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# **The Political Economy of International Transitional Administration:**

## **Regulating Food and Farming in Kosovo and Iraq**

This article reconstructs how democratic participation and interference can be fended off by the construction of an international authoritarian political architecture and a strongly legalised and specific form of market economy. We do this by interrogating International Territorial Administration (ITA) regulations established to administer post-conflict Kosovo and post-invasion Iraq. In following the regulations and executive decrees of a largely unaccountable international policy-making bureaucracy in reforming the agricultural sector, the article demonstrates how and with what impact an authoritarian-liberal approach to economic reform materialised in the agricultural sectors of post-conflict Kosovo and Iraq. The regulation of land reform and patent law in turn served in these cases to establish distributional outcomes in favour of large-scale agricultural interests and multinational corporations. Even though the two administrations focused on different aspects of land and agriculture regulation, we argue that significant commonalities exist between their political preferences and interests. Our work draws on the tradition of critical legal studies in International Law (IL) and we posit that by drawing on this tradition, scholarship on post-conflict international territorial administration is better able to capture the long-term ramifications of international intervention.

**Key Words:** International law, political economy, International Transitional Administration (ITA), agriculture, Kosovo, Iraq

### **Global Political Economy and the Politics of International Law**

During the last two decades, international law has become increasingly technicalised and fragmented. Its scope of formulation and enforcement is ever more stretched across various and dispersed fields of expertise and technical vernaculars, with the balancing of, and battles between, socio-economic interests, political projects, and multiple and often conflicting legal regimes resulting (Kennedy, 2016; Koskenniemi, 2007). Accordingly, it is imperative to ‘rethink[] international law as a terrain for political and economic struggle rather than as a normative or technical substitute for political choice, itself indifferent to natural flows of economic activity’ (Kennedy, 2013, p. 7). This has spurred a concern among scholars in the discipline of International Law (IL) with the critical assessment of the legal components and distributive consequences of economic programmes on a global scale (Brabazon, 2016a; The IGLP Law and Global Production Working Group, 2016; Mattei & Haskell, 2015). Law is foundational to the

contemporary ordering and operations of actors and institutions that constitute international and national political economies, the intersection between which is scrutinized here.

At the intersection between the international and national sites expertise and experts, translating purported universal ordering principles into concrete institutions and practices in local contexts. In the context of international development policy, a ‘turn to law’ has been observed (see, among others, Abbott & Snidal, 2000; Kennedy, 2004) together with a shift in the primary locus of political agency from domestic organisations to the relatively closed arenas of international bureaucracy (Grasten & Uberti, 2017). Kennedy (2006) notes, ‘the politics of law in the neoinstitutionalist era has largely been the politics of politics denied’ (p. 163). Denial here denotes the subversion of politics by legal technicality and form. This article reconstructs how politics was subverted through legal codification in the decrees, orders and regulations enacted by two international transitional administrations (ITAs). We explore the legal foundations of agricultural reforms in the context of ITAs in post-war Kosovo and Iraq and focus on two types of property entitlements, land holdings and patents, and the constitutive and distributive effects of these in commercialising agriculture. Property entitlements ultimately define the boundaries between individuals and resources available in any given legally demarcated community. Private and judicially enforced property is the fulcrum of market society, and contemporary market societies tend to coalesce around variegated neoliberal reforms. Notably, ‘the role of law in the neoliberal story has been relatively neglected, and the idea of neoliberalism as a *juridical* project has not been considered’ (Brabazon, 2016b, p. 1, emphasis in original).

In approaching neoliberalism as a juridical, and a political economic project, the article traces how the use of international law comprises the legal form of neoliberal thought and the legal vehicle for economic reforms. Particular deployments of international law have played an important role in creating and cementing a neoliberal social order. The United Nations (UN) Interim Administration Mission in Kosovo (UNMIK) (1999-2008) and the Coalition Provisional Authority (CPA) in Iraq (2003-2004) demonstrate this. Although, neoliberal approaches to state-building and the notion of ‘liberal peace’ have been intensely debated among critical International Relations (IR) scholars (see Chandler, 2010; Paris, 2002; Pugh, 2005; Zaum, 2007), the role of international law has been relatively under-analysed. This article contributes to addressing this neglect, which persists despite that, ‘[t]he starting point of neoliberalism is the admission, contrary to classical liberal doctrine, that their vision of the good society will triumph only if it becomes reconciled to the fact that the conditions for its existence must be *constructed*, and will

not come about “naturally” in the absence of concerted political effort and organization” (Mirowski, 2013, p. 53, emphasis in original; see also Bruff, 2014; Tansel, 2017a). Such concerted effort can take more or less coercive and authoritarian forms. Post-war states under international tutelage in Kosovo and Iraq incorporate an authoritarian mode of neoliberalism. Kosovo and Iraq represent extreme cases of authoritarian neoliberalism in the construction of (ostensible) market societies. Authoritarian neoliberalism resembles Stuart Hall’s ‘authoritarian populism’ where, ‘an exceptional form of the capitalist state – which, unlike classical fascism, has retained most (though not all) of the formal representative institution[s] in place, and which at the same time has been able to construct around itself an active popular consent’ (Hall, 1979, p. 15; see also Hall, 1985). Neoliberalism in other contexts has been constructed upon a base of existing institutions and political constellations. In our cases, international experts, policy-makers and liberal utopians working within the ITAs perceived there to be a blank slate on which to write their aspirations.

In scrutinising the neoliberal underpinnings of the legal foundations of regulating food and farming in the context of ITAs in post-war Kosovo and Iraq, we reconstruct the distributive effects of definitions and rights to property. Historically, agricultural reforms have been an important part of post-conflict developments and economic restructuring. Agriculture in post-war West Germany, for instance, underwent profound structural adjustments (Sato & Schmitt, 1993, p. 251). Similarly, Japan experienced radical agricultural land reform at the end of the Second World War. Compulsory agricultural reform was imposed by General MacArthur, the Supreme Commander of the Allied Powers. ‘Landlords, who dominated the rural society in pre-war Japan, disappeared by the reform’ (Kawagoe, 1999, p. 1). Reforms imposed by the occupying power effectively restructured rural society in post-war Japan. Agricultural reforms address ownership and property rights, which are ever more pressing in a post-conflict context where there may be multiple claims to the same property (see Unruh & Williams, 2013). Relatedly, agricultural and land reform in Japan, and subsequently Korea, was perceived as a means of generating political consent to the new regime.

We are concerned with property rights cognisant of the fact that they are constitutive of political economy in two interrelated dimensions. First, property constructs social relations, and, second, it connects the future with the present. In analysing the relationship between property and law, Commons (1950) argued that ‘[p]resent value depends on expected scarcity, which is economic futurity, and this is property’ (p. 107). Futurity, according to Commons (1925), denotes the

‘extent to which this human ability of forecasting has its influence on present behaviour and values’ (p. 2). The legal inscription of property rights therefore represents an attempt to predetermine who gets what and how from given resources going forward. Law-making becomes a political economic act of locking in preferred distributional outcomes. The effects of property in constituting socio-temporal relations thus entails the issue of its control and object, and who has the authority to determine the scope of property entitlements and the purpose such entitlements should serve. In the case of ITA, time takes on added importance with the past cast into sharp relief as a period of conflict and backwardness. This image of the past fortifies the perceived immanence of a prophetic future and a rhetoric of progress. This past and its concomitant future undergird a project of reformation through regulations.

### **ITAs, Authoritarian Neoliberalism and Governance by Regulation**

ITAs are commonly defined as ‘the exercise of administering authority (executive, legislative or judicial authority) by an international entity for the benefit of a territory that is temporarily placed under international supervision or assistance for a communitarian purpose’ (Stahn, 2002, p. 44). In the last two decades, there have been ITAs in Bosnia and Herzegovina, Kosovo, East Timor and Iraq. However, this form of governing is not new (see Wilde, 2004). In Danzig, ITA was used during the interwar period as a temporary solution to manage the problem of competing nationalisms. In turn, international administration in East Slavonia was used to manage the territory before its incorporation into another state. However, ITAs after the 1990s became a form of comprehensive international tutelage involving intensive economic, legal and political reforms. As de Brabandere (2009) notes: ‘The inclusion of economic aspects in comprehensive peace building missions is a very recent phenomenon in international law. The addition can be seen as underlying a tendency to recognise the economic dimension of international peace and security’ (p. 148). This turn to a pro-active, intrusive model of ITA is commonly attributed to the ideological hegemony of ‘democratic peace theory’ after 1990. Critical scholars, including Pugh (2005), have outlined the basic premises of this (neo)liberal approach to post-conflict administration and peace-building:

The hubris of peacebuilders keys the political economy of war-torn societies into a map captioned “the liberal peace project;” that, in its economic dimension, requires convergence towards “market liberalisation”. This became an aggressively

promoted orthodoxy, with variations, derived from the late 1990s Washington Consensus on the logically correct path of development for undeveloped states. Perhaps not treated as a high priority in stabilising peace per se (the vanguard of which has been allocated to fostering security, rule of law and democratic forms), neoliberal economic policies were nevertheless barely-contested assumptions underlying external economic reconstruction assistance and management in war-torn societies' (Pugh, 2005, p. 23).

It was in this context that, as Orford points out, the local and national level was reconceptualised as a source of conflict, strife and disorder, while international law and institutions were presented as solutions to those problems; 'The second assumption made by advocates of an expanded humanitarian role for the Security Council is that the principal threats to human rights, democracy, and security occur at the state or local level' (Orford, 1997, p. 449). The establishment of long-lasting peace and prosperity was consequently tasked to international actors. This led to largely unaccountable international executives that generously interpreted mandates and crafted a corpus of neoliberal regulations.

While recognising the colonial origins of ITA, after the Cold War ITA is associated with the neoliberal present. For present purposes, neoliberalism can be understood as, 'a model of capitalist accumulation that arose as a response to the Keynesian state and to 19th century *laissez-faire* liberalism, [resting upon] the idea of generalized competition and state intervention for the construction, guarantee and expansion of these competitive relations' (Tzouvala, 2016, pp. 120-121). Such an understanding of neoliberalism challenges the perception that neoliberalism constitutes an anti-statist, anti-regulatory theory and practice necessarily associated with the rolling back of the state and the reduced regulation of economic activity. Both neoliberal theory and practice negate this view (Konings, 2010; Panitch & Konings, 2009). For example, James Buchanan (1986, quoted in Mirowski, 2013, p. 41) clearly distinguishes between neoliberalism and 'anarcho-capitalism': 'Among our members, there are some who are able to imagine a viable society without a state... For most of our members, however, social order without a state is not readily imagined, at least not in any normatively preferred sense'. Friedrich Hayek was also adamant in rejecting calls for minimal state intervention arguing that the question of whether the state should intervene or not in the economy was 'ambiguous and misleading' (Hayek, 2011, p. 331). His position was that 'it is the character rather than the volume of government activity that is important' (ibid.).<sup>1</sup>

Instead of de-regulation, the main *modus operandi* of neoliberalism is to promote re-regulation in support of the ever-ending expansion of private property rights and competition. Foucault summarised the specific statism of neoliberalism pointing out that if the purpose of the Keynesian



state was the elimination of the anti-social effects of competition, the purpose of the neoliberal state's interventionism is the elimination of the anti-competitive aspects of society (Foucault, 2008, p. 160).

The historical overlap between the rise of ITA and the triumph of neoliberalism is no coincidence. Internationalisation of economic decision-making has been a recurring theme in the writings of neoliberal thinkers, including Hayek (2011) and Roepke (1942; 1954). Internationalisation was considered an ideal means of dismantling economic planning and the Keynesian state. The 'scaling up' of economic governance would dissolve the 'solidarity of interests' and was seen as a means of eradicating anti-competitive and illiberal aspects of the modern state. Moreover, legalisation of certain fundamental aspects of this, such as independent central banks, would guarantee stability and continuity as well as restrict the role and influence of domestic politics and popular pressures in decision-making processes (Hayek, 1993, pp. 108-9).

This aspect of neoliberal internationalisation is closely linked to the question of 'governing by decree' in the context of ITA as a manifestation of authoritarian neoliberalism. In 1933, criticising Carl Schmitt's understanding of the 'authoritarian state', Hermann Heller coined the term 'authoritarian liberalism' to describe the type of state that is simultaneously authoritarian and permissive in regard to the market (Heller, 1933). The paradox that was of concern to Heller is aptly described by Streeck (2015): 'The freedom of the market from state interference that defines a liberal and indeed a liberal-capitalist economy is not a state of nature but is and needs to be politically constructed, publicly instituted and enforced by state power. The depoliticised condition of a liberal economy is itself an outcome of politics' (pp. 361-362). Authoritarian neoliberalism, understood as a regime that relies upon 'the judicial and administrative state apparatuses which limit the avenues in which neoliberal policies can be challenged' (Tansel, 2017b, p. 2), operates through the disciplinary effects of legal mechanisms (Bruff, 2014, p. 116). The neoliberal advocacy for a strong, competitive state operating as a guarantor of the free market indicates neoliberalism's tentative relationship with democracy and, more broadly, mass politics. This tension is only exacerbated in cases of ITA when there is a presumption of local actors' inability to self-govern.

Post-war Kosovo and Iraq encapsulate a critical change in the use of international law to provide the functional and normative foundation for international executive authority. Military interventions in Kosovo and Iraq constituted a pivotal evolutionary moment in the function and practice of international law. Without having secured a UN Security Council resolution, NATO

launched its bombing campaign against the Federal Republic of Yugoslavia (Serbia) on March 24, 1999. The intervention was infamously referred to as ‘illegal but legitimate’ by the Independent International Commission on Kosovo, in recognition that the intervention had been launched on ‘shaky legal grounds’ (IICK, 2000, p. 166). The intervention in Iraq a decade later demonstrated the extent to which Kosovo had become, ‘a desirable precedent for international intervention’ (Orford, 2014). The legality of the 2003 invasion was equally contested and has been debated extensively among international legal scholars (Craven, Marks, Simpson, & Wilde, 2004).

In June 1999, the UN Security Council (UNSC) passed Resolution 1244 establishing a UN transitional administration in Kosovo, UNMIK, which was to govern Kosovo for almost nine years. The text of the UNSC resolution was in accordance with Chapter VII of the UN Charter in ‘determining’ that the situation in Kosovo ‘continues to constitute a threat to international peace and security’<sup>2</sup>. The resolution determined that the people of Kosovo should enjoy ‘substantial authority’ under the UN administration; a term that created a significant amount of uncertainty about Kosovo’s future status and the role of international actors. Kosovo became a ‘territory in limbo between statehood and disempowered neo-trusteeship’ (Knoll, 2005, p. 638). As a result, the executive head of mission, the Special Representative of the Secretary General (SRSG), was implicitly authorised to define the scope of his own powers through regulations issued by UNMIK and enacted by the SRSG himself. These regulations had the immediate force of law in post-conflict Kosovo. The first UNMIK regulation provided that, ‘all legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the SRSG’<sup>3</sup>. Accordingly, the SRSG authorised himself to ‘appoint any person to perform functions in the civil administration in Kosovo, including the judiciary, or remove such person’<sup>4</sup>.

Following the invasion of Iraq, the CPA was established in April 2003. The former United States (US) Ambassador, Paul Bremer, was appointed by George W. Bush to serve as the Administrator of the CPA in occupied Iraq. A letter addressed to the UN Security Council, the US, the UK, and the coalition partners stopped short of describing the CPA as an occupying power,<sup>5</sup> even though it contained indirect but clear references to the laws of occupation.<sup>6</sup> At the same time, the US and UK initiated a process of securing a UNSC resolution that would legitimise their presence in Iraq and determine the role of the UN in the process of Iraq’s reconstruction, UNSC Resolution 1483.<sup>7</sup> Without resolving all issues regarding the legal framework of the CPA’s operation, Resolution

1483 designated the CPA as the occupying power of Iraq, and in addition to making direct references to the laws of occupation, it authorised the CPA to move beyond its formal mandate and promote political and, crucially, economic and legal reforms in Iraq.<sup>8</sup>

In this context, Bremer was charged with ‘democratising’ the post-conflict state by, among other means, replacing the Ba’ath regime’s rule by decree with the ‘rule of law’. In a speech on Iraq’s interim constitution, the Transitional Administrative Law, Bremer stressed, ‘Iraqis know what happens when personality and position outweigh the law [...] without the rule of law the government would become the country’s most powerful criminal’<sup>9</sup>. Simultaneously, the CPA had prescribed, similar to the international executive of UNMIK, that it would exercise ‘all executive, legislative and judicial authority’ in Iraq with the aim of advancing ‘efforts to restore and establish national and local institutions for representative governance and facilitat[e] economic recovery and sustainable reconstruction and development’<sup>10</sup>. Ironically, as Iraq’s chief executive authority in which all executive, legislative and judicial powers were vested, Bremer was authorised to rule by decree and pass regulations that had the force of law.<sup>11</sup> Even though the decrees of the CPA were nominally temporary, they remained in force after the termination of the formal occupation. The reform of CPA decrees depended on Iraq’s subsequent governments,<sup>12</sup> which were dysfunctional and slow to reach decisions. Hence, the continuity of many of the CPA’s laws was almost *de facto* guaranteed. The continuation of laws enacted by UNMIK followed similar lines. UNMIK regulations were often used by Kosovo’s government as ‘templates’ for new laws after the Unilateral Declaration of Independence (UDI) in 2008,<sup>13</sup> or simply passed with the only amendment the title of the regulation, which would then be adopted word for word.<sup>14</sup>

During the ITAs in Kosovo and Iraq international actors were not subject to domestic jurisdiction. In addition to all powers being vested in UNMIK and, ultimately, in the SRSG, UNMIK and NATO’s forces in Kosovo, KFOR, were not accountable to domestic authorities in Kosovo. According to a joint declaration issued in 2000 by the two organisations, preceding the adoption of an UNMIK regulation on this matter<sup>15</sup>, ‘UNMIK and KFOR, their property, funds and assets are immune from any form of legal process’<sup>16</sup>. Civilian and military powers governing Kosovo after the end of the conflict were effectively placed above the law at the same time as the first UNMIK regulation had put in place a regime in which there would be no separation of powers and, in consequence, no executive accountability. A similar executive order was passed by the CPA in Iraq in 2003, according to which ‘[t]he MNF, CPA and Foreign Liaison Missions, their Personnel, property, funds and assets, and all International Consultants shall be immune from Iraqi legal process’<sup>17</sup>. US and

foreign contractors were not subject to Iraqi laws and legal process, and were largely unaccountable for their operations in Iraq. In both cases, law was deployed to insulate an authoritarian governance architecture and promote the construction of a market economy in the image of neoliberalism.

### **Agricultural Reforms and Rule by Regulation in Post-War Kosovo**

The neoliberal agenda espoused by UNMIK did not lead to the ‘rolling back of the state’ (here the state effectively being the UN transitional administration). The SRSG had been authorised by the UN Secretary General to ‘change, repeal or suspend existing law to the extent necessary for the carrying out of his functions, or where existing laws [were] incompatible with the mandate, aims and purposes of the interim civil administration’<sup>18</sup>. The legal authority of UNMIK’s executive, the SRSG, was justified by reference to the purpose that international law (in the form of regulations issued by UNMIK and enacted by the SRSG) should serve in Kosovo: UNMIK’s mandate. The first UNMIK regulation provided that the applicable law would be the one in place prior to NATO’s intervention on March 24, 1999, but only insofar these laws did not conflict with ‘internationally recognized standards’, UNMIK’s mandate or UNMIK regulations.<sup>19</sup> The rule of law had been translated into a rule through international law and executive regulations enacted by UNMIK’s executive. International law was to be used to realise the aspirations of the ITA as formulated in its ambivalent mandate. Subscribing to the notion of the inalienability of sovereignty, Resolution 1244 had reaffirmed Serbia’s sovereignty and territorial integrity, at the same time as it - somehow paradoxically - provided for the complete withdrawal of Serbian security forces, which began with the deployment of KFOR the day after adoption. As noted above, Resolution 1244 only recognised that the people of Kosovo should enjoy ‘substantial authority’ under the UN administration.

‘Substantial authority’ would mean that Kosovars should eventually exercise governing functions under the UN ITA, which therefore did not recognise Kosovo’s statehood. State-building and statehood were effectively separated. Importantly, the mandate of UNMIK was open-ended and its renewal would not be subject to an annual vote in the Security Council, as is customary for UN peacekeeping and peacebuilding missions. Consequently, not only the substance of the mandate, but also its termination was uncertain. It had been anticipated during preparation that the mission would be phased out and terminated within three years of establishment. However, the UN ITA turned out to be the ultimate authority in Kosovo for almost nine years until the UDI

in 2008. As noted by a former UNMIK staffer involved in the privatisation process: ‘[T]he short term became the long term and that created the structural problems that became evident later. It is like treating a patient in intensive care forever. And based on that you cannot make policy choices’<sup>20</sup>.

Given this context, that agricultural reform in Kosovo, despite agriculture’s significance for land use, food and farming, has received little scholarly attention calls for redress. Kosovo is one of the most agrarian areas in Europe with 53 percent of its total land classified as agricultural land.<sup>21</sup> After the Second World War, and when Kosovo was a province of Serbia within the Socialist Federal Republic of Yugoslavia (SFRY), Kosovo was primarily an agricultural economy with 80 % of the population working in agriculture.<sup>22</sup> In the 1970s and 1980s, investments by the SFRY central government were directed towards more capital intensive extractive industries, such as mining.<sup>23</sup> However, prior to NATO’s intervention in 1999, 60 percent of employment in Kosovo was related to agricultural activities. These activities were concentrated on small holdings. An entitlement for small subsistence farms to private land use had already been provided in the 1963 SFRY Constitution, ‘Agricultural workers are guaranteed the right of ownership of arable farm land to an area up to 10 hectares per household’<sup>24</sup>. The ‘Greenbook’ on Kosovo’s agricultural sector published by UNMIK in 2003 noted that ‘[w]hile a crucial role is expected from foreign investors, including well-targeted FDIs, agriculture has been predominantly owned by small-scale farmers. The small-scale agricultural structures currently play an important role in mitigating, but also preserving, rural poverty’<sup>25</sup>. Though UNMIK recognised that agriculture should continue to serve as a ‘social buffer’<sup>26</sup> in Kosovo, it stressed that ‘[t]his process should be associated with greater farm aggregation and efficiency improvements leading to long-term sustainability in regional and international trade’<sup>27</sup>.

The UN administration in Kosovo engaged in extensive neoliberal reforms during its almost nine years of governance in the former Serbian province, with industrial restructuring mostly left to market actors, the dismantlement of centralised economic planning and the launch of an ambitious privatisation programme targeting Kosovo’s socially owned enterprises (SOEs). SOEs operated within the most important sectors in Kosovo, such as extractive industries, transportation and services, and, importantly, agriculture and food production. UNMIK and bilateral donors involved in market reforms, in particular the US bilateral development agency, USAID, would lament the ‘lawlessness’ of Kosovo’s socially owned sector and enterprises. A 2002 UNMIK report stated, when the privatisation phase initiated by UNMIK had yet to begin,

‘property relations in Kosovo [were] a function of power, rather than law’<sup>28</sup>. The Yugoslav concept of social ownership originated in Tito’s efforts to distance Yugoslavia’s economic model from that espoused by the Soviet Union that rested on state ownership. In the Yugoslav model the productive assets of SOEs belonged to society at large, and were subject to strict constitutional constraints in terms of transfers to private persons (Knudsen, 2010, p. 35). Decision-making and business planning in SOEs was delegated to workers’ councils. During the first donor conference in Brussels a month into UNMIK’s mandate, Joly Dixon, who was in charge of economic reconstruction and development, called for increased international engagement to formulate and enact rules for a market society in Kosovo:

‘The market is beginning to work, but the basic institutions are not there. [...] The economy is restarting at an incredible speed. For the moment, however, this is an economy which is totally without rules and regulations of the market, and without a civil administration. But the economy is not just sitting there, it is happening. [...] and if we want that economy to be a normal market economy, we have to be up and running too because the rules of the market need to be put in place. The market is there, but the rules are not. This is a potentially very dangerous situation and we have to work on it fast, because the situation on the ground is evolving very fast’<sup>29</sup>

Three years into UNMIK’s mandate, the SRSG established with UNMIK regulation 2002/12 Kosovo’s Trust Agency (KTA), governed by the UN mission (all board members were appointed by the SRSG), and charged with managing privatisation sales.<sup>30</sup> In the words of a senior UNMIK official, the four UNMIK directors on the KTA board (on which also local actors in Kosovo were represented) instigated a ‘sea shift’ to ‘chang[e] the mindset of people into understanding capitalism’<sup>31</sup>. At the same time, another UNMIK regulation was enacted by the SRSG that established the Special Chamber on Kosovo Trust Agency Related Matters located within Kosovo’s supreme court in Pristina and granted sole jurisdiction over disputes resulting from the privatisation process, such as potential ownership claims by former owners.<sup>32</sup> The panels would consist of five judges of which three would be international judges, and judgements were rendered by majority voting. Control over the Special Chamber was ultimately placed with UNMIK’s executive, with the SRSG mandated to appoint and remove from office the three international judges.

The mandate of UNMIK and its lack of clarity as to the scope of UNMIK’s authority granted the interim administration significant latitude in drafting and enacting regulations that had the immediate force of law in Kosovo. UNMIK’s authoritarian-liberal approach to economic reforms was sustained by its institutional set-up and the legal powers vested in its executive, the SRSG.

UNMIK consisted of four ‘pillars’, each responsible for a particular function (such as ‘police and justice’) and led by an international organisation. ‘Pillar IV’ addressed economic reconstruction and development and was led by the European Union (EU) under the final authority of UNMIK’s SRSG. The KTA was placed under the authority of this pillar. A month into its deployment, UNMIK established a Department of Judicial Affairs (DJA), which became the main unit for legal reforms, together with the SRSG’s international lawyers within the Office of Legal Affairs (OLA). A former international staffer in the DJA noted that law-making was largely ‘purpose-made’ to ‘ensure the success of the mission’.<sup>33</sup> The same year, the Department of Agriculture, Forestry and Rural Development (DAFRD) was established by UNMIK regulation and the following year UNMIK established a Department for Trade and Industry (DTI) staffed with UN personnel. Both departments would work closely with Pillar IV in drafting regulations for the implementation of a privatisation programme to restructure Kosovo’s economy and its agricultural and food-processing SOEs.

However, as the DTI was seriously understaffed, USAID contracted a private consultancy, BearingPoint, to supply US consultants to work alongside UN staff within the department. The US consultants would be fervent proponents of a rapid privatisation of Kosovo’s SOEs despite profound disagreements and contestation among international staff within UNMIK over *how* to regulate privatisations and, in particular, compensate former owners (Grasten & Uberti, 2017). This contestation also played out in the case of agricultural reform and the privatisation of SOEs within the agricultural sector of the economy. According to a report by the US non-governmental organisation (NGO), International Center for Soil Fertility and Agricultural Development (IFDC), financed by USAID to carry out agricultural reform in Kosovo after the end of the war, ‘UNMIK resisted [the IFDC project’s] arguments that state and socially owned lands should be commercialized and privatized so that the scarce land and assets could be brought into production. UNMIK argued that owners needed to be identified and rents placed in escrow’<sup>34</sup>. Staff working within the bureaucratic bounds of UNMIK were assisted by international organisations, in particular the World Bank. According to a World Bank report published two years into UNMIK’s rule in Kosovo to, ‘create the conditions for durable growth under efficient market conditions’<sup>35</sup>, the Bank recommended the ‘establishment of a liberal trade and customs regime’ and the ‘creation of a reformed framework for encouraging the growth of private, small and medium enterprises and transferring viable existing public enterprises into private hands’<sup>36</sup>. This position on privatisation became an important ITA objective in Kosovo. As the then SRSG, Michael Steiner, emphasized in a speech at the University of Pristina in 2002; ‘the most urgent goal

[before privatising] is establishing clear ownership. Clear legal title is the basis for both economic development and the rule of law' (quoted in LLA, 2002, p. 25).

The agricultural (and rural) economy was largely organised around agricultural cooperatives (established through self-management agreements) and the larger agro-kombinats, most of which were production units of the giant agro-kombinat, the state-agro food system *AgroKosova*, and were registered as individual SOEs in 1989.<sup>37</sup> These SOEs accounted for a relatively small part of available cultivated land, compared to small farm holders. Yet, the agricultural SOEs covered the most fertile areas and the size of their production units allowed for economies of scale. When UNMIK became the trustee of Kosovo's SOEs, the agro-kombinats were subject to privatisation. Almost a third of the SOEs that came under the authority of the KTA were in the agro-food and forestry-wood sectors.

However, as noted above, UNMIK's approach to privatisation became mired in legal disputes within its own administration over determining the 'real owners' of the SOEs, the protection of their entitlements, and how to address claims to the proceeds of privatisation. As a result, it took three years before UNMIK introduced a legal framework for the privatisations of SOEs under its tutelage. Facing this legal impasse, local directors in some of the SOEs took control and began to rent out or sell off land. A 2002 UNMIK report, drafted by Pillar IV, described this process in the following terms: 'In the case of the SOE Agromorava in Vitina, which controls nearly 1,000 ha of valuable agricultural land, the workers have complained to UNMIK that the director, supported by a hard core of ten workers, is attempting to sell off land and pocket the income. In 'self-defence', the workers have taken to guarding the land against encroachment by the director'<sup>38</sup>.

To address the thorny issue of legalising the informal privatisations already taking place, UNMIK adopted Regulation 2002/12 in June 2002 which put in place a system of 'spin-off privatisation'. The productive assets of SOEs would be separated from its debts and obligations, transferred to new and smaller subsidiary corporations (referred to as NewCOs) and sold to investors through a public tender process managed by UNMIK's KTA. The problem of the SOEs' entitlements to their physical property was addressed in UNMIK Regulation 2003/13 which transformed the land use rights of SOEs (also the now former agro-kombinats) into 99-year leaseholds that were to be tradable rights.<sup>39</sup> Some of the first SOEs transferred to private hands as NewCOs were agro-kombinats, and former production units of Agro-Kosova.



Finally, the World Bank, together with UNMIK, the UN Food and Agriculture Organization (FAO), and bilateral and private development actors were from the beginning of international administration involved in executing agricultural reforms and implementing short-term projects aimed at commercialising and integrating Kosovo's agricultural sector in global value chains. These projects were continued and the task remained heavily donor-driven after Kosovo's independence in 2008. In April 2011, for instance, USAID launched its New Opportunities for Agriculture program, which ran for five years until completion in November 2015. According to USAID, '[t]he goal of the program is to increase economic growth in Kosovo through expanded, environmentally sustainable production and sales of value-added agricultural products by enabling producers and processors to compete regionally and globally'<sup>40</sup>. To implement the program, USAID contracted the private consultancy, Tetra Tech, the expertise of which included the 'management of some of USAID's largest and most complex agriculture value chain development projects' through a 'market-driven, facilitative approach that builds the capacity of local stakeholders to address value chain constraints and opportunities'<sup>41</sup>.

### **From Mont Pèlerin to Bagdad: Agricultural Reform in Occupied Iraq**

The occupation of Iraq is commonly referred to as a blueprint of neoliberal reform under foreign administration (see, among others, Whyte, 2007; Zabczi, 2010). Within the span of a few months, the CPA introduced measures such as flat tax rates,<sup>42</sup> the complete liberalisation of trade through the abolition of 'all tariffs, customs duties, import taxes, licencing fees and similar surcharges for goods entering or leaving Iraq, and all other trade restrictions that may apply to these goods,'<sup>43</sup> the creation of an independent central bank, and the introduction of the most investor-friendly domestic legal framework in the world.<sup>44</sup> Agricultural reform in this context has attracted little scholarly attention (for an exception see Tzouvala, 2017). However, as emphasised above, due to its fragile and sensitive nature and its links to food security, land use and demographic shifts, agricultural reform under international administration carries significant ramifications.

The intentions of the CPA *vis-à-vis* agriculture became clear when Daniel Amstutz was put in charge of agricultural reform. Amstutz had been the chief US negotiator for the Uruguay Round of the GATT and his role was crucial in the consolidation of the Agreement on Agriculture (AoA) that first brought agriculture into the scope of international trade law with a clear liberalisation strategy: '[T]he underlying premise of the liberal market approach embedded in the AoA is that the removal of state support for and protection of agricultural production is the best way to achieve food security in the longer term' (Orford, 2015, pp. 54-55). Moreover, Amstutz had been

professionally linked to Cargill, a US corporation that controls significant parts of the global grain trade, to the North American Export Grain Association and to Goldman Sachs, where he had developed and directed commodity activities since 1978. Amstutz had attracted significant criticism for the drafting of the 1985 Freedom to Farm Bill which slashed federal price supports (Cockburn & Clair, 2004, p. 309). Oxfam protested Amstutz's appointment in Iraq stating that:

'Putting Dan Amstutz in charge of agriculture reconstruction in Iraq is like putting Saddam Hussein in the chair of a human rights commission. This guy is uniquely well placed to advance the commercial interests of American grain companies and bust open the Iraqi market, but singularly ill equipped to lead a reconstruction effort in a developing country.'<sup>45</sup>

In his reconstruction work, Amstutz shared responsibility with the Chairman of the Australian Wheat Board, Trevor Flugge. Flugge was later implicated in a number of scandals including accusations of corruption under the UN's Oil for Food programme<sup>46</sup> and the receipt of a salary of one million Australian dollars for nine month's service in Iraq paid out of aid funds (Georgiou, 2012, p. 215). With Amstutz and Flugge in charge, the CPA embarked on a programme of neoliberalisation that included the elimination or radical reduction of subsidies, the introduction of stringent intellectual property rules, a move away from small-scale agriculture, and the support of corporate farming. Moreover, the radical liberalisation of trade was conducive to the creation of an export-oriented farming sector as well as to increased dependence on imported foodstuffs.

To achieve these goals, the CPA had to do away with the constitutional prohibition on private ownership over and the patenting of biological resources. According to Iraq's 1971 constitution, '[n]atural resources and principal instruments of production are the property of the nation. The central authority of the Republic of Iraq shall invest them directly in accordance with the requirements of the general planning for the national economy'<sup>47</sup>. Further, the CPA sought to dismantle the entrenchment of small-scale agriculture in the Constitution, which had been protected by the establishment of upper limits to land ownership and nationalisation of the remaining land in the 1971 constitution: 'The maximum of agricultural ownership shall be defined by the Law and what surplus thereof shall be considered as property of the nation.'<sup>48</sup> Orders 39 and 46 introduced sweeping reforms in Iraqi investment law replacing all existing legislation and putting in place one of the most investor-friendly frameworks in the world (Siddiqui, 2013, pp. 15-16). However, reforms in land tenure were relatively modest, since

foreign ownership of land was not allowed and leases were limited to 40 years with the possibility of renewal.<sup>49</sup>

Yet, it was not in relation to land tenure that the CPA introduced its more radical reforms. Order 81 passed by Bremer introduced far-reaching reforms to Iraq's patent law, which explicitly focused on corporate agriculture and rested on the presumption that the driving force behind successful agriculture is private sector innovation protected by strong intellectual property rights:

‘Recognizing that companies, lenders and entrepreneurs require a fair, efficient, and predictable environment for protection of their intellectual property, Noting that several provisions of the current Iraqi Patent and Industrial Design Law and related legislation does not meet current internationally-recognized standards of protection, [...] Acting in a manner consistent with the Report of the Secretary General to the Security Council of July 17, 2003, concerning the need for the development of Iraq and its transition from a non-transparent centrally planned economy to a free market economy characterized by sustainable economic growth through the establishment of a dynamic private sector, and the need to enact institutional and legal reforms to give it effect’.<sup>50</sup>

Crucially, absent from this prescription was direct engagement with the question of national food security, a critical concern when it comes to agricultural reforms. This is much more than an omission. Omission carries volitional force. Here, the absence of any specific reference to food security is linked to the conviction in neoliberal approaches to agriculture that developing states' focus on national food security was misguided, since ‘a greater engagement with international markets through greater specialisation will give the economy (and, by implication, its individual members) greater income and therefore a greater ability to secure the necessary amounts of food through international trade’ (Chang, 2009, p. 481).

To materialise this vision the CPA made seeds and other biological material patentable for the first time in Iraqi history. To qualify for this protection plant varieties needed to comply with the Union for the Protection of New Plant Varieties Convention requiring them to be new, distinct, uniform and stable.<sup>51</sup> This requirement was impossible to meet for traditionally-bred seeds, since the Convention requires that plant varieties have not existed in the territory of the said state for more than a year, or anywhere else for more than four years.<sup>52</sup> Seeds developed through traditional practices are almost by definition old. Similar constraints emanated from the other three requirements. Further, the approach of Order 81 to identifying the breeder of a patentable

plant variety could not capture communal practices of breeding, such as exercised by Iraqis: ‘The breeder: The person who bred, discovered or developed a new variety, or the legal successor to such person’. Therefore, even if the four criteria noted above were met, the individualistic construction of legislation could not capture the realities of Iraqi seed development. Thus, even though protection was nominally available to all, the four conditions of newness, distinctiveness, uniformity and stability *de facto* reserved protection only for seeds with a clearly identifiable breeder. The property model envisaged by this legislation as optimal is an individualistic model of private property, and in this context, a specific variant of corporate property, and not alternate, community-based forms of property. As noted in the case of Kosovo, this designation of individual property as the preferred form of property was not unique to the CPA, but was central to other instances of ITA.

Further, Order 81 gave breeders a wide range of rights. Production, reproduction, multiplication, stocking, or conditioning for the purposes of propagation were prohibited absent authorisation of the breeder. Order 81 stipulated that varieties essentially derived from the registered plant variety, varieties not clearly distinguishable from the registered variety, and varieties the production of which requires the repeated use of the protected variety are subject to the same protection provided to the initial registered variety. Crucially, the Order explicitly prohibited the stocking and re-use of these patented seeds. Through this final provision, the CPA brought patent law in Iraq in line with that in the US, which is arguably the most expansive regarding protection for agricultural biotechnology in the world (Winston, 2008, p. 322).

Simultaneously, USAID was actively involved in restructuring Iraqi agriculture along neoliberal lines. The main mechanism of doing so was the establishment of the ‘Agriculture Reconstruction and Development Program for Iraq’ (ARDI). The stated mid- and long-term goal of the ARDI was the, ‘implementation of policies and programs to strengthen the private sector to lead a market-based agricultural economy with strong support from the Government of Iraq (GOI)’. The goal was to create an environment in which the private sector, denoting risk bearing and profit seeking farmers, and the public sector, providing governance and assistance, cooperate to achieve equitable growth.<sup>53</sup> If that was the mid-term goal, the short-term actions of the ARDI involved the distribution or selling at relatively low prices seeds, fertilisers and other equipment.<sup>54</sup> The outcome of this programme was that thousands of tons of genetically modified wheat seeds were distributed in Iraq creating the situation of a prevalence of corporate-owned seeds on the ground. Factoring in this aspect of agricultural governance should inform any evaluation of Order 81. Of

course, the use of non-corporate seeds was not prohibited by the CPA. However, the impact of the invasion, the generally poor state of Iraqi agriculture after decades of conflict, strict sanctions and unsuccessful reform (Tzouvala, 2017, pp. 4-8) combined with these co-ordinated efforts of USAID to promote GMOs in Iraq meant that Order 81 was operationalised so as to promote the expansion of corporate-owned seeds, fertilisers and equipment to the detriment of alternative cultivation materials and practices.

The practical effects of these sweeping reforms are difficult to evaluate. The quick ascendance of armed resistance to the occupation, its morphing into a civil war and the subsequent devastating events render such an evaluation difficult. Arguably, this also points to the fact that the intentions and plans of the CPA and USAID were emphatically not the sole determining factor in determining the future of Iraq. Nonetheless, we maintain that closer and comparative examination of ITA experiments, such as that offered here, are needed in order to better understand the considerable shifts that have taken place in the ‘common sense’ of international law and politics since the end of the Cold War.

## **Conclusion**

This article addressed regulation as intervention to create, reproduce and sustain (neoliberal) markets, and the proliferation of internationalised forms of regulation as a way of managing post-conflict societies. We reconstructed how democratic participation and interference were effectively fended off by the parallel construction of an international authoritarian political architecture and a strongly legalised and specific form of market economy in the case of ITAs nominally established for post-conflict state-building in Kosovo and Iraq. The processes analysed demonstrate that the establishment of property rights is as much about the distribution of control over the future as present concerns for equity and efficiency. In both cases, changes predetermined that multi-national corporations and large scale agricultural interests stood to gain most from the future of Kosovo and Iraq’s agricultural production.

Commons, almost hundred years ago, recognised that the mode of market expansion increasingly incorporated a temporal as well as a spatial dimension. The processes of neoliberal regulation in the context of ITAs demonstrates that this spatio-temporal process has been reproduced and driven forward in the context of post-conflict societies and by international missions purportedly devoted to promoting sustainable, long-term, equitable, and peaceable development. This is

particularly the case to the extent that international administrators make reforms particularly difficult to reverse either through constitutionalising neoliberalism or by putting in place dysfunctional and dependent political systems. The sensitive nature of agriculture and the practical irreversibility of certain reforms, such as the introduction of genetically modified seeds, further entrenched the links between the present, which was dominated by ITA, and a nominally independent and sovereign future. This article therefore represents a challenge to those interested in interrogating post-conflict state-building to confront the role of international law in constructing markets that do not reflect the level playing field of liberal imaginaries, but cement unequal distribution in the present and incoming future. Regulatory action under conditions of acute instability may serve to cast in sharp relief the dominant political characteristics of contemporary regulatory governance.

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<sup>1</sup> Our understanding of neoliberalism incorporates American neoliberals, such as Friedman and Buchanan, and German ordo-liberals, including Roepke and Erhard, and thinkers who transcend this divide, such as Hayek himself. Though there are important differences between these intellectuals, not least regarding their engagement with (international) law, a shared commitment to the renewal of liberalism via the state and an emphasis on private property rights and competition groups nominates them as ‘neoliberalism’.

<sup>2</sup> UN Security Council Resolution 1244 (10 June 1999) S/RES/1244 (1999), p. 2.

<sup>3</sup> UNMIK Regulation 1999/1 ‘On the Authority of the Interim Administration in Kosovo’ (25 July 1999) UNMIK/REG/1999/1.

<sup>4</sup> Ibid.

<sup>5</sup> UN Security Council, ‘Letter dated 8 May 2003 from the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the President of the Security Council’ (8 May 2003) S/2003/538, p. 1.

<sup>6</sup> ‘The States participating in the Coalition will strictly abide by their obligations under international law, including those relating to the essential humanitarian needs of the people of Iraq. We will act to ensure that Iraq’s oil is protected and used for the benefit of the Iraqi people.’ Ibid., p. 2.

<sup>7</sup> UN Security Council Resolution 1483 (22 May 2003) S/RES/1483 (2003).

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<sup>8</sup> According to the Chilcot Report, the legal advice received by the UK on Resolution 1483 was as follows: ‘The resolution clarifies the legitimate scope of activity of the Occupying Powers and authorises them to undertake actions for the reform and reconstruction of Iraq going beyond the limitations of Geneva Convention IV and the Hague Regulations.’ The Report of the Iraq Inquiry (Report of a Committee of Privy Counsellors) (The Iraq Inquiry, 6 July 2016) Section 9.2 para. 85.

<sup>9</sup> Public Services Announcement by L. Paul Bremer on the Transitional Administrative Law and the Rule of Law. Retrieved from [http://govinfo.library.unt.edu/cpa-iraq/democracy/PSAs/Rule\\_Law.html](http://govinfo.library.unt.edu/cpa-iraq/democracy/PSAs/Rule_Law.html)

<sup>10</sup> Coalition Provisional Authority Regulation 1 ‘The Coalition Provisional Authority’ 16 May 2003 CPA/REG/16 May 2003/01.

<sup>11</sup> Coalition Provisional Authority Order 17 (revised) ‘Status of the Coalition Provisional Authority, MNF-Iraq, Certain Missions and Personnel in Iraq’ (27 June 2004) CPA/ORD/27 June 2004/17.

<sup>12</sup> ‘The laws, regulations, orders and directives issued by the Coalition Provisional Authority pursuant to its authority under international law shall remain in force until rescinded or amended by legislation duly enacted and having the force of law.’ Article 26.c Iraq: Law of 2004 of Administration for the State of Iraq for the Transitional Period (8 March 2004). Available at: <http://www.refworld.org/docid/45263d612.html>

<sup>13</sup> Interview, former Director of OSCE Department of Human Rights and Communities in Kosovo, July 2013, Pristina, Kosovo.

<sup>14</sup> Interview, Legal Advisor, European Commission Liaison Office (ECLO), April 2013, Pristina, Kosovo.

<sup>15</sup> UNMIK Regulation 2000/47 ‘On the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo’ (18 August 2000) UNMIK/REG/2000/47.

<sup>16</sup> UNMIK/KFOR Joint Declaration (17 August 2000) CJ(00)0320, reprinted in Fleck, D. (ed.), 2001. *The Handbook of the Law of Visiting Forces*. Oxford: Oxford University Press; pp. 596-601.

<sup>17</sup> Coalition Provisional Authority Order No. 17 (revised), ‘Status of the Coalition Provisional Authority, MNF – Iraq, Certain Missions and Personnel in Iraq’, CPA/ORD/27 June 2004/17, Section 2 para. 1 on ‘Iraqi Legal Process’.

<sup>18</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo (12 July 1999) S/1999/779, para. 39.

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<sup>19</sup> UNMIK Regulation 1999/1 ‘On the Authority of the Interim Administration in Kosovo’ (25 July 1999) UNMIK/REG/1999/1.

<sup>20</sup> Interview, former international staff of Kosovo Trust Agency (KTA), May 2013, Pristina, Kosovo.

<sup>21</sup> USAID, 2010. *Property Rights and Resource Governance in Kosovo, Country Profile*, p. 4.

<sup>22</sup> UNMIK, 2003. *The Kosovo Greenbook: A Strategy for Sustainable and Rural Development in Kosovo*, Provisional Institutions of Self-Government, Ministry of Agriculture, Forestry and Rural Development, p. 19.

<sup>23</sup> *Ibid.*

<sup>24</sup> Art. 21 of the Constitution of Socialist Federal Republic of Yugoslavia (SFRY), quoted in Kulic, D., 1973. The Constitutional Court of Yugoslavia in the Protection of Basic Human Rights. *Osgoode Hall Law Journal*, 11 (2), 275-284, pp. 277-278.

<sup>25</sup> UNMIK, 2003. *The Kosovo Greenbook*, p. 44.

<sup>26</sup> *Ibid.*

<sup>27</sup> UNMIK, 2003. *The Kosovo Greenbook*, pp. 44-45

<sup>28</sup> LLA, 2002. *The Ottoman Dilemma: Power and Property Relations under the United Nations Mission in Kosovo*. Pristina: Lessons Learned and Analysis Unit of the European Union Pillar in Kosovo, p. 10.

<sup>29</sup> Speech by Joly Dixon at the first donor conference, Brussels, July 28, 1999; quoted in Grasten, M. & Uberti, L. J., 2017. The Politics of Law in a Post-Conflict U.N. Protectorate: Privatization and Property Rights in Kosovo (1999-2008). *Journal of International Relations and Development*, 20 (1), 162-189, p. 169.

<sup>30</sup> UNMIK Regulation 2002/12 ‘On the Establishment of the Kosovo Trust Agency’ (13 June 2002) UNMIK/REG/2002/12.

<sup>31</sup> Interview, UNMIK official, April 2013, Pristina, Kosovo.

<sup>32</sup> UNMIK Regulation 2002/13 ‘On the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters’ (13 June 2002) UNMIK/REG/2002/13.

<sup>33</sup> Interview, UNMIK Legal Advisor, April 2013, Pristina, Kosovo.

<sup>34</sup> IFDC – An International Center for Soil Fertility and Agricultural Development (2006) *Restoring Kosovo’s Agricultural Sector After Conflict – IFDC’s Involvement*. p. 17.

<sup>35</sup> World Bank, 2001. *Kosovo: Economic and Social Reforms for Peace and Reconciliation*, World Bank Technical Paper no 50, p. vii



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<sup>36</sup> Ibid.

<sup>37</sup> European Stability Initiative (ESI), 2003. *Agricultural & Forestry SOEs In Kosovo: Assessment & Proposed Reform initiatives*, p. 11

<sup>38</sup> LLA, 2002. *The Ottoman Dilemma: Power and Property Relations under the United Nations Mission in Kosovo*. Pristina: Lessons Learned and Analysis Unit of the European Union Pillar in Kosovo, p. 10.

<sup>39</sup> UNMIK Regulation 2003/13 ‘On the Transformation of the Right of Use to Socially Owned Immovable Property’ (9 May 2003) UNMIK/REG/2003/13, section 2.

<sup>40</sup> USAID Kosovo, 2012. *Kosovo New Opportunities for Agriculture Program: Fruit and Vegetable Processing Technical Assistance*, Report (1 August 2012), p. 1.

<sup>41</sup> Tetra Tech, website ‘Agriculture and Economic Growth.’ Retrieved from <http://www.tetratech.com/en/agriculture-and-economic-growth> (accessed 20 August 2017)

<sup>42</sup> Coalition Provisional Authority Order 37 ‘Tax Strategy for 2003’ 17 September 2003 CPA/ORD/17 September 2003/37; Coalition Provisional Authority Order 49 ‘Tax Strategy for 2004 with Annex A and Explanatory Notes’ 19 February 2004 CPA/ORD/19 February 2004/49.

<sup>43</sup> Coalition Provisional Authority Order 12 ‘Trade Liberalization Policy’ 7 June 2003 CPA/ORD/7 June 2003/12, Section 1.

<sup>44</sup> Coalition Provisional Authority Order 39 ‘Foreign Investment’ (19 September 2003) CPA/ORD/19 September 2003/39. The Economist lauded these reforms: ‘If carried through, the measures will present the kind of wish-list that foreign investors and donor agencies dream of for developing markets. [...] The unspoken wish is that this will create a poster child for the recalcitrant economies surrounding it.’ ‘Iraq’s Economic Liberalisation: Let’s All Go to the Yard Sale (2003, September 25). Retrieved from: <http://www.economist.com/node/2092719>.

<sup>45</sup> H. Stewart (2003, April 28). Fury at agriculture post for US businessman. *The Guardian*. Retrieved from: <https://www.theguardian.com/world/2003/apr/28/iraq.usa>

<sup>46</sup> L. Hobday (2015, October 12). Trevor Flugge, former AWB chairman, faces court over Iraq oil-for-food scandal. *ABC News*. Retrieved from: <http://www.abc.net.au/news/2015-10-12/ex-awb-chairman-trevor-flugge-court-iraqi-oil-for-food-scandal/6846396>

<sup>47</sup> Article 13 New Interim Constitution of the Republic of Iraq in 10 The Weekly Gazette of the Republic of Iraq (10 March 1971).

<sup>48</sup> Article 16 (d) Ibid.

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<sup>49</sup> Coalition Provisional Authority Order Number 39 ‘Foreign Investment’ (19 September 2003) CPA/ORD/19 September 2003/39, Section 8.

<sup>50</sup> Coalition Provisional Authority Order 81 ‘Patent, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Law’ (26 April 2004) CPA/ORD/26 April 2004/81.

<sup>51</sup> Articles 6-9 of the International Convention for the Protection of New Varieties of Plants 1961, 1968.

<sup>52</sup> Ibid.

<sup>53</sup> USAID, 2014. *Agriculture Reconstruction and Development Program for Iraq (ARDI): A Transition Plan for the Agriculture Sector in Iraq*, (Final Report: Volume 1, April, 2004), p. ix.

<sup>54</sup> Ibid.

### **Disclosure statement**

No potential conflict of interest was reported by the authors.

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