bank claims, "the post-conflict needs assessment (PCNA) has recently become a key entry point for conceptualizing, negotiating and financing post-conflict recovery strategies."<sup>30</sup>

The Bank has a special unit to design development programmes for conflict affected countries (the Conflict Prevention and Reconstruction Unit) and a special fund to provide financing for reconstruction in "post-war societies" (the Post-Conflict Fund). It has an Operational Policy on "Development Cooperation and Conflict" (OP 2.30) that sets the scope and the terms of the institution's interventions and explicitly opens the door for the Bank to work in conflict prevention.<sup>31</sup> The Bank can even intervene in countries where it is unclear who is in power and can provide grants on request from the international community as "properly represented" (e.g., by UN agencies). This means that the World Bank (and the IMF) can operate in a country in the absence of a sovereign government, as they did in Iraq and Afghanistan.

In 1997, the Bank established the Post-Conflict Fund (PCF) to "enhance the World Bank's ability to support countries in transition from conflict to sustainable peace and economic growth." The PCF makes grants to governments, civil society organizations, institutions and private sector actors, to channel Bank aid as early, and in

as broad a spectrum as possible. In FY '04 alone, the Bank disbursed US \$ 10.6 million; since 1998, it has disbursed US \$ 66.7 million to, among others, Afghanistan, Sri Lanka, Columbia, Haiti, Azerbaijan, Rwanda, Sierra Leone, Bosnia, Croatia and the Philippines.<sup>32</sup>

What is remarkable about the Bank's involvement in post-conflict reconstruction is the breadth and size of its operations, and the ease with which it repackages its usual programmes into 'reconstruction' mode. The Bank's reconstruction activities span a wide spectrum, from giving policy "advice" and commissioning studies, to financing in-country activities and managing the donor funds channeled to a war-torn or conflict-ridden country for reconstruction. For example, in the Great Lakes region in Central Africa, the Bank is administering a US \$ 350 million, multi-donor programme to demobilize and reintegrate 450,000 former combatants from Angola, Burundi, Central African Republic, Democratic Republic of Congo, Republic of Congo, Rwanda and Uganda.<sup>33</sup>

Even the International Finance Corporation (IFC) — the World Bank's private sector financing window — is into the business, and has provided financing for projects such as a luxury long-stay hotel for international development personnel in Rwanda, a luxury hotel for diplomats and development aid professionals in Afghanistan, the development of oil fields in Southwest Chad, the construction of an underground pipeline from Chad to Cameroon (to transport the oil from the Chadian wells), a Greenfield cement plant in Iraq, privatization and expansion of a state owned power plant in Tajikistan, and a special loan facility to reconstruct and rehabilitate tourism facilities destroyed by the Tsunami.<sup>34</sup>

In order to expand its reconstruction work, the Bank has developed "new products" for situations where normal lending instruments cannot apply. These allow the Bank to "position itself" early on in shaping the affected country's development path. In a number of countries emerging from conflict, the World Bank prepares a Transitional Support Strategy (TSS). The TSS is a short to medium-term plan for comprehensive

reconstruction through which the Bank can provide emergency recovery grants and loans. Angola, Macedonia, Kosovo, Timor Leste and the Democratic Republic of Congo all currently have a TSS. The Bank has also established and managed joint donor trust funds in countries such as Afghanistan, Kosovo and Timor Leste, and in the Great Lakes region in Africa.<sup>35</sup>

## RE-FASHIONING THE STATE

At the end of 2002, the World Bank established the Low Income Countries Under Stress (LICUS) Unit. LICUS focuses on improving "development effectiveness" in what the Bank calls "fragile states." In collaboration with other development agencies and academics, the Bank has started to create an analytical framework and "assemble the right tools" to help countries in difficult circumstances.<sup>36</sup> As of June 2004, target countries included the Central African Republic, Haiti, Liberia, Myanmar, Somalia, Sudan, Togo, and Zimbabwe.

In the Bank's world, fragile states are "characterized by particularly weak institutions and performance, as measured by the World Bank's Country Performance and Institutional Assessment ratings."<sup>37</sup> Significant here is the Bank's observation that LICUS countries have "environments that are not conducive to absorbing significant quantities of development assistance."<sup>38</sup> The Bank's approach to fragile states is actually quite similar to that of the US' S/CRS programme. Both claim concerns about a proliferation of failed states that are as much a threat to the world at large as they are to their own populations.

Many LICUS have domestic stakeholders who are attempting to initiate basic reforms. Domestic reformers in these countries are often politically weak: they require modest but timely international support to build momentum for reform efforts. This is particularly critical in LICUS countries where efforts at national reconciliation or political transition are underway: it is crucial that economic

and governance improvements take place during such transitional periods, both to prevent a return to political instability and to strengthen policies and institutions in readiness for more comprehensive engagement by the international community.”<sup>39</sup>

In January 2004, the Bank set up a LICUS Trust Fund to support LICUS countries during what it calls “transitional” periods, especially for those that have loan servicing arrears to the Bank. Financed by the Bank’s surplus in FY ‘03, the Trust Fund has a budget of \$25 million, and to date has disbursed \$19.1 million in grant packages to Comoros, Liberia, Central African Republic, Haiti and Sudan. According to the Bank,

The proposed trust fund, targeted primarily to countries in non-accrual, would allow the Bank to provide modest support that would assist them as they initiate the kinds of reforms that would set the stage for arrears clearance and subsequent access to IDA financing and debt relief, on the basis of a robust track record.<sup>40</sup>

In other words, the objective of the LICUS Trust Fund is to bring these “fragile” countries back under the apron strings of the World Bank and the IMF. The main reforms envisaged through Trust Fund financing include, governance, civil service, public finance, policy, institutional and judicial reforms — all the elements of a classic structural adjustment programme.

In the coming years, LICUS is likely to play a greater role in advancing the ideological underpinnings of the reconstruction model. A document released by the Organisation for Economic Cooperation and Development (OECD) in April 2005 and advocated by the World Bank, lays out 12 principles for “good international engagement in fragile states.” The document more or less outlines a framework by which bilateral donors, multilateral agencies, creditors and

other international organizations should coordinate their reconstruction efforts in fragile states. Most of the principles address establishing national government institutions and infrastructure, local/national “capacity building,” overtly linking economic development with political and “peace processes,” and donor “coherence”<sup>41</sup>; in other words, completely re-fashioning the state.

A dangerous facet of the World Bank’s LICUS programme is that it endows the Bank with the capacity to designate countries that are at threat of becoming “fragile states” and thereby target them for policy and perhaps even stronger action by the Bank’s powerful shareholders. Similarly, Carlos Pasqual’s S/CRS office has requested the US National Intelligence Council to identify every six months a group of countries that they consider to be at the “greatest risk of instability.” From among these, the CRS will select countries on which it will “focus a more intensive planning process.”<sup>42</sup> Both, the Bank and S/CRS then, are in a position to make state failure a self-fulfilling prophesy through their respective post-war reconstruction programmes.

## **MAINTAINING ITS FOOTHOLDS**

Despite its best effort to portray otherwise, the World Bank’s motto, “Working for a World Free of Poverty,” rings increasingly hollow with every dollar of aid it disburses.

Over the past 60 odd years of its existence, the Bank has moved through numerous fads, including emergency relief, infrastructure development, building human and social capital, meeting basic needs, financial and economic reforms, good governance and participation. But by any measure of economic or social performance, the last two decades have shown applications of Bank-Fund economic and financial orthodoxy to be abysmal failures. Countries indebted more than 20 years ago remain mired in debt with crippling debt repayment burdens that have undermined all social and environmental indicators; income poverty, inequality, unemployment, hunger and malnutrition have become entrenched conditions as result of Bank-Fund designed economic and financial reforms; social exclusion, distress

migration and human trafficking are on the rise wherever the Bank and Fund have left their policy imprints; environmental and ecological destruction and forced resettlement accompany most Bank financed infrastructure projects, and the abilities of Bank-Fund borrowers to combat HIV-AIDS, malaria and other epidemic diseases have been undermined as a result of shrinking public expenditure budgets.

In a study on IFI involvement in Afghanistan, Anne Carlin notes that IFIs are seeking “new lines of business” at a time when large borrowers such as India and China turn to other sources for major projects.<sup>43</sup> In order to keep middle-income clients such as India and China, the IBRD has cut its loan fees and raised the maximum amount it would lend to a single country by \$1 billion, to \$14.5 billion.<sup>44</sup> According to a senior Bank official, India has complained that it find the costs of borrowing from the Bank too onerous and is unwilling to borrow if the costs of borrowing are not reduced.

Post-conflict/war reconstruction thus provides an excellent opportunity for the World Bank to carve out a new role for itself and keep institutional irrelevance at bay. “Nation building” and supporting “fragile states” to achieve “sustainable exits” from conditions of conflict offer useful shields to the Bank to deflect unfavourable attention away from its poor record with structural adjustment, debt relief and white elephant infrastructure projects. The ascent of Paul Wolfowitz to the Presidency of the Bank thus suits the Bank’s interests of self-perpetuation.

Although Wolfowitz comes to the Bank presidency without any development experience, he does bring the extremely valuable experience of overseeing the reconstruction of Iraq during which, he demonstrated his willingness and commitment to use ‘development’ as a cover for corporate profit making. It matters little that in the two years since it was invaded, Iraq has descended into chaos, food, water and medicines are scarce, physical security and public safety are practically non-existent, and the country is wracked with sectarian conflicts. More important is the fact that

US corporations have control over all the plum contracts for rebuilding the structures that Wolfowitz’s war destroyed. Vertical integration at its best.

The World Bank has come under heavy criticism for brokering a debt relief plan for Iraq under pressure from the US. In late 2003, the Paris Club agreed to a debt relief plan for 80 percent of Iraq’s debt, in return for Iraq agreeing to yoke itself to an IMF ‘reforms package.’ France, Germany and Russia — who had had investments in Iraq under Saddam Hussein’s government — initially resisted the plan, arguing that such massive debt relief for Iraq was unfair to other countries with even larger debts and without the abundant oil reserves that Iraq has to service its loans. Eventually they capitulated, and although Iraq owed less to the Paris Club of creditors than it owed to its regional neighbors, its future economic and social policies are now firmly in the grip of the IMF and the World Bank and thereby, Washington.

Iraq’s attraction as a source of immense oil wealth is in fact at the heart of Washington’s debt relief plan. The debt reduction deal obliges the new government to dismantle the largely publicly owned economy established under the previous government, and to undo the system of social supports that the former government put in place to provide Iraqis with jobs and food subsidies out of revenue earned from oil sales. Now, privatisation, private investment and liberalisation are the buzzword of Iraq’s new reconstruction economy, and the new government in Iraq is preparing itself to slash public spending budgets on an unprecedented scale. The country’s oil reserves will go to enrich foreign (largely US) investors, and not towards internal development or to provide Iraqi’s food, healthcare, education and energy at affordable prices.<sup>45</sup> Talks have just been completed between Iraq and the IMF over a new financing arrangement, which will trigger the full amount of the debt relief agreed last year. According to US Deputy Treasury Secretary, Robert Kimmitt, “The (IMF) stand-by agreement is crucial simply because it is a mark of progress for the Iraqis ... it is an important element in their

economic transition going forward.”<sup>46</sup>

Despite the availability of plenty of cash, all is not quite that well in the Bank’s reconstruction plans for Iraq. In December 2003, the Bank estimated that Iraq would need as much as \$35.8 billion in reconstruction aid from 2005 through 2007. In 2004, Wolfowitz’s predecessor, James Wolfensohn committed US \$3.5 billion from the Bank’s funds for Iraq’s reconstruction and agreed to manage the Iraq Trust Fund, which routes funds pledged by international donors to finance Iraqi reconstruction. As of September 2005, the Bank had been able to finance only \$156.8 million in projects altogether, and allocated another \$366 million more through the Iraq Trust Fund. In late September, the World Bank’s Board approved a plan for about US \$500 million in loans to the Iraqi Government. Security problems have slowed reconstruction and escalated project costs, especially if they involve foreign consultants and staff. Former Bank President James Wolfensohn relocated his staff from Baghdad to Oman and Jordan after an August 2003 bombing near the Bank’s Baghdad headquarters killed at least 22 people.

The Bank is now caught in a dilemma: it cannot disburse vast amounts of aid for reconstruction unless it can guarantee close supervision of spending and project operations. An internal Bank report has warned that “there are high and unprecedented risks” to the Bank’s work in Iraq, arising from the inability of Bank experts to travel around the country and oversee aid disbursement.<sup>47</sup> But at the same time, Bank staff are unwilling to move to a country where the bounty on their heads can be as large as the project amounts they are expected to monitor. For the moment, the Bank continues to operate from outside Iraq and communicates with Iraqi officials by teleconference.

In a bid to keep disbursements moving, the Bank is now attempting to rely on local, rather than foreign contractors. In reference to a new US \$ 100 million school construction loan, the World Bank’s director for Iraq, Joe Saba, claimed, “Bank-financed projects emphasize local employment and are implemented by Iraq’s own institutions, which helps minimize security costs while building local capacity and ensuring

sustainability,” and further, “The [education] ministry will contract Iraqi construction companies using internationally accepted competitive procurement procedures.”

Ironically, as Deputy Defense Secretary, Wolfowitz was one of the strongest advocates of invasion and occupation of Iraq, and argued that US troops would be welcomed as “liberators” and that Iraq would practically reconstruct itself with its oil wealth. But now as World Bank President, Wolfowitz is quickly lowering expectations and citing deteriorating security conditions in Iraq as a serious impediment to foster reconstruction.

Of the massive amounts of reconstruction money pouring into Afghanistan, only official bilateral aid is being routed through the Afghanistan Trust Fund (ARTF), which succeeds the UNDP Trust Fund and is jointly managed by the World Bank, The Asian Development Bank and the Islamic Development Bank. Total paid in contributions amount to US \$ 154 million in 2005, with additional pledges of US \$ 308 million. Disbursements in 2003 amounted to US \$ 288 million (of which US \$ 179 million were salaries and the rest for operations and maintenance), and of the US \$ 241 million cash balance left over in March 2005, US \$ 102 million were committed to investment projects. The volatile and unpredictable security environment in Afghanistan has hampered both, the US’ and the Bank’s plans to transform Afghanistan into a modern capitalist society.<sup>48</sup>

## FAILURE

*“This was a very young democracy that was overthrown and there were problems, but the seeds for democracy were being planted... Now those seeds have been torn out and the soil has been overturned. Haiti’s gone back 50 years.” - Anthony Fenton, co-author of *Canada in Haiti: Waging War on the Poor Majority*<sup>49</sup>*

The scorecard of results from reconstruction efforts is far from impressive. Practically all the yardsticks that are held up by reconstruction’s architects as indicators of

success — public safety and security, rule of law, democracy and economic growth — are proving to be abysmal failures.

In Haiti, Afghanistan and Iraq, physical security and human rights conditions have deteriorated so much that outside of a few heavily guarded enclaves in the capital cities, even armed troops tread with extreme caution, let alone humanitarian relief providers and ordinary residents. Subsistence economic activities and commerce have practically ground to a halt in several regions, while obtaining basic needs such as food, water, cooking and heating fuel, and healthcare have become daily struggles for majority of the people in these countries.

In February 2004, Jean-Bertrand Aristide, President of Haiti, was toppled from power and forced into exile by a coup that — according to several political analysts — was engineered by the US, and supported by Canada and France. Critics charge that the Aristide Government was destabilized by the freezing of aid: led by the US, Canada and France, countries put pressure on Haiti by withholding aid, but then rushed in to support the unelected opposition when Aristide's government fell. In the period leading up to the coup, the US, Canadian and French governments cited human rights abuses, corruption and deteriorating internal security as reasons why Aristide should step down. But human rights organisations, journalists, local residents and political analysts have repeatedly pointed out that human rights and political repression have actually worsened tremendously under an elite transitional government installed by the US after Aristide was sent into exile. Despite its problems, the Lavalas government was a democratically elected one, as compared to the elite regime in power now, which is using the police, courts and prisons to repress political freedoms in order to maintain its grip on power. According to human rights observers, there are thousands of political prisoners in Haiti now, including residents from poor neighborhoods, members of the press and political activists. Leaders and supporters of Aristide's Lavalas party are particularly being targeted for persecution

in special security operations across poor neighborhoods — where Lavalas has most of its supporters.<sup>50</sup>

UN Peacekeeping Forces have added to the security problems in Haiti by becoming more aggressive in tracking down armed gangs, some of who are agitating for Aristide's return to power. The UN Stabilization Mission in Haiti was established in April 2004 to keep the peace as it were, after invading US military forces arranged for Aristide to abdicate power and then withdrew from Haiti. However, confronted with violent opposition from Aristide loyalists, peacekeeping forces have stepped up military actions to ensure "stability" in advance of elections. On July 6, in an operation titled "Iron Fist," at least 1,400 heavily armed UN peacekeepers from Brazil, Peru and Jordan, backed by Argentine and Chilean helicopters, raided Cité Soleil, a poor Haitian neighborhood, to arrest Emmanuel "Dread" Wilme, a local gang leader. Although Operation Iron Fist killed Wilme and several of his gang members, more than 20 innocent civilians were killed and dozens injured in the cross-fire, over half by UN peacekeepers.<sup>51</sup>

On August 30, almost 200 organisations and individuals sent an open letter to Wolfowitz, objecting to a July 27 article posted by the Bank on its website titled: "Haiti: One Year Later." The signatories to the open letter claimed that the article, "grossly misrepresents the current reality in Haiti." The letter cited worsening public safety conditions, increased violence and human rights abuses, political motivated detentions, violence and extra judicial killings by the current transitional government, and massive unemployment as the reality of Haiti since the 2004 coup, a reality that has been partly precipitated by the Bank: "The World Bank's whitewash of Haiti's dire situation is especially troubling in light of the Bank's own role in helping to topple Haiti's democratically elected government by "suspending aid, under vague 'instructions' from the US..."<sup>52</sup>

In both Afghanistan and Iraq, militias controlled by warlords or political parties continue to carry out abductions, assassinations and other forms of

intimidation. They are often more powerful than the local police or military forces and frequently engage in armed battles with so-called “insurgents.” Reports from the northern and southern regions of Iraq reveal that politically and religiously aligned militias have also infiltrated local police and army units, and through them, are establishing dominions of control and patronage that threaten to deepen sectarian divides across the country. Ironically, groups in the police and army units have been trained and equipped by US and British armed forces and are completely unaccountable to elected officials or the ruling government which at least in theory, controls the Iraqi army and police.<sup>53</sup> At the same time, the Iraqi Government has been charged with condoning torture and running death squads. Sunni communities claim that the Shiite dominated government is undertaking a systemic campaign of sectarian reprisals as revenge for years of repressions under Saddam Hussein’s regime.<sup>54</sup>

International peacekeepers, occupying forces, diplomats, development agencies and the press in Haiti, Iraq and Afghanistan have set great store by elections as the most crucial manifestation of democracy. But it is hardly likely that elections held in conditions of such insecurity and instability would be “free and fair.” Afghanistan’s recent elections were accompanied by voter harassment and intimidation and not surprisingly, voted into power warlords and political elites who have always held power traditionally.

Trouble is also brewing about how reconstruction money is used. Earlier in the year, Afghanistan’s Minister of Economy expressed frustration in the Afghan Government’s attempts to gain more control over the huge amounts of foreign aid flowing into the country. According to the Ministry of Finance, only about a third of the 2005 US\$ 4.7 billion aid budget for Afghan reconstruction will pass through government hands; the rest would go directly from donors to aid agencies and private contractors. Most social and developmental services continue to be provided through non-governmental channels. Donors are not confident that the government can handle more direct aid,

and claim that ministries have entrenched systems of kickbacks to secure contracts and jobs. Even USAID is unwilling to channel more money directly through the Afghan Government until it has “greater confidence in the capacity of the institutions of this government to manage.”<sup>55</sup>

Despite billions of dollars in aid money over the past three years, most Afghans live without electricity, clean water or proper roads. In February, a UN report stated that 70 percent of people in rural areas do not have access to safe water, and one child in five dies before the age of 5. Not surprisingly then, the salaries and lifestyles of foreign aid workers have become a focus of local resentment. Country directors for international NGOs in Afghanistan earn anywhere from US \$55,000 to 70,000 a year, while foreign consultants on contract to donor countries and the UN charge up to US \$ 1000 a day.

Stephen Gowans reports that when asked why Iraq, which had no weapons of mass destruction, was invaded, while North Korea escaped Iraq’s fate, Paul Wolfowitz, then US Deputy Secretary of Defense replied, “Let’s look at this simply. The most important difference between North Korea and Iraq is that economically we had no choice in Iraq. The country swims in a sea of oil.”<sup>56</sup>

Regardless of the empty rhetoric by the US, the World Bank and bilateral donors about restoring freedom, democracy, the rule of law and economic opportunities in countries undergoing reconstruction, the political and economic motivations that shape the mammoth reconstruction paradigm are clear to most of the world, especially those who have to bear the brunt of reconstruction’s impacts. And despite the mindless propaganda that the neo-liberal spin machines spread about the successes of reconstruction, the growing popular resistance against it shows that the neo-liberal establishment has bitten off more than it can chew. ■

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<sup>3</sup> <http://www.state.gov/s/crs/c12936.htm>

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Stephen D. Krasner, Director of Policy Planning and Carlos Pascual, Coordinator, Office of Reconstruction and Stabilization. Addressing State Failure. Foreign Affairs Magazine, July/August 2005, Vol 84, No 4, Washington, DC, June 27, 2005.

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<sup>8</sup> Financial Times, US prepares classified watch-list of 25 unstable countries. March 29 2005.

<sup>9</sup> Ibid

<sup>10</sup> Naomi Klein, Baghdad Year Zero, Pillaging Iraq in Pursuit of a Neocon Utopia. Harper's Magazine, September 2004

<sup>11</sup> Herbert Docena, The Other Reconstruction: How private contractors are transforming Iraq's state and civil society. Focus on Trade, Part 1, Number 101, July 2004. <http://www.focusweb.org/pdf/fot101.pdf>

<sup>12</sup> For details see the website: [www.HalliburtonWatch.org](http://www.HalliburtonWatch.org)

<sup>13</sup> Herbert Docena, Iraq's Neoliberal Constitution. Foreign Policy in Focus, <http://www.fpi.org/fpifxt/492>

<sup>14</sup> Ibid. See also, Emad McKay, US to Take Bigger Bite of Iraq's Economic Pie. Inter Press Service, December 23, 2004.

<sup>15</sup> Leslie Wayne, Expedited Contracts for Cleanup Are Testing Regulations. The New York Times, September 13, 2005.

<sup>16</sup> John M. Broder, In Storm's Ruins, a Rush to Rebuild and Reopen for Business. The New York Times, September 10, 2005.

<sup>17</sup> Mike Davis, The Predators of New Orleans. Le Monde Diplomatique, October 2005. <http://mondediplo.com/2005/10/02katrina>

<sup>18</sup> John M. Broder, In Storm's Ruins, a Rush to Rebuild and Reopen for Business. The New York Times, September 10, 2005.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> The Associated Press, Investigators to Monitor Katrina Contracts. September 13, 2005.

<sup>22</sup> Leslie Wayne, Expedited Contracts for Cleanup Are Testing Regulations. The New York Times, September 13, 2005.

<sup>23</sup> The Associated Press, Investigators to Monitor Katrina Contracts. September 13, 2005.

<sup>24</sup> John M. Broder, In Storm's Ruins, a Rush to Rebuild and Reopen for Business. The New York Times, September 10, 2005.

<sup>25</sup> HalliburtonWatch.org, Washington, Sept 16, 2005. <http://www.halliburtonwatch.org/news/watts.html>

<sup>26</sup> Mike Davis, The Predators of New Orleans. Le Monde Diplomatique, October 2005. <http://mondediplo.com/2005/10/02katrina>

<sup>27</sup> Mike Davis, The Predators of New Orleans. Le Monde Diplomatique, October 2005. <http://mondediplo.com/2005/>

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<sup>30</sup> Uwe Kievelitz, Thomas Schaeff, Manuela Leonhardt, Herwig Hahn, Sonja Vorwerk, Practical Guide to Multilateral Needs Assessments in Post-Conflict Situations: A Joint UNDG, UNDP and World Bank Guide, prepared by GTZ with the support of BMZ.

<sup>31</sup> See "Bank's policy on development cooperation and conflict," World Bank web page.

<sup>32</sup> <http://lnweb18.worldbank.org/ESSD/sdvext.nsf/67ByDocName/ThePostConflictFund>

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<sup>33</sup> <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20629793-pagePK:34370-piPK:34424-theSitePK:4607,00.html>

<sup>34</sup> <http://www.ifc.org/ifcext/about.nsf/Content/WhatWeDo>

<sup>35</sup> Bretton Woods Project: [http://brettonwoodsproject.org/article.shtml?cmd\[126\]=x-126-16554](http://brettonwoodsproject.org/article.shtml?cmd[126]=x-126-16554)

<sup>36</sup> <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/STRATEGIES/EXTLICUS/0,,menuPK:511784-pagePK:64171540-piPK:64171528-theSitePK:511778,00.html>

<sup>37</sup> <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/STRATEGIES/EXTLICUS/0,,contentMDK:20288808-menuPK:532113-pagePK:64171531-piPK:64171507-theSitePK:511778,00.html>

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<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

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# Justice to Tsunami Victims!

**BY SARATH FERNANDO, Movement for National Land and Agricultural Reform (MONLAR) and National Fishers' Solidarity, on behalf of peoples' organisations in Sri Lanka**

**T**he tsunami of 26<sup>th</sup> December killed nearly 40,000 people, displaced over 800,000 others and resulted in the loss of employment for at least 200,000, touching 13 out of the 14 coastal districts of Sri Lanka. It is estimated that over 80% of the dead were from the families of small-scale fishermen that live and work on the country's coastline, while around 90% of the homes destroyed belonged to these communities, and approximately 50% of the loss of livelihoods.<sup>1</sup>

These communities have been under threat for some time. Official figures say that between 25% and 33% of the population in the affected districts live below the poverty line, and this proportion is much higher in the fishing communities<sup>2</sup>. For some time, the conflict and in particular the High Security Zones in the North/East have severely restricted their access to the sea, as communities have been displaced and offered only small corridors and limited

time slots to go to sea. In recent years, the ever-expanding beach tourism industry in the South/West and increasingly also in parts of the East, has been further encroaching into their traditional lands that are essential landing and processing sites for the small-scale fishers. At the same time, the growing industrial fishing industry using large-scale trawlers has been depleting fish stocks and eroding the sustainable livelihoods of the traditional and artisanal fishers.

The tsunami immediately increased the threat. The Government says 'tsunami has increased the vulnerability of a large proportion of fishermen, farmers and small enterprises and service providers'<sup>3</sup>. The fishing communities have been left without many of the means necessary for their livelihoods: almost all of their homes, the majority of their fishing equipment, and many of their main breadwinners.

The post-tsunami reconstruction process should be ensuring that these communities are able to rebuild their lives as they see fit with access to the resources they need to sustain their livelihoods now and in the future. However, as we will show in the following pages, it seems to be adding to rather than relieving the burden that they bear.

## **REBUILDING THE NATION**

Soon after tsunami, the Government started talking about 'Rebuilding the Nation'. The President wanted to 'restore not only the tsunami-affected areas, but the entire country, not only to normality, but also to improve it'<sup>4</sup>. The official plan announced 'reconstruction will not be based on replacement cost of what is damaged, but on cost of required infrastructure to support modern development'<sup>5</sup>.

While the tsunami was one of the worst natural disasters in our history, the affected areas make up less than 1% of the total land area of the country and the affected people constitute less than 5% of the total population<sup>6</sup>.

It seems that the rhetoric about rebuilding the whole nation rather than just the affected areas was a mechanism for the Government to include previous controversial national development plans and push them forward more rapidly in this period of crisis with the weight of the huge sums of money that have been raised in the names of the tsunami victims from generous supporters all around the world.

The old Poverty Reduction Strategy Paper called "Regaining Sri Lanka," which was published in 2003 by the previous UNP government, but which was actually started

in 2001 under the old PA government, and which was an extension of the same neo-liberal economic strategy that has been employed by successive governments in Sri Lanka since 1977, was one such plan. This document was definitively rejected by the people at the last elections only a year ago, when the UPFA campaigned on a platform opposing the strategy. However, policies and projects included in this plan, such as the road development projects, water and electricity privatisation policies, land titling scheme, selling off of natural resources such as the Eppawela Phosphate Deposit, have all emerged again in the last few months and have been directly linked to and pushed forward by the post-tsunami rebuilding process.

## **BY THE BIG BUSINESSES**

One of the foremost concerns is the exclusion of the people from decision-making and planning of this post-tsunami rebuilding process, and the domination of a small group of elite business leaders.

On 3<sup>rd</sup> January, the President handed over control of the planning and implementation of the nationwide programme and the coordination of all the finances to an extra-governmental body of 10 members called the Task Force to Rebuild the Nation (TAFREN).

Of these 10 individuals, 2 are senior political advisors, 2 are heads of national banks and 6 are leaders of some of the largest corporations in the country, almost all of which major operators in the beach tourism industry. There are no representatives of the affected people or of any organisations operating in the affected areas, and no academics or scientists or any professionals with experience of rebuilding after disasters.

The members are as follows:

- Mano Tittawela: special advisor to the President; chairman of the Strategic Enterprises Management Agency (entity operating under the President to restructure public enterprises); former chairman of Public Enterprise and Reform Commission (entity operating under the President in charge of selling

off public enterprises); former chairman of the Board of Investment

■ Lalith Weerathunga: secretary to the Prime Minister

■ Harry Jayawardena: managing director of Stassen Group (conglomerate with major operations in tea manufacturing in the central hills of Sri Lanka, plus holdings in Aitken Spence); chairman of Aitken Spence (owner of five large beach hotels, operator in power generation and shipping infrastructure development); director of Browns Beach Hotels Limited; major shareholder of DFCC Bank

■ Rajan Brito: deputy chairman and managing director of Aitken Spence (owner of five beach hotels, operator in power generation and shipping infrastructure development)

■ Nihal Jinasena: managing director of Jinasena Group (operating in hotel and shopping centre construction and in manufacturing); chairman of DFCC Bank

■ Nihal Fonseka: chief executive officer of DFCC Bank

■ Rohini Nanayakkara: general manager of Seylan Bank

■ Mano Selvanathan: director of Carson Cumberbatch (owner of two large beach hotels and agent for two international airlines)

■ Ken Balendra: former chairman of John Keells Holdings (owner of three tour operators and five beach hotels, major operator in ports, airport and infrastructure development); former chairman of Ceylon Chamber of Commerce; chairman of Brandix Lanka (one of the largest garment manufacturing companies in the country)

■ Mahesh Amalean: chairman of MAS Holdings (underwear manufacturing company)

On 13<sup>th</sup> January, TAFREN submitted their fully worked out and finalised plans to the

President. That is only 10 days after they were asked to start work. The President presented these to the people on 17<sup>th</sup> January. TAFREN remains in charge and is now being converted for a period of 3 to 5 years into a State Authority through a Parliamentary Act<sup>7</sup>.

People have been given very little information on the process that has been put in place and no coherent information at all on the amount of money the Government is going to allocate and for what. The latest information came after the Sri Lanka Development Forum in May, when TAFREN announced that they were going to spend \$3 billion in grants or loans that had been committed by international agencies. This figure was an increase from the \$2.1 billion quoted in their summary document submitted at that meeting<sup>8</sup>, the \$1.8 billion from their complete plan issued in March<sup>9</sup>, and the \$1.5 billion of January<sup>10</sup>. These documents can be downloaded from the internet over a high speed connection in about an hour, but they don't seem to be available in any public place. Our experience has shown that local officials on the whole are not aware of them and cannot therefore pass the information on to people in their areas.

## FOR THE BIG BUSINESSES

This process has resulted in a programme that sees the interests of the majority of the people marginalised in favour of those of big businesses.

The plan starts with the idea that *'The objective is to put in place a new infrastructure and systems to meet the challenges of the 21st century and fulfil the dreams and aspirations of a modern society'*<sup>11</sup>. This modern society includes high-end tourism, export agriculture and manufacturing and large-scale fisheries. It clearly does not include small-scale fishing, subsistence farming or community-based tourism.

## Tourist resorts

Promoting high-end tourism seems to be one of the driving forces of the TAFREN plan. Within days of the disaster, the Government

## **THEIR PLANS**

### **Zone 1**

Coastal belt within Kilinochchi, Mannar, Puttlam, Gampaha, Colombo, Kalutara, Galle, Matara, Hambantota districts 100m landwards from the mean high water line

### **Zone 2**

Coastal belt within Jaffna, Mullaitivu, Trincomalee, Batticaloa, Ampara districts 200m landwards from the mean high water line

### **Houses within the Coastal Conservation (Buffer) Zone**

- Reconstruction of damaged houses will not be permitted within the CCZ. Instead, the GOSL will provide a house that is a minimum of 500 sq. ft. free of charge in close proximity to the original location.
- The proposed houses will be located in urban and rural settlements which will be provided with infrastructure such as electricity, water, sanitation, recreation facilities and road systems etc.

### **Tourism Zones**

The Government will set up special Tourism Zones covering all the tourist areas in the coastal belt. These zones will have modern infrastructure with an unencumbered view and access to the coast. There will be special incentives provided to promote sustainable and value-added tourism.

### **Hospitality Business Premises completely destroyed by the tsunami**

Businesses that are prevented from rebuilding within the CCZ will be given preference in allotment of land with similar or better facilities within the Tourism Zones to rebuild their businesses. The land will be provided free of charge.

### **Hospitality Business Premises under construction as at 25th December 2004**

- Establishments that are not entitled to complete the buildings will be entitled to land in the Tourism Zones described above.
- The same privilege will be afforded to those who have already obtained Government approvals to construct new buildings but had not commenced construction before 26th December 2004.

started talking about the need to encourage tourism in the rebuilding process. The Sri Lanka Tourist Board went as far as to say, *'In a cruel twist of fate, nature has presented Sri Lanka with a unique opportunity, and out of this great tragedy will come a world class tourism destination'*<sup>12</sup>.

In the action plan<sup>13</sup>, an amount of \$58 million is allocated for tourism, a three-fold increase from the estimated investment of \$20 million in their original document<sup>14</sup>. However, this is turning out to be only a tiny fraction of the amount being spent to promote tourism, as \$80 million is now earmarked for the redevelopment of a single town.

### **People pushed off the beaches**

Almost immediately, the President announced that people should not rebuild their houses on the coast. In February, TAFREN published an advertisement in the national newspapers outlining what they called conservation zones that were being set up throughout all the coastal areas of the country<sup>15</sup>. The conservation zone includes the belt of land 100m from the sea in the west and south of the island, and 200m from the sea in the east and north.

The advertisement said that they would not allow any houses within this zone to be repaired or rebuilt. They said that they would instead be providing the people that previously lived in this 'buffer zone' with new houses in as yet unidentified alternative inland locations. It was said that this was for the safety of the people. Other ways of protecting people from the dangers of another disaster like this, such as assisting people to build their houses with stronger materials or building up natural defences such as sand dunes and mangroves, which are employed in countries like Japan that regularly suffer tsunami waves, were ruled out.

### **Existing hotels permitted to stay and new ones invited to move in**

On the same day, TAFREN published another advert offering special treatment to the tourism industry. They said that tourist

hotels would be allowed to remain and even rebuild within the 'buffer zone'. Nothing was said about protecting the people in these hotels from a possible future tsunami.

In the same set of advertisements, plans to establish Tourism Zones all round the coast were announced.

### **Master plans being developed**

By March, the list was announced. TAFREN said that master plans were being developed to transform at least 15 coastal towns into magnificent tourist resorts as part of the post-tsunami rebuilding process.

Wadduwa, Beruwala, Bentota, Hikkaduwa, Galle, Unawatuna, Koggala, Matara, Hambantota, Tangalla, Yala, Arugam Bay, Passikuddah, Nilaweli and Kalpitiya were singled out for redevelopment according to different themes.

The first plan to emerge was that for the redevelopment of Arugam Bay, a small town nestled on the edge of a 300 hectare lagoon on the east coast of Sri Lanka, which just happens to be one of the best surfing spots in the world, with beautiful beaches as well.

No other plans are so far available, but it is said that this will serve as a model for all the other areas.

### **Plans envisage a complete transformation of the local environment and economy**

The 'Arugam Bay Resource Development Plan: Reconstruction Towards Prosperity'<sup>16</sup> covers a stretch of land 17km by 5km between Komari and Panama, including Pottuvil Town.

It envisages the total reorientation of the area away from the current fishing and agricultural communities, supplemented by seasonal guesthouses, into a large development of hotels ('low cost budget windsurfer to 5-star tourist'<sup>17</sup>), a commercial centre ('shoppers' paradise'<sup>18</sup>), a yachting marina, floating plane pier and helipad. According to the plan, while only 9 out of 25,000 hectares are currently being used for tourism, this figure is set to increase exponentially through the redevelopment.

### **What else to do with \$80 million?**

The Government has decided to stop the weekly food grant of 200 rupees in cash and 175 rupees in rations for the 881,000 people affected by the disaster. \$80 million would be sufficient to extend this relief for all for another 6 months. They have only started to build 1,659 permanent houses to replace the 41,393 that were completely destroyed. \$80 million would be enough for 32,000 families to build houses.

Consultants contracted by those responsible for the plan admit, '*consultants have drawn heavily upon past plans (esp. the Tourism Master Plan)...which was widely recognised as being 'grandiose' and 'inappropriate'*',<sup>19</sup> referring there to a report of the Asian Development Bank<sup>20</sup>.

The disconnect between the planned development and the interests of the people is illustrated in the following quote, '*the location of the helicopter pad near the new pedestrianised road will bring a new vibrant life in to Arugam Bay town centre*'<sup>21</sup>.

If all of the 15 tourist resorts cover a similar area, a total of 1,275 square kilometres will be taken over for tourism, far more than the 500 square kilometres that it is estimated were affected by the tsunami<sup>22</sup>.

### **Pushing fishing communities away from the sea and the lagoon in favour of tourists**

In order to achieve this, the Sri Lanka Tourist Board is ready to acquire not only all the land within the buffer zone declared by TAFREN of 200m from the high tide line, but also a stretch of up to 1km wide running along 3km of the coast beyond the buffer zone, and a belt of in places over 600m around the edge of the lagoon. Add to that an area of sea next to the lagoon entrance for the yachting marina and a strip across the middle of the lagoon for the floating plane landing pier.

It is reported in notes taken at a meeting organised by Sewalanka Foundation<sup>23</sup> between the community and the Sri Lanka Tourist

Board Chairman<sup>24</sup>, *'The land belongs to the government. Maybe your forefathers lived in that area, but the 860 acres belongs to the government. It will be developed as a tourist zone. We will put up buildings and develop the area and we will ask you to come and work there...After I became the Chairman I captured 5,000 acres of land for the Tourist Board. My target is 15,000 acres'*.

The plan explains that new housing for the estimated 5,000 displaced families<sup>25</sup> will be provided in 5 separate inland locations, in all cases behind areas zoned off for tourism, at an average of well over 1km from both the sea and the lagoon, obstructed from accessing the same by the new infrastructure. It then proposes to allocate houses by drawing lots. It is reported in the same set of notes mentioned above that *'these houses will be given to people who support our program'*. Further, *'if you built any illegal structures in Arugam Bay, the army and the police will have to come and remove them'*.

The document also says that the estimated over 70 existing guesthouses and numerous other small enterprises that will have to be relocated would, if they were already registered businesses, be given the option of leasing land within the zones for a period of up to 30 years, while unregistered businesses would have no such rights. Nobody would receive compensation.

If all of the 15 tourist resorts follow the model of Arugam Bay, the number of families pushed out of the way of hotels, yachting marinas, helipads and floating plane landing strips could be well over 75,000.

### **Government spending \$80 million of tsunami funds to facilitate the process.**

The initial investment in the planned development is estimated at \$80 million. Of that, \$50 million is earmarked for a bridge over Arugam Lagoon, which according to the document *'will stand as an inspirational symbol that shows progress towards the achievement of prosperity for Arugam Bay'* as *'the gateway to a tourist paradise'*.

Another \$5 million is allocated for a new road around Arugam Lagoon. Then \$20

million is proposed for the construction of the new inland townships of 2,500 houses. The remaining \$5 million is given for water supply schemes and sanitation systems in the new townships and the tourist zone.

The cost of the other proposed infrastructure and amenities, such as the floating plane landing pier and helipad, is not yet included in the overall plan, although it is stated in the document that this will have to be funded either from investment by the Government or by NGOs.

If all of the 15 tourist townships require an investment of \$80 million, the cost will be \$1.2 billion, or a massive 40% of the total amount apparently raised to date.

### **Putting the wrong people in charge of planning again**

The Arugam Bay plan was initiated apparently independently by the Rebuild Sri Lanka Trust, which was set up in the aftermath of the tsunami by 4 individuals and started working in the Arugam Bay area as a *'non-political private sector initiative'*<sup>26</sup>. The Trustees are Mr. Ajith De Costa, Mr. Michel Sproule, Mr. Hanif Yusoof, and Dr. Mrs. D. Kumara. Mr. De Costa is Managing Director of Maxim Ltd., a garment manufacturing company. He was previously appointed Chairman of the Central Environmental Authority and Chairman of the Taskforce that produced the Colombo Megapolis 2030 Master Plan. Mr. Sproule is his stepson and a senior partner in a Colombo law firm, specialising in foreign investment, infrastructure development advisory services and real estate. Mr. Yusoof is the Managing Director of Expolanka Freight Ltd, a transport services company. Mrs. Kumara is a retired doctor.

The Rebuild Sri Lanka Trust had within a month of the tsunami contracted a series of consultants to work on the plan. These were Arcadis, a company of consulting engineers from the Netherlands, ECOPLAN-Z Limited from New Zealand, and EML Consultants from Sri Lanka. All are themselves involved in or are directly linked to work on large Asian Development Bank or World Bank infrastructure projects. The local company, EML Consultants, according to their website,

normally works in facilitating US investment in water and environmental services, in carbon trading and in the promotion of plantation agriculture and floriculture.

The plan was finalised by 25<sup>th</sup> April 2005 and states that at the time of writing the President had already given approval, and further was *'keen to see the action projects proposed in the report are implemented without delay'*<sup>27</sup>. In fact, USAID had already published a Presolicitation Notice<sup>28</sup> for a contract to construct the bridge, road, water supply scheme and wastewater system in Arugam Bay by 8<sup>th</sup> April 2005, and hosted a Pre-Bid Conference for potential contractors in Colombo on 10<sup>th</sup> May 2005.

The first the residents of Arugam Bay heard of the plan was at a meeting organised by the Sri Lanka Tourist Board and Sewalanka Foundation in Colombo on 17<sup>th</sup> May 2005.

An assessment of the plan carried out for the Rebuild Sri Lanka Trust said 'the most important shortcoming is that it has largely been produced in isolation in Colombo, with little or no stakeholder involvement. It is evident that the team spent only two days in Pottuvil - Arugam Bay, and apart from the GA officer in Ampara and the DS in Pottuvil, they met only with INGO staff.'<sup>29</sup>

## Highways

Expansion of the road network is also a major priority of the TAFREN plan, which again puts the interest of the tourist businesses and also the export industries ahead of those of the people.

\$353 million or over 10% of the total financing is to be spent on highways, a figure that has been increasing by the month, from \$210 million in March and \$150 million in January.

The action plan includes \$38 million for the widening of the road between Colombo and Galle from 2 to 4 lanes and \$36 million for the expansion of the road base between Galle, Matara and Hambantota to 4 lanes. Another \$97 million is allocated for the widening of the road between Pottuvil and Jaffna from 1 to 2 lanes.



At the same time, a previous project for building a new road, dubbed Sri Lanka's first motorway, between Colombo, Galle and Matara, which had been resisted by people in the country for nearly 5 years, was suddenly pushed forward in the process. Government announced that the building work, which had been on hold, was to start again with the utmost urgency. Armed police were sent to threaten those still defying eviction with the imminent bulldozing of their houses<sup>30</sup>.

The Southern Highway, a 4 lane expressway project 2 years into construction, lies just inland from the existing 2 lane highway that is now to be widened.

It is estimated that over 1315 homes will have to be destroyed to complete this new road<sup>31</sup>. Residents say that resettlement sites have not been properly prepared, in some cases lacking water and electricity services, and that compensation is regularly not paid in full before eviction takes place, meaning that many families have to live either in debt or in only half-built houses. They also say that there has been no attempt to replace lost livelihoods, even though the resettlement sites are in some cases a long distance away<sup>32</sup>.

This example of how the Government has

managed the resettlement of people displaced by a project that has been operational for nearly 5 years does not give hope for the fate of those the Government has promised to resettle away from their coastal lands.

It was reported in an international trade journal recently that the Government was 'considering channelling some tsunami reconstruction money into the redesign of [the Southern Highway]'<sup>33</sup>.

The World Bank says in its 2005 Investment Climate Report that 'Sri Lanka has a large road network relative to both its population and its land area'<sup>34</sup>. Whether this development has led to economic growth is questionable, but it is clear that whatever growth has been of little benefit to the majority of the people. There is therefore little evidence to support the argument that these new or widened roads will be of benefit to the majority of the people.

### **Fisheries harbours**

The development of large-scale fisheries is another area prioritised by TAFREN.

To take just one example from the latest draft of the official action plan<sup>35</sup>, of the US\$ 200 million allocated specifically to the fisheries sector, only 30% is to be spent on providing fishermen with new boats and nets to replace those damaged. The majority is to be spent on large ports and harbour complexes. Will the majority of the affected people use these big ports for their small craft? Will this not just encourage the large-scale fishing industry that was already putting their livelihoods at risk?

An example is the development of a new port in Hambantota, which has been on hold for nearly 5 years, but which it has now been announced will be fast-tracked with a loan from the Chinese government of between \$75 and \$80 million<sup>36</sup>.

### **Privatisation of natural resources**

The TAFREN plan also surreptitiously brings back the spectre of water privatisation. A total of \$200 million is to be spent on constructing water infrastructure throughout all coastal

districts of the country, including areas which were barely touched by the tsunami, of which \$136 million for entirely new schemes<sup>37</sup>.

This follows a pattern that has been set by the World Bank and Asian Development Bank in Sri Lanka over many years, where loans and grants are given to construct systems that attract and are then used by the private sector to market water. Further, finance is usually conditional on the involvement of the private sector. The dangers of this have been shown both across the world and within the country. In urban areas where management of water supply is handled by private sector, the first action taken is to reduce what is referred to as 'waste water', the main source of which is public taps in the street, which are being gradually closed off and removed. In rural areas, 'modern' irrigation systems are built in place of old, which are then controlled by societies that can start charging inflated prices for water. In fact, as long ago as 1996, the World Bank recommended this very strategy to encourage the millions of small-scale paddy farmers in Sri Lanka to give up their livelihoods to make way for more 'efficient' export agriculture<sup>38</sup>.

It was reported that on 30<sup>th</sup> December 2004, 4 days after the tsunami, the Cabinet approved the latest draft of the water resources bill, which sets the legal framework for privatising the country's water resources. This document was first drafted in the year 2000, but had to be withdrawn by the government of the day in the face of massive people's protests. Subsequent governments have all promised that there would be no marketing of water, but this policy is now being integrated into the post-tsunami rebuilding process.

At the same time, another long-resisted policy of the selling off of one of the world's highest quality phosphate deposits has been reintroduced and directly linked to the tsunami.

The President, speaking at a public gathering at Narahenpita in January said that it was a big mistake not to utilise the rich natural resources in the country and that the tsunami was a way in which nature punished the country for not utilising these

natural resources. She said, 'There is a great mountain of phosphate in the North Central Province. A Buddhist monk and a few others were shouting against the utilisation of these deposits. It was stopped. I am also answerable for this mistake. We get frightened when they shout. We will not do this in the future. If this small group of protesters shout on the streets again we will...lock them up...and then we will continue our work'<sup>39</sup>. She was referring to huge protest movements in the country that included people of all sectors, scientists, scholars and clergy. The case was taken to the Supreme Court in the year 2000, who found in favour of the protesters, concluding that 'the phosphate deposit is a national heritage and not the government property to sell out and it is the duty of the rulers to secure and manage the deposit which is to be inherited by the next generation'<sup>40</sup>.

On 28th February, the Public Enterprises Reform Commission (PERC), an entity operating under the authority of the President, published a request for expressions of interest in the deposit<sup>41</sup>. It has since been reported that the deposit is one of the projects being negotiated with the Chinese government under a loan agreement with the Exim Bank<sup>42</sup>.

## **OTHER EMERGENCIES**

The tsunami was one of the most devastating natural disasters in our history, but there are also equally if not much more devastating man-made disasters that also require urgent attention in the country. While it is not proposed to go into great detail in this document, it is considered useful to briefly describe these disasters and the response of the Government.

### **Conflict**

Millions of people have been drastically affected by the war in the North/East. There are still around 180,000 refugees, with more than 40,000 families currently living in relief camps and others with relatives or friends<sup>43</sup>. There are still more than 55,000 houses that need to be reconstructed<sup>44</sup>. The High Security Zones (areas occupied by the army)

have displaced 24,178 families in Jaffna district alone, of which 16,027 farming families and 4,436 fisher families<sup>45</sup>. This situation has existed for two decades, throughout which it has been a desperate emergency for the affected people. It requires the urgent attention of the Government to build a just and sustainable peace in the country.

### **Poverty and hunger**

Millions of others are living in poverty and hunger. The latest figures, which still exclude the North/East, show that well over 4.5 million people or nearly 25% of the population are living below the poverty line, while over 10 million or over 50% of the population survive with less than the minimum level of dietary energy consumption<sup>46</sup>. The incidence of poverty has barely changed in 20 years, while cases of hunger have actually increased over the same period.

The current approach to poverty and hunger in the country and internationally does not recognise these disasters as the emergencies that they are for those that suffer them. The adoption of targets such as halving poverty and hunger by half by 2015 as set out in the Millennium Development Goals must be rejected as it is clearly irrelevant to the people living in poverty and hunger, it enshrines the right of the wrong people to plan, and it gives credence to the kind of strategy that has not worked and cannot work, that of accelerating growth with the expectation that it will trickle down to the poor. The Central Bank of Sri Lanka reports that in over 20 years of implementing this strategy in the country there has been 'a low trickledown effect of the benefits of economic growth'<sup>47</sup>.

There are alternative proposals for the direct eradication of poverty at much less cost being made by people's organisations that should instead be given the opportunity to flourish. These are set out in other documents that can be provided for discussion upon request.

## **CONCLUSION**

The parallel between the responses to

conflict and poverty and hunger, and the post-tsunami rebuilding process is clear. When the wrong people are placed in charge of planning, the wrong plans result and the majority of the people end up left out. Like the tens of thousands of people that are sweltering in their tents and tin huts, waiting to find out where they will be allowed to rebuild their lives and what resources they will be permitted to use. Like the hundreds of thousands of people who have been living in such uncertainty for up to 20 years. Like the millions who have been told to wait until 2015 to perhaps feel half as poor or hungry.

There is an urgent need for all the millions of people who have contributed, so promptly and generously, to the post-tsunami rebuilding funds, to demand that the people they wanted to reach out and help get what they need to rebuild their lives. Above all, they want access to the resources that have been theirs for generations - the land, the water, the beaches, the sea - and the space to make their own plans.

There is also a need for those same people to look at the disasters of conflict, poverty and hunger as emergencies that cannot be postponed, and to ensure those affected get the same access and space.

## Notes

- <sup>1</sup> ADB, JBIC, World Bank: Preliminary Damage and Needs Assessment, January 2005
- <sup>2</sup> Department of National Planning, Presidential Secretariat and TAFREN: Rebuilding Sri Lanka: Action Plan, March 2005
- <sup>3</sup> Department of National Planning, Presidential Secretariat and TAFREN: Rebuilding Sri Lanka: Action Plan, March 2005
- <sup>4</sup> President CBK, 20<sup>th</sup> January 2005 [www.news.lk](http://www.news.lk)
- <sup>5</sup> Government of Sri Lanka: Post-Tsunami Recovery and Reconstruction Strategy, May 2005
- <sup>6</sup> ADB, JBIC, World Bank: Preliminary Damage and Needs Assessment, January 2005
- <sup>7</sup> According to the TAFREN website [www.tafren.gov.lk](http://www.tafren.gov.lk)
- <sup>8</sup> Government of Sri Lanka: Post-Tsunami Recovery and Reconstruction Strategy, May 2005
- <sup>9</sup> Department of National Planning, Presidential Secretariat and TAFREN: Rebuilding Sri Lanka: Action Plan, March 2005
- <sup>10</sup> Department of National Planning: Rebuilding the Tsunami Affected Area, January 2005
- <sup>11</sup> Department of National Planning, Presidential Secretariat

and TAFREN: Rebuilding Sri Lanka: Action Plan, March 2005

- <sup>12</sup> Sri Lanka Tourist Board Bounce Back website at [http://www.srilankatourism.org/bb\\_slrebuilds.htm](http://www.srilankatourism.org/bb_slrebuilds.htm)
- <sup>13</sup> Department of National Planning, Presidential Secretariat and TAFREN: Rebuilding Sri Lanka: Action Plan, March 2005
- <sup>14</sup> Department of National Planning: Rebuilding the Tsunami Affected Area, January 2005
- <sup>15</sup> Sunday Times, 27<sup>th</sup> February 2005
- <sup>16</sup> Arugam Bay Resource Development Plan: Reconstruction Towards Prosperity, 25<sup>th</sup> April 2005
- <sup>17</sup> ABRDP, 25<sup>th</sup> April 2005
- <sup>18</sup> ABRDP, 25<sup>th</sup> April 2005
- <sup>19</sup> Arcadis in Environmental Assessment for Post-Tsunami Rehabilitation: Assisting the Planning Process at Arugam Bay, Sri Lanka, 16<sup>th</sup> March 2005
- <sup>20</sup> Eastern Coastal Community Development Project – PPTA No. 3479-SRI, Asian Development Bank
- <sup>21</sup> ABRDP, 25<sup>th</sup> April 2005
- <sup>22</sup> ADB, JBIC and World Bank Needs and Damage Assessment, January 2005
- <sup>23</sup> Sewalanka Foundation is one of the largest NGOs in Sri Lanka [www.sewalanka.org](http://www.sewalanka.org)
- <sup>24</sup> Notes from Arugam Bay Meeting in the Committee Room of the Sri Lanka Tourist Board, 17<sup>th</sup> May 2005
- <sup>25</sup> Estimate by Sewalanka Foundation, as reported in the Washington Post, 4<sup>th</sup> June 2005
- <sup>26</sup> [www.rebuildsri.lanka.org](http://www.rebuildsri.lanka.org)
- <sup>27</sup> Arugam Bay Resource Development Plan, 25<sup>th</sup> April 2005
- <sup>28</sup> Presolicitation Notice for Upcoming Issuance of Request for Proposal (RFP) Number SL688-05, 8<sup>th</sup> April 2005
- <sup>29</sup> Arcadis: Environmental Assessment for Post-Tsunami Rehabilitation – Assisting the Planning Process at Arugam Bay, 16<sup>th</sup> March 2005
- <sup>30</sup> Joint Organisation of the Affected Communities on Colombo-Matara Highway: Report, February 2005
- <sup>31</sup> ADB: Final Report of the Special Project Facilitator on the Southern Transport Development Project, ADB loan 1711-SRI(SF)
- <sup>32</sup> Joint Organisation of the Affected Communities on Colombo-Matara Highway: Complaint, June 2004
- <sup>33</sup> New Civil Engineer: News, 6/13 January 2005
- <sup>34</sup> World Bank, ADB: Sri Lanka – Improving the Rural and Urban Investment Climate, 2005
- <sup>35</sup> Department of National Planning, Presidential Secretariat and TAFREN: Rebuilding Sri Lanka: Action Plan, March 2005
- <sup>36</sup> Reported on [www.ColomboPage.com](http://www.ColomboPage.com) on 19<sup>th</sup> May 2005 and in many other media
- <sup>37</sup> Department of National Planning, Presidential Secretariat and TAFREN: Rebuilding Sri Lanka: Action Plan, March 2005
- <sup>38</sup> World Bank: Non-Plantation Crop Policy Alternatives, March 1996
- <sup>39</sup> Reported in Lankadeepa, major Sinhala newspaper, 17<sup>th</sup> January 2005
- <sup>40</sup> S. C. (FR) Application No. 884/99

<sup>41</sup> See PERC website at [www.perc.gov.lk](http://www.perc.gov.lk)

<sup>42</sup> See China Huanqin Contracting and Engineering Corporation website at [www.hqcec.com](http://www.hqcec.com)

<sup>43</sup> ADB, JBIC, World Bank: Preliminary Damage and Needs Assessment, January 2005

<sup>44</sup> Government of Sri Lanka: Post-Tsunami Recovery and Reconstruction Strategy, May 2005

<sup>45</sup> UNHCR: Jaffna Report

<sup>46</sup> Millennium Development Goals Country Report 2005 - Sri Lanka, May 2005

<sup>47</sup> Central Bank of Sri Lanka: Annual Report 2003



## On Rebuilding Peasants' and Fisherfolks' Livelihoods After the Earthquake and Tsunami Catastrophes

**Declaration of Regional Conference on Rebuilding Peasants' and Fisherfolk's Livelihoods After the Earthquake and Tsunami Catastrophes, held in Medan, North Sumatra, 17-19 February 2005**

Organisations of peasants, fisher peoples and victims of the earthquake and tsunami of 26 December 2004 as well as non-governmental organisations (NGOs) that work with and support peasants' and fishers' organisations, came together at the "Regional Conference on Rebuilding Peasants' and Fisherfolk's Livelihoods After the Earthquake and Tsunami Catastrophes" on the 17-19<sup>th</sup> of February. Over 80 participants from 11 countries representing around 20 organizations were present.

On the 17<sup>th</sup> some of the participants visited Serdang Bedagai, North Sumatra. And then the participants participated in a field trip to Aceh on the 20-21<sup>st</sup> of February visiting Banda Aceh, Sigli, Bireun, Lhokseumawe, Langsa and Medan, the six coordination centres of the KSKBA (Koalisi Solidaritas Kemanusiaan Bencana Alam di Aceh dan Sumatera Utara – *Coalition of Humanitarian Solidarity of Natural*

*Disaster in Aceh and North Sumatra*).

The tragic effects on the lives, property, livelihoods and socioeconomic basis of hundreds of thousands of people in the tsunami-affected regions of Asia and Africa are immense, and important part of the victims are peasants and small-scale, artisanal, traditional, beach-based, labour-intensive

fishing communities, living in marginalised socioeconomic conditions.

Over 220,000 people died and many others are still missing. We are in solidarity with their families and communities whose lives and livelihoods have been shattered by this unprecedented disaster. We recognize and acknowledge the immediate support and commitment of all the people and groups that have shown great solidarity with the victims of the tsunami catastrophe.

The victims, their communities and social organizations must be enabled to rebuild their livelihoods themselves. Victims of the tsunami, their communities and organisations have to be the key actors in rehabilitation and reconstruction efforts. Such rebuilding has to be done by people, should be democratic and non-discriminatory, and lead to improved and sustainable livelihoods. Traditional ecological knowledge systems for protecting and managing natural ecosystems, biodiversity and human habitats, have to play a central role in this.

Especially in disaster situations such as this it is crucial to strengthen peasants' and fisherfolk organisations as key actors that defend the interests of these communities and support coalitions, networks and campaigns to further the cause of peasants and farming communities.

Guarantee that funds are utilised for building public infrastructure for fishing and peasant communities, like water and sanitation, free schooling, public housing and building of religious centres, and medical facilities that provide free healthcare and basic medicines.

In the tsunami relief and rehabilitation work, special attention has to be given to children by setting up educational, and health and trauma care infrastructure especially designed for them. Women and elderly people, particularly those who have lost all their relatives, also need specific attention.

Relief, rehabilitation and reconstruction efforts for the tsunami victims have to be transparent. People have the right to know where the funds go and for what they are used. International and national NGOs and institutions have to respond to the agenda

and demands articulated by organisations and communities of fisherfolk and peasants for the rebuilding of their livelihoods in the long term.

There is a need for autonomous, independent disaster management and preparedness agencies, as well as early warning systems, both nationally, regionally and internationally, which should be done by people themselves. These bodies should be co-ordinated by democratically elected committees, respect human rights and aided by experts and supporters of fishing and peasant communities.

We call on governments, international institutions and other policy-making bodies as well as NGOs and peoples' organisations to support and guarantee the following rights for small farmers, peasants and fisherfolk in the tsunami-affected regions:

#### ***In the case of peasant communities:***

- Houses have to be rebuilt in their original locations, based on traditional practices and local knowledge, in contrast to some official attempts to relocate people under the pretext of safety. In case of potential safety problem, a dialogue with the affected communities should lead to an adequate solution, also for the communities concerned.
- Ensure that peasants are not displaced from their own traditional lands and homes, and can stay on their farms.
- Guarantee clear and unambiguous rights to their lands, including recognising customary rights where applicable; ensure clearly defined demarcation of boundaries of the lands they have been living in, before the tsunami devastation, and in case of land being wiped out by the tsunami, equitable provision of land to peasant must be guaranteed.
- Systems for irrigation, traditional wells, sanitation and potable drinking water have to be rehabilitated. Peasants and their organisations a clear say in the planning and execution process, including initiatives for soil desalination.
- Rehabilitation efforts have to ensure that land appropriated by trans-national corporations or other vested interests will be

returned to peasant owners. Rehabilitation and reconstruction efforts have to take into account people's food sovereignty, including a genuine agrarian reform program.

- We demand that national authorities reject GM food aid and any imported food aid that depresses local prices, purchasing food locally wherever possible, and matching local cultural and social tastes and preferences.

- Ensure a fair and equitable trading and market system that will guarantee remunerative prices for crops and reasonable costs for inputs at the national level.

- General training and education for building up human resources among peasants, and training centres for organic agriculture have to be established. Promote in tsunami-hit areas the practice of organic agriculture as an alternative to the pressure by multinational companies for transgenic seeds (GMOs) and industrial agricultural production.

- Co-operatives managed by peasants and their organisations must be set up as well as transportation infrastructure for agricultural products.

#### ***In the case of fishers and their coastal communities:***

- Design housing projects that are safe and appropriate for fisherfolk and coastal communities engaged in beach-based fishing activities.

- Prevent private corporate interests, including in the tourism and travel industry, from appropriating coastal areas for profit-making activities.

- Ensure that gear and craft for small-scale fishing communities are designed and manufactured by traditional artisanal fishworkers.

- Make certain that government aid for fisheries development goes to small-scale traditional fishing communities, and not to large-scale, mechanised, harbour-based fishing interests.

- Prevent the eviction of fishing communities from coastal areas and recognize their rights of access to, and management of, coastal

resources.

- Enforce legislation to ensure fishing zones only for traditional, small-scale fishers, with distances to be determined as locally appropriate, in consultation with fishing communities and their organisations.

- Ensure that rehabilitation plans involve fishers, their communities and organisations, respecting customary law and traditional rights and practices.

- Emphasize that while rejecting the neoliberal agenda for reconstruction and rehabilitation, fishers and their organisations stress that the above principles should be applicable for all disasters, big or small.

- Strengthen local, national, regional and international organisations of fisherfolk and fishing communities.

#### ***As NGOs and other organisations that work in support of peasant and fisherfolk organisations and communities, we commit ourselves to:***

- Support the defence of labour-intensive, beach-based fisheries and the livelihood interests of peasants, as well as the monitoring of relief and reconstruction efforts.

- Raise awareness and campaign against dumping of discarded fishing vessels in tsunami-affected areas.

- Support initiatives by the victims and their communities for a social audit of relief and reconstruction efforts so that they can control how and for what purposes funds are used.

- Demand that governments of tsunami-hit countries desist from anti-people and anti-democratic activities and policies, and respect the rights of the people for justice, without any discrimination whatsoever, whether this relates to their nationality, ethnicity or religious beliefs, and guarantee the safety of all those engaged in relief and rehabilitation work.

- Press international NGOs to respond to the capacity-building and other requirements of fisherfolk and peasant organisations in order to strengthen themselves and to fisherfolk and peasants to rebuild their livelihoods

according to their needs.

*Adopted on the 21<sup>st</sup> of February 2005 at  
Langsa, Aceh, Indonesia by the following  
participants of the Regional Conference  
on Rebuilding Peasants' and Fisherfolk's  
Livelihoods After the Earthquake and  
Tsunami Catastrophes:*

**SIGNATORIES:**

*The affected fisherfolk and peasant organisations*

National organizations:

FSPI – Indonesia

NAFSO and MONLAR Sri Lanka

NFF-India

Southern Federation of Fisherfolk-Thailand

International organisations:

Via Campesina – World Forum of Fisherfolk  
People (WFFP)

*The NGOs and other organisations in support of  
peasant and fisherfolk organisation present at the  
Conference:*

Green Movement, Srilanka

OXFAM Soliderity, Belgium

ICSF, India

MORE AND BETTER, Italy

CROCEVIA, Italy

Focus of the Global South, Thailand

INSIST Yogyakarta, Indonesia

YSIK Jakarta, Indonesia

YBA Aceh, Indonesia

JALA Medan, Indonesia

LEUHAM Aceh, Indonesia

SBSU Medan, Indonesia

SINTESA Medan, Indonesia

LENTERA Medan, Indonesia

KAU Jakarta, Indonesia

CODE, Mexico

CECAM, Mexico

NOUMINREN, Japan

Confederation Paysan, France

Catalan Department for Cooperation and  
Development, Spain

Hyogo Research Center and Quake  
Restoration Kobe, Japan

# A People's Process for Post-Tsunami Rebuilding

**STATEMENT ADOPTED IN CONFERENCE HELD IN COLOMBO, SRI LANKA 24-26 APRIL 2006**

**T**he tsunami that struck our coastal and island communities in Sri Lanka, India, Indonesia, Maldives, Somalia, Thailand and other countries on the shores of the Indian Ocean on 26<sup>th</sup> December 2004 was completely devastating. Hundreds of thousands were killed, are missing or injured, and millions displaced, with their livelihoods devastated. In Somalia, apart from the impact of the tsunami, the churning up of radioactive and toxic waste earlier dumped in their seas, has had severe impacts on health and environment.

People from all across the world responded to the disaster with tremendous compassion and generosity. Billions of dollars were donated to rebuild the lives and livelihoods of the survivors. Our governments and the international agencies operating in our countries that have jointly taken on the task of making this happen have almost all

declared very positive guiding principles acknowledging the need to consult and empower the affected communities.

However, four months later, hundreds of thousands of the affected people are still living in desperate circumstances amidst complete uncertainty about their future. In many cases they have been reduced to the

state of passive, subservient receivers, as immediate relief is dumped hurriedly without consideration of their needs and desires or of the problems of poverty and in some cases conflict in which they were living even before the disaster. Even more disturbing, aid has not reached certain invisible sections of affected populations, especially women and those not seen to have been directly affected by the tsunami. Another issue of serious concern is the militarization of relief delivery, particularly in Sri Lanka and Indonesia, which creates further obstacles to peace.

While we greatly appreciate the sense of urgency among all people who donated to relief and reconstruction efforts, the compulsion to disburse such funds within short-term time targets leads to the undermining of local structures and organisations and reinforces current inequitable structures and processes. It restricts possibilities of being guided by long-term social development perspectives. This calls for greater dialogue between people of contributing and receiving countries, in order to increase appreciation of grassroots realities.

In most of our countries, the tsunami rehabilitation is being used to push through neo-liberal agendas that are being resisted strongly by people's movements. In Sri Lanka in particular, where control of the rebuilding process has been handed over to private interests, decisions are being taken on the basis of vested corporate interests. The pressures that exist in some countries to push poor communities away off the coasts must be seen in this light. The traditional right to coastal lands is being denied, as is their right to make informed and independent decisions on relocation.

It is in this context that fishworker, farmer and people's organisations, regional networks, national and international NGOs and development agencies, working in tsunami-affected areas in India, Indonesia, Maldives, Somalia, Sri Lanka and Thailand, met in Colombo on 25<sup>th</sup> and 26<sup>th</sup> April 2005.

While there are many differences between our countries in terms of post-tsunami rehabilitation, there are also commonalities, such as lack of coordination in aid delivery, inappropriateness and inequity in aid disbursement, top-down and inappropriate

policies for relief and rehabilitation, lack of financial and policy transparency, and lack of community participation.

We are united in the belief that the serious problems that remain to be solved in all our countries must and can only be addressed through a people's process that recognises that all resources pledged in the name of affected people genuinely belong to them and must be used in the way that they see fit. This can be achieved by setting up reserve funds, to be managed and administered with representation from affected populations. These funds must be available for long-term use and should be transparent and accountable to local people's organisations.

It is essential that systems for representation of affected people's organisations in planning and decision-making bodies set up by national governments with multi- and bilateral institutions, and for continuous monitoring must be set up. This has been reiterated at previous meetings of this kind, held in Bangkok and in Medan. The rights of affected populations to information, in language and forms accessible to them, must be ensured.

We emphasise the importance of developing collaborative strategies that bring together the donors, the actors and the people who are affected. We commit ourselves to building such networks at all levels for monitoring the processes from the perspective of the people.

We reaffirm the fundamental principle for post-tsunami rebuilding: the need for people, particularly the affected people, to be the owners and therefore the designers and decision makers of the process of rebuilding.

#### **Endorsed by the participants:**

South Asia Alliance for Poverty Eradication  
(Sri Lanka, Maldives, India, Nepal, Bhutan,  
Pakistan)

International Collective in Support of  
Fishworkers (India)

Movement for National Land and  
Agricultural Reform (Sri Lanka)

South India Federation of Fishermen  
Societies (India)

Centre for Sustainable Agriculture (India)  
Sintesa Foundation (Indonesia)

Indonesia Corruption Watch (Indonesia)  
FSPI (Indonesia)  
La Via Campesina (Indonesia)  
Society for Health and Education (Maldives)  
Fashan (Maldives)  
Management of Internally Displaced  
Population (Maldives)  
Ministry of Fisheries, Agriculture and  
Marine Resources (Maldives)  
Somali Organisation for Community  
Development Activities (Somalia)  
Federation of Southern Fisherfolk  
(Thailand)  
NGO Coordinating Committee on  
Development (Thailand)  
Sustainable Development Foundation  
(Thailand)  
National Fisheries Solidarity (Sri Lanka)  
Savisthri Women's Network (Sri Lanka)  
Southern Fisheries Organisation (Sri Lanka)  
Muslim Women's Research and Action  
Forum (Sri Lanka)  
Ampara District Fisheries Solidarity (Sri  
Lanka)  
Puttalam Community Development  
Organisation (Sri Lanka)  
Jaffna Fisheries Cooperative Society (Sri  
Lanka)  
United Federation of Labour (Sri Lanka)  
Sewalanka (Sri Lanka)  
University of Peradeniya (Sri Lanka)  
Centre for Policy Alternatives (Sri Lanka)  
Green Movement (Sri Lanka)  
Oxfam Community Aid Abroad (Australia)  
Eurostep (Belgium)  
Europe External Policy Advisers (Belgium)  
World University Service (Canada)  
People in Need (Czech Republic)  
Action Aid (India)  
CESVI (Italy)  
German Agro Action (Germany)  
Hivos (Netherlands)  
Action Aid (Sri Lanka)  
Christian Aid (UK)  
CAFOD (UK)



# About the Authors

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