



**NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
MASTER OF LAWS IN INTERNATIONAL LAW PROGRAMME (LL.M)**

MASTER'S THESIS

INTERNATIONAL LOANS IN POST-CONFLICT STATES

Ahmed Bahram Rasool

NICOSIA

2016



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Thesis Defence

International Loans in Post-Conflict States

**We certify the thesis is satisfactory for the award of degree of Master of
INTERNATIONAL LAW**

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ABSTRACT

There is an evolution of international loans after WWII especially when there exist war between nations leading to the collapse of the economy. Additionally the development of nations has become a subject of contentions. They reached this conviction that the stability will not materialize until reconstructions of countries have been achieved. There is reliance on US for offering loans and aid to countries that suffered during the war, especially the Western European countries and the so-called Marshall Plan in 1947. These loans are used to serve the economic revitalization. The World Bank was established and hence contributed effectively to the reconstruction of countries with the establishment of the IMF and then the World Trade Organization to achieve the balancing of the international economy and stability of the currencies. And we see the blossoming of those countries with the aid of international financial institutions which is considered a significant achievement. The international loans is deemed to be effective mechanism capable improving the situation of countries. Notably in the case of Iraq, the idea of loan came up during the war and just after the war financial jurists considered Iraqi loans as odious debts established by financial institutions. This financial institution collected these massive loans and grants for the rebuilding of Iraq but unfortunately the country's economy has not improved effectively. This dissertation would shed light on different types of loan, the concept of loan and odious loan. Finally, it will examine the Iraqi loan and grants and to see whether it has been of benefit to Iraqi people. To accomplish this goal, loan in post-conflict countries should be utilized for the protection of human rights.

Keywords: Wise loan, odious loan, fair dealing, loan contract, contractual terms, joint ventures, financial agreement, protection of human rights.

ÖZ

Ekonominin çöküşüne yol açan milletler arası bir savaş olan II. Dünya Savaşından sonra uluslararası kredilerin evrimi gerçekleşmiştir. Buna ek olarak ülkelerin gelişimi bir tartışma konusu haline gelmiştir. Ülkelerin yeniden yapılanması başarılıncaya kadar istikrara kavuşulmayacağı inancına ulaşıldı. Özellikle Batı Avrupa ülkeleri ve 1947 yılındaki sözde Marshall Planı şeklinde savaş sırasında zor durumda olan ülkelere kredi ve yardım sunma konusunda ABD'ye güven vardı. Bu krediler ekonomik canlanmaya hizmet etmek için kullanılmıştır. Dünya Bankası kurulmuş ve dolayısıyla IMF'nin kurulmasıyla ülkelerin ve daha sonra Dünya Ticaret Örgütünün uluslararası ekonomi ve kurların istikrarının dengelenmesini sağlamak için yeniden yapılandırılmasına etkin bir şekilde katkıda bulunmuştur. Uluslararası finansal kurumların yardımıyla bu ülkelerin patlamasını görmekteyiz ve bu büyük bir başarı olarak görülmektedir. Uluslararası krediler, ülkelerin durumunu geliştirmek için etkili bir mekanizma olarak kabul edilirler. Özellikle Irak'ın durumunda kredi fikri savaş sırasında ortaya çıkmış ve savaştan hemen sonra finansal hukukçular, Irak kredilerini finansal kurumlar tarafından verilen gayrimeşru krediler olarak değerlendirdiler. Bu finans kurumu bu büyük kredileri ve hibeleri Irak'ın yeniden inşası için topladı ama ne yazık ki ülke ekonomisini etkin bir şekilde gelişmedi. Bu tez kredinin farklı türleri olan kredi ve yasa dışı kredi kavramlarına ışık tutacaktır. Son olarak, Irak halkının yararına olup olmadığını görmek için Irak'taki kredi ve hibeleri inceleyecektir. Bu amaca ulaşmak için kredi çatışma sonrası ülkelerde insan haklarının korunması için kullanılmalıdır.

Anahtar Kelimeler: Akıllı kredi, gayrimeşru kredi, adil muamele, kredi sözleşmesi, sözleşme şartları, ortak girişimler, mali anlaşma, insan haklarının korunması.

DEDICATION

To whom I hold his name with pride.

To whom I say his name with admiration and safety

To the most honest and sincere person in my life

To my late dad

You have been such an inspiration to me, and I take all your life lessons to heart. I have always looked up to you as the ideal man for all the things you have taught me and guided through the years.

Any man can be a father but it takes someone special to be a dad.

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ABBREVIATIONS

AFDB	___	African Development Bank
AFESD	___	Arab Fund for Economic and Social Development
CBI	___	Central Bank of Iraq
CIDA	___	Canadian International Development Agency
CPA	___	Coalition Provisional Authority
DFI	___	Development Fund for Iraq
EO	___	Executive orders
EIB	___	European Investment Bank
EPA	___	Environmental Protection Agency
EU	___	European Union
G7	___	Group of Seven
GDP	___	Gross Domestic Product
HIPC	___	Heavily Indebted Poor Country
IAEA	___	International Atomic Energy Agency
IAMB	___	International Advisory and Monitoring Board
IBRD	___	International Bank for Reconstruction and Development
ICI	___	International Compact for Iraq
ICM	___	International capital markets
ICSID	___	International Centre for Settlement of Investment Disputes
IDA	___	International Development Association
IDA	___	International Development Association
IDRO	___	Iraq Debt Reconciliation Office
IFC	___	International Finance Corporation
IFI	___	International Financial Institutions
IMF	___	International Monetary Fund
IPO	___	Initial Public Offering
ISIS	___	Islamic State of Iraq and Syria
JBIC	___	Japan Bank for International Cooperation
KRG	___	Kurdistan Regional Government
LCCG	___	London Club Creditor Group

MF _____ Multinational forces
 MIGA _____ Multilateral Investment Guarantee Agency
 NATO _____ North Atlantic Treaty Organization
 ODA _____ Official Development Assistance
 OECD _____ Organization for Economic Cooperation and Development
 OIP _____ Oil-for-Food program me
 OPEC _____ Organization of the Petroleum Exporting Countries
 PRSP _____ Poverty Reduction Strategy Papers
 SBA _____ Small Business Administration
 SC _____ Security Council
 SDR _____ Special drawing rights
 SIGIR _____ Special Inspector General for Iraq Reconstruction
 TA _____ Technical assistance
 UAE _____ United Arab Emirates
 UK _____ United Kingdom
 UN _____ Unite Nations
 UNAMI _____ United Nations Assistance Mission in Iraq
 UNCTAD _____ United Nations Conference on Trade and Development
 UNDP _____ United Nations Development Program
 UNMOVIC _____ Monitoring Verification and Inspection Commission
 UNSCR _____ United Nations Security Council Resolution
 US _____ United States
 USAID _____ United States Agency for International Development
 WB _____ World Bank
 WBG _____ World Bank Group
 WHO _____ World Health Organization
 WMD _____ Weapons of mass destruction
 WTO _____ World Trade Organization
 WWII _____ Second World War

CHAPTER ONE: THE LEGAL SYSTEM OF INTERNATIONAL LOANING

1.1 Introduction and Historical Background of the Study

Public loans are considered one of the sources of public revenue which differ in their types as regard being terms of being internal or external. Some of the internal type could be long-term loans or those loans underwritten by the stock market such as treasury bonds and permissions. The internal and short-term loans granted by Bank credit facilities through the banking system of the state and public bodies. In spite of the differences that arise on loans and dangers of reliability in terms of the economic burden, it has aided growth and importantly the growing size of most countries of the world and particularly in post-conflict countries. For example, we discovered that international loans represent a significant proportion of revenues in Iraq second to its abundance of oil. Study showed that the resort to international loans may increase after operation freedom of Iraq. It should be pointed out that there will be constant increase in international loans which will be mainly due to the circumstances of the war waged by Iraq on the one hand and the other hand from the economic and social development program which often leads to a decline in GDP and budget deficit. The phenomenon of increasing international loans, one of the international financial characteristics considered in the modern era after the WWII was the rise and resort to international loans due to the fact that the loan is considered an important tool to achieving economic goals and strengthening the country's infrastructure that ward off crises. By improving the income and achieving economic stability in the country, the vision on loans become a normal way to cover state expenses (Nikolaos, 2004, p. 2).

The core of the thesis lies in the discussion of the dangers of international loan and their effects on development, social repercussions and infrastructural facilities. Why do states resorts to lending? What's the difference between odious and wise loans? Is there any international criteria? How do we distinguish between them? Is there any international guarantee that loan will be used for rebuilding? When do you consider the loan to be odious or sovereign loan? In this research we will also focus on

countries which their budgets and economy depend only on energy such as Iraq, In the event that the price of energy declines, such countries resort to borrowing. There

Are indications of the IMF that a number of countries, including Iraq would collapse if the price of oil continues to decline?

Research Hypothesis: To answer the above questions we can formulate the following assumptions:

- Loans are an effective method to face financial crisis
- Loans are considered a quick and current way
- Loans are used for debt crisis, indebtedness, development, encouragement; develop investment and rebuilding the infrastructure
- Loans lead to an increase in production and to combat inflation
- Loans strengthen the reliance on local capacity, price stability and economy rebound.

Significance of the Research: The importance of this research is to draw attention from the international scope and regional scope. This study will teach us to give a pure image of the foreign debts and to highlight the impact of external debt on economic development and stability of the country. A case is that of Iraq which is resorting to international loans and how to effectively use it in infrastructure development and as well in distribute the loan among Iraqi provinces and federal regions such as KRG which is currently experiencing war.

The Target of Research: Although third world countries have many ongoing researches on the internal, regional and international levels. Despite having many conferences on international loan and their repercussion on developmental process, until now these counties have not come out of the economic impasse. Our quest is to look for a line between odious debt and other debts. Until now, a clear criterion to know the odious debt is yet to be found. We want to find real guarantee to use international loans for benefit of the people and not for the system or a specific group in the country. Statistics used in the research and analysis are taken from economic reports and some are issued by IFC such as the IMF, the WB, the Arab Monetary

Fund, UN reports and international organizations in general while some are taken from national resources in specific locations.

1.2 History of Loans & Financial Institutions

Levi-Strauss from France offered an extraordinary debate titled life is nothing without three points. These are language which consists of the exchange of words, kinship which consists of the exchange of women, and economics which consists of the exchange of things. We will focus on the latter if the histories of the sources are different about the first borrowing, but they consent about the history of money. Money appeared in 1200 B.C. so the debt was a synonym of guilt or sin. In all Indo-European languages, debt is a direct nexus with sin or guilt in codes of barbarian law. The word SCHULD means both debt and guilt that creditors were delighted in punishing debtors who are unable to repay their loans and so they suffered all sorts of torture. In that time money had different shapes, like feather money for example in Africa which is an example that all the nations have their own form of money. The oldest and ancient written history documents show that the people of Mesopotamia were the first who borrowed from the temples (Graeber, 2011, p. 247).

It is right to jump from the history of the loans to history of international stability between states during economic crisis. The biggest international economic crisis occurred after the WWII and witnessed Germany great recession, abandonment of the Gold Base and issuing of banknote to during the war. To regulate global financial stability, the Bretton Woods is a strategy in form of Financial Conference in 1944 which put the foundation stone of both the WB & IMF, stability of exchange rates system which is based on exchange-base golden dollar under the provisions of the IFC. This is to allow each member state that the exchange value of its national currency which is sets for gold or US dollars base on the weight and caliber such that $\$ 1 = 0.88671$ grams of pure gold. This subsequently led to Withdrawal of gold from the state member, such that America suddenly turned from military victory into Economic victory which finally led to the collection of gold and dollars which turnout to become hard currency globally. US closed the window of exchange dollar to gold with the decision of President Nixon and subsequent fall of Britton Woods in

1971. As a result massive gold amount collected in America and struggle to impose control on foreign exchange markets which thus expected to strengthen its influence as a superpower. These financial institutions have great role of the international borrowing since its inception until now. The international loans history goes back to after the energy crisis which occurred in two stages. The first is in 1973 as a result of Arab-Israeli war when the price of oil rose from \$3 to \$12 per barrel and after the Iranian revolution in 1979 that the price of a barrel of oil rose from \$12 to \$ 29. Countries do not have any choice except resorting to international loans to confront the imbalances resulting from higher oil bill and the high value of its imports in exporting countries which could lead to economic collapse of some countries due to their inability to pay its international debts such as Mexico in the eighties, then followed by Venezuela and Brazil and Argentina. This phenomenon indicates the failure of international development strategies and international debts is observed to flow by countries more than 60%. Hence, countries assemble under the care of the WB and IMF thereafter gave John Mason therapeutic prescription to save the states in this circumstance known as Washington consensus. After years of discerning that the Washington consensus was not successful, crisis and inflation start in the international market and the beginning of economic crisis in Mexico in 1994, Argentina in 1998, Southeast Asia in 1997, and Turkey in 2002. Washington consensus still exists and its provisions constitute a well-established procedure for both the WB IMF and WTO (Reza, 2015, p. 45). We can say that international financial bodies have played a main role in the international financial stability and international borrowing, because without it stability of the international peace would not have been achieved.

1.3 Definitions

Loan means giving money to others provided that it is being returned on a specified time. Further exchange value of the urgent loan to the loan of value in futures. A debt is a sum of money owed by one person or group to another or the obligation to pay a sum of money owed. The difference between debt and obligation is that debt can be accurately quantified which could require money, but in obligation there is

something to do, such as military service. And the creditor is the one to whom a debt is owed (Ezabile, 2008, p. 320). Borrow is to take or receive something from someone that you intend to give back which is usually after a short time (Helen, 1998, p. 80). There is difference between loans and international aid, International donation and aid, money-kind and cash, foreign aid offer by rich countries to poor countries or countries that need a temporary international aid for purpose of humanitarian security and social positions. It is not considered a financial commitment; normally countries that provide this assistance are US & EU. Also grants are kind of aid received by the state from donors to cover the budget deficit without a commitment from the state to return the principal amount or any part of this money, but loan must be return with his usury (Ugo, 2015, p. 12). A loan is a contract between two parties, the first party is the lender who grants money, while the second party is the borrowers who receives the money and undertakes to return it with its interests on time. So the loan process if we look at the lender's perspective is the delivery of an amount of money, and if we look at the borrower's perspective is an obligation to pay a certain amount of money on the agreed time (Soyfy, 2011, p. 29).

According to the definition, there are some similarities and differences between loan and debt. Both are liabilities to pay back with certain amount of money. All loans are debt but not all the debt is a loan because a loan is an act of lending money. A debt may come from a loan or caused by sale or instead of others which means a loan becomes a debt when it remains unpaid beyond the due date. Shortly, loans are a type of debt in which a lender lends money and a borrower borrows money. Loan is money borrowed, but debt is money owed. If we look at the loan in religions perspective we will find out that it is mentioned in the Quran. Any word or subjects is mentioned in the Quran it means that the word or subject has significance importance (Asad, 2007, p. 211). The Quran focused on debt and borrowing in different places, for example "*Who is he that will lend to Allah a goodly loan, so he will increase it manifold for him, and he will have a generous reward*" (Holy Quran Al-Hadid Verse 12). In Biblical texts, loan mentioned explicitly (Exodus22:25). In Christianity, Jesus asks people to love and help each other and allow borrowing to

fill the need (Luke6:34-35).Also in the Old Testament, *"If you lend money to my people, to the poor among you, you are not to act as a creditor to him; you shall not charge him interest"*. Prophet Muhammad borrowed barley from a Jew and mortgaged his armor (Ata, 2015, p. 4). Now we understand that loan is more important and is an old phenomenon for all nations and in religion. We must pay attention to research and how to deal with it in an accurate way.

1.4 The Legal System of International Lending

International lending is a process of fiscal policy every state resort to whenever in need as to achieve social and political balance because loans have several types and each type has its own legal system. Every legal system is preserved or organized by several pieces of legislation and Legal nature of legislations differs from one to another. Hence, we will focus on international loans in legal perspective by international laws. Searching for legal perspective is not written occasionally because lending had special attribute and is different from other revenue sources such as tax and fees. These attributes makes it to be cautiously and carefully deal with. So we must know the legal nature of international loans whether the international lending is an international instrument, bilateral contract, administration contract or international treaty and deal with them. External loans are the loans that take statehood from international persons or of persons which is usually applicable to IPO. While the approved external debts with international institutes and bodies have international treaties, the approved external debts with foreign people are private contracts and called administrative contracts. Each of them has special nature because one of its sides is a foreign person related to another country (Abbud, 2002, p. 5).

From here come the question that is there a difference between international treaty, international agreement and covenant? Some international law scholars differentiate between different treaty and convention. Treaty must be in writing unlike agreement and they are not the same in two aspects.

- When one party is an international organization, the treaty is imposed and signed by the president of the state. But international organization that does not have a president the international agreement is not international treaty.
- If we look for collective agreements, the differences between some terms are clear and explicit and include some international legal norms such as The Hague Convention on the law of war and the settlement of international disputes of 1899 and 1907 and the Geneva Conventions of 1949 which are all different from some legal terms. These legal terms include the following:

Protocol: These terms is usually used for development, application, supplement or modification of a treaty, such as appendix. An example is the Annex Protocol of the Geneva Conventions of 12 August / August 1949 on the protection of victims of internationally armed conflict and the additional Protocol II to the Geneva Conventions of 1949 as well as on the protection of non-international armed conflicts victims.

Accord: It is less formal than the treaty and the convention which is generally not held by the heads of state and is usually among a smaller number of parties and regulated in the habit of technical and administrative issues which is not subject to ratification. An example is the agreement on the establishment of SDR at the IMF on May 30 1968, Agreement on Kingston on May 1978 and the amendment to the Statute of the IMF.

Arrangement: It is a diplomatic tool usually aims to identify roadmap an earlier treaty and the establishment of a temporary system (Muhammad, 2009, p. 9). But if we go back to formal instruments we can find similar terms and definition of treaty such as in the Vienna Convention on the Law of Treaties which defines international treaty as *"an international agreement concluded between states in writing form and governed by international law, whether embodied in a single instrument or in two or more related instruments whatever its particular designation. Ratification, acceptance, approval and accession mean in each case the international act so named whereby a state establishes on the international plane its consent to be bound by a treaty"* (Article 2 of Vienna Convention 1969, p. 333). Also in Article 38 of the

Statute of the International Court of Justice, international treaties are now the most important and ancient sources of international law (Statute of Court of Justice, Article 38, p. 26). In light of the aforementioned, we can say the international treaty, international agreement and covenant are the same.

1.5 International Loans and Legal Permission

If there is a difference in the nature of the general debts and the difference does not derive from submitting it to the principle of the legal permission, international loans will be illicit without taking permission from legislative authority because it has the authority to get permission and concluding them (Abbud, 2002, p. 19). If we look at the Iraqi's constitution, we don't find the principle and the legal permission which means that Iraq's constitution lack is lacking in principle unlike the Algerian constitution which states in article 122 that the loan issues shall be under the power of parliament (Algeria Constitution 1996 article 122).

While Iraqi constitution focuses only on the ratification of debt which is under power of the parliament but it does not state which authority has the power to conclude a loan (Iraqi Constitution 2005 , Article 110). If we search in the Iraqi legislation we find the Financial Management Law that the Minister of Finance has the power to execute loans (Financial Managment Law 2004). On the other hand, the CBI law prevents the government for borrowing from central bank (CBI Act , 2004). Otherwise Iraqi government can decide to borrow from the central bank which is decelerated by the economic adviser of the prime minister who said that the government plans to borrow nearly \$ 1 billion from the Central Bank to remedy the budget deficit in 2015 (Layla, 2015, p. 1). International reserves have shrunk with the Central Bank from \$ 87 billion at the end of 2013 to \$ 66 billion at the end of 2014 due to lower oil price imports, knowing that oil exports decreased to 2.5 million barrels a day from to 3.1 million barrels per day (IMF, 2015, p. 2).

In the case of 2014 in Iraq when the parliamentary economic committee announced that the general budget deficit ratio exceeded 20% equivalent to \$150 billion, the committee proposed three suggestions to the Iraqi government which include resorting to take and spend cash reserves at the Central Bank of Iraq. The WB

threatened Iraqi government with blacklist if Iraqi borrows from central bank. The central bank must be independent from the government without any intervention. So if the government wants loan it should be compelled in a legal way like taxes, sale of exchequer bills etc. Otherwise, the government is unable to protect price stability (Al-khad, 2014, p. 4). According to the legal evidence we can say that the government borrows from the central bank and any loan without prior permission in parliament is considered illegitimate debt. The constitution of Iraq lacks the principal of legal permission for international loans; use of international loans must be under the supervision of parliament but unfortunately, that the constitution of Iraq free of this legal authorization, which is considered a pretext to protect next generations for debts.

CHAPTER TWO: INTERNATIONAL LOANING AS A MEAN OF REBUILDING POST-CONFLICT STATES

2.1 The Concept of International Loan & International Loan Criteria

The international finance term consists of two words. One is Finance which means providing the fiscal resources to cover current expenditures and other is international which means a group of countries. International finance has the following three dimensions:

- Trade transactions, exports and imports
- Financial obligations on the countries as in the case when there is compensation for war or breach of international commercial contracts
- International influx of capital in both forms loans and bonds

We will focus on the last point which does not mean movement of capital in kind or the form of machinery and equipment and various assets in the field of international commodity trade. The meaning of these movements is the movement of capital in the form of lending and borrowing operations between different countries. If the government is offering a bond for sale in the capital market in Germany for example, and the institutions, banks and citizens in Germany to buy these bonds, it is a transition of capital at the international level (Healey, 1979, p. 4). This presentation indicates that the international loans come from outside countries. A uniform definition in its annual report from all of the IMF, WB and OECD, "*external debt is an amount at any given time, of disbursed and outstanding contractual liabilities of residents of a country to nonresidents to repay principal, with or without interest, or to pay interest with or without principal*" (Knight, 2003, p. 19). It means that loans are distinguished by two characters, that is outstanding and liability. We can describe such a loans issued by state as intra-territorial and underwritten by those of individuals or public or foreign bodies which may be borrowed from international organizations such as the IMF & WB. It means that there are two ways to get an international loan:

- Subscription by the individuals, public or foreign bodies

- Directly from international organizations or multilateral countries and Subscription. It is also called special moves of funds which are all the loans granted by individuals, institutions and people in public international law to the borrowing government and applying the kind of moves in a formats of Supplier Credit, Bank Credit, International Bonds and Portfolio Investment.

The differences between portfolio investment and foreign direct investment in international capital flows are long-term flows and flows of short and long-term to be considered by the sale of shares. An international bond for a long time helps in order to obtain long-period loans. As for short-term capital movements, they include dealing in selling short-term financial assets such as government bonds, bank loans and treasury bills. Significance of international loans varies between borrower and lender, from the perspective of borrower and supports the programs and plans for economic development. To achieve the points mentioned above, the countries resort to either withdrawal of state-owned reserves or to external borrowing, usually they resort to the second method as was the level of foreign reserves which is not allowed to drag more. From the perspective of different lenders, the political factors have a big role to determine the international loans. To get international loans from another country does not mean giving the borrowing state the right to use and full liberty to buy from any market and international markets. According to the finest goods and cheaper prices, donor state wants to achieve several goals including the improving of the image of the donor country to the international community and display it as a country to fight poverty or to protect the interests of some products inside the state. For example, agricultural sector which is produced in large quantities needs not to export them in lower prices to avoid fear of damage and lose to producers simply by getting rid of these surpluses through international loans. Sometimes the creditors have specific conditions before giving the loan. It could be that the loan must be used for implementation of specific project and these projects must be implemented by the donors company (Salih, 2006, pp. 34-39). Shortly we can say debt that is in the form of accumulation of unpaid loans, borrowing from countries called bilateral debt, borrowing from international organizations such as the IMF, WB and etc. are multilateral debt and they are called private debt. If the obligation or indebtedness for

global banks and private financial institutions the International influx of capital in both forms of loans and bonds is the concept of international loan. While international bonds, have paramount importance in international capital markets.

2.2 International Capital Markets

ICMs constitute the prime provenance of funding external transactions especially loans and financial services. Therefore, monetary and fiscal property such as stocks, bonds, loans and others instruments are traded. Since 1980's ICMs and have seen a great evolution which enhanced financial liberalization. National capital markets are financial institutions dealing with local capital and local stock exchanges but under the supervision of the central bank or finance ministry while the ICMs is trading volumes operations and exchange and liquidation of debt and cash assets with financial-related operations that transcend into national. The international capital markets have many branches:

- European foreign currency market and European loans are those of the market which has been the treatment of a particular currency outside the country of that currency. For example the deposit or US dollar loans with banks outside the US whether European or non-European banks. This market is divided into two parts:

The first is the deposit and lending market of short term that does not to exceed 18 months and the so-called European Monetary Market. Also, the European loan markets which are namely those international loans granted by banks in intermediate-term and long term using foreign currencies. The utility of these loans are either fixed such as utility rate which is applicable in the London market or changeable and characterized by the borrowing level. There is a classification of borrowing countries according to the level of risk. An example is the utility of these loans to the industrial countries of either $\frac{1}{2}$ % in African countries or 2% in the so-called international money markets.

- International bond market which is an important way to withdraw capital from other countries for the purpose of financing with period maturities of 10-15 years, international bond market in 1993 and equivalent to \$268.6



billion issued by the official international institutions as well as governments in order to borrow. For example Saudi Arabia issued and borrowed \$4.5 billion in foreign market but International bonds sometimes which could make States to face shortage of cash to cope with the problems faced by resorting to external financing through the issuance of bonds to be put in the financial market for the public through banks or various financial institutions. The bond is a financial paper embodies the commitment by the debtor toward the creditors. The creditor puts funds at the disposal of the debtor and the basic characteristics of international bonds are:

A: In terms of the issuer, local bonds are resorting to specific bank while the international bonds are resorting to international bank rally.

B: In terms of registration, the registration of European bonds in London and Luxembourg, etc. while the local and foreign bonds are registered in the local bourses.

C: In terms of clearing and settlement, European bonds are subject to the laws of International Clearing while the domestic and foreign bonds are subject to local clearing.

- International stock market is the meeting place for those in need of money. International stocks represent ownership of the investor or buyer of those shares for a fraction of the issuing company. As for how the distribution of international shares that made up of banks' international body so the international bond is a guarantee document. However. The creditor confirms the ownership of his right or duty and shows the debtor to pay it and prove this right in the bond. A certificate entitles the holder the right to property which is part of the company issuing the stock. It is the support of ownership and then does not have a maturity date and the registration of international stocks in the international financial center of the Wall Street of US which is one of the most important registration centers where they exceeded the amounts of international stocks of \$124.8 million in 1998 (Makfoz, 2008, p. 29).

2.3 International Loaning Criteria

Any state has right to get a normal loan without any requirement of not more than 25% of the share of its contribution but if it's more than that it can get a conditional loan and the conditional loans mean that the state should follow the policy and recommendations of the IMF. Actually there were no fixed standards for international loans, but the standards are different according to the lender. For instance, the criteria of lending are quite different between IMF and international bank. However, both of them are financial institution with criteria rules or principles which need to be applied before taking a decision. It means for achieving this criteria with some conditions, i.e. conditions imposed by the WB and the IMF in 1999 on 13 African countries (there exists 114 conditions) and which is impossible that these African countries able to meet this number of stipulations. While the number of people living in extreme poverty less than a dollar a day according to WB data is 298 million in 2004, the conditions imposed on Turkey during the parley that took place recently for an additional loan from the IMF in 2002. These conditions include need for greater transparency of government operations, expansion of the privatization process of the country, encouraging foreign direct investment and the use of structural adjustment program. The US congress arranged the advisory committee for the IFC called Meltzer Commission which was mandated by the IMF must mitigate financial conditions (Alexander S & John S, 2016, p. 4).

The conditions were imposed by IMF to lending Iraq an estimated amount of \$436 million in 2004 which are implementable program under EPA and the reduction of spending heavily on salaries, pensions and other social programs. Privatization of the financial sector and increase in private sector participation in the country's oil industry contributed to a rise in gasoline prices and reduce consumer support (Momani B & Garrib A, 2008, p. 157). In view of this difficult conditions, Nicolai resorted to Romania to cancel all external borrowing unconditionally when the total of external debt represented \$11 billion in 1980 and was repaid fully in April 1989. In order to pay, Roman people in hard situation resorted to reduce imports by 40% between the years 1980 and 1984 (Carey, 2004, p. 19). Also about Franco Tudjman

government in Croatia, when he understand the refusal by IMF for giving loan in 1997 turned to private creditors. And Malaysia rejected IMF programs but managed to get out of the crisis by their own efforts (Mechael K & Jayachandran S, 2002, p. 39). So there is no standard applicable procedure to all countries, the standards vary according to the circumstances of concerned countries.

2.4 Donors of International Loan

International persons means countries and international economic organizations whether international or regional organizations. Sometimes the Countries donates to one another's, the lending between two countries is called bilateral loan agreement.

2.4.1 International Financial Organizations

International organizations are the institutions which are part of the UN whose membership includes most of the world states and deals in the field of international lending, Such as IMF, IBRD, IFC, IDA, ICSID, and MIGA.

2.4.2 International Monetary Fund

IMF is a prime source of funding and international borrowing. It grants loans for his membership in the case of problem in the economy and budget deficits. IMF supervises the cash system and international finance. It was established by the UN to avoid repeating the failed economic policies that contributed to the catastrophe of the Great Depression in the twentieth century. The countries pay 25% of their quota in SDRs, or in one of the foreign currencies. The members borrowed from IMF such as what happened in Korea in 1997 the IMF gave a loan to strengthen its existing reserves to provide US \$ 21 billion to help it to reform the economy, Also in Kenya in October 2000, the IMF gave a loan to Kenya 193 million US dollars to help it cope with the effects of PRSP. The US has the lion's share in the IMF fund with a share of 17.6% of the total quota while the share of Seychelles is 0.004% because it is the smallest economy in the world. Borrowing from the IMF goes back to 1952 when Belgium was the first state when it asked for US \$ 50 million from the IMF to strengthen its international reserves. Dominance of industrialized countries over IMF

is believed to affect IMF policies and emphasize the capitalist economic idea. To implement these ideas on African countries regardless of the social and economic specificities one can say that the IMF is rather a development box. Sometimes played political role than just a development box like in 1998, IMF request assistance from the WB to contribute to the lending program to Russia amounting to \$ 22.6 billion, the main purpose was to keep Boris Yeltsin in power, and to stabilize the price of aluminum (Osama, 2007, p. 128).

2.4.3 World Bank

WB have has two functions which are financing and providing advisory information services to member states. It is an IFC, a UN agency aiming to fight poverty and improve living conditions for people in the developing world which include both IBRD & IDA. WB was established in 1944 at Bretton Woods agreement, and its first aim was to contribute to the reconstruction of Western Europe after the devastation caused by the war. While the European countries made great steps in the process of reconstruction, third World countries need to support their projects by finance support and lending. The WB paid attention to these countries with the establishment of the WBG which aims to facilitate loans for poorer countries. It is worth mentioning that the WBG consists of five specialized institutions and all of them work in a particular area of the development process. These institutions are IBRD, IDA, IFC, ICSID, MIGA and the WB which are all based in Washington. It is a component of the WBG. Composition of the WBG issued the first international bond in 1947 for rebuilding Europe after the WWII. Annual borrowing of about \$10-15 million with IMF support and policies is to ensure the stability of the international monetary and financial system by monitoring international payments and exchange rates. The WB is lending governments and financing infrastructure projects to member governments. The IMF and WB are called IFI are not subject to any kind of accountability except from powerful governments that control the executive board, the US& UK were the most powerful in attendance, prevalence and the negotiations(Michele, 2011, p. 98).

The practice of the WB shows evidence of bias in lending to some countries and reluctance to lend other countries such as the High Dyke project in Egypt (Stady Strategic, 2005, p. 21). Regional financial organizations are those organizations that aim to finance certain group of nations, linked together in a geographical location but in many states are providing assistance to non-developing countries regardless of their location such as EIB, AfDB , ADB, IDB, AFESD.

2.5 How to obtain International Loans

The following provides basic guidelines on how to obtain international loans.

Soft loan: Also known as soft financing or concessional funding which is distinguished by three descriptions without interest or a below-market rate. It is normally aim at developing countries without complicated conditions and for long time schedules in some states up to 50 years. The soft loan for infrastructural projects for example in October 2004, Angola takes a soft loan amounting to \$2 billion from Export-Import Bank to build infrastructure facility. Contrast to Angola is China's bank which received a stake in oil exploration off the coast (Hurst C. , 2006, p. 23). Another example is the interest free soft loan of 20 billion Rupees given by the ADB to India on the stipulation that it is used for health and education (TNN, 2013, p. 1).

WB failed to lend to Iraq since 1973, while in July 2005 it concluded plan to lend soft loan to Iraq amounting to \$500m for reconstruction (Mizban, 2005, p. 1).

Project Aid: In general, aid can be categorized in different shapes, upon giver and receiving countries. It can be a form of gift, a grant, or a low interest loan may be to gain other kinds of commercial, project aid can be a form of international loan. The beneficiary country offered several projects to the donor and the donor will select among them. This aid is given for a certain aim such as building materials for a hospital. This kind of loan is able to be implementation via international organizations, countries or banks such as JBIC which has provided ¥216.5 billion in ODA loans to finance 20 projects in Central Asia (JBIC, 2005, p. 29).

Project Aid in Iraq Sewage Facilities project in 2008 of \$19 million, Engineering Services for BASRA Refinery Upgrading Project signed in Apr, 2007 for \$18 million, BASRA Refinery Upgrading Project signed in May, 2012 for \$524 million

and Crude Oil Export Facility Reconstruction Project signed in Apr. 2007 for \$432million and were Fulfill by Japan (Embassay of Japan , 2015, p. 2).

Program Aid: Donor and beneficiary country decide to allocate funds to support a particular sector that provides an opportunity through which the beneficiary countries directing loans towards national priorities. These types of loans are conditional loans. Lender applies the program to borrower such as Iraq agreement with IMF to give Iraq \$ 15 billion over the next three years. It required submitting Iraq policy financial and economic to the control of the IMF for the year 2015 to 2016 after understanding the financial crisis in Iraq of low oil prices (IMF, 2015, p. 23).

Direct Financial Support for the State Budget: Donor countries may ask for reports on how the money has been spent by the beneficiary countries, this type of support is not broad because there is a lack of credibility and transparency in the disbursement of these funds by the beneficiary countries. Such as Iraq, was granted a loan by WB in the tune of \$350 million loan in 2015 for remedy of budget deficit of up to \$20 billion (World Bank Group , 2015, p. 18).

Technical Assistance (TA): It is represented technical support in specific areas, TA it is a training to assist states for improved development and more effective institutions in order to promote capacity building and promote economic stability and inclusive growth. Training through courses, workshops, and seminars strengthens employees, leading to better economic outcomes (IMF, 2016, p. 23).

Japans loan for Iraq in capacity building in MUTHANNA Governorate-Iraq which is known for Improving Access to Quality Health Care \$3.9 million, WHO, and Institution Reinforcement Program me \$4 million, UNDP(The Government of Japan, 2009, p. 7). And Norway pledged in Madrid conference 2003, aiming at promoting private enterprises (ICI, 2003, p. 2). During SADDAMS ouster nearly 6,699 Iraqi officials were trained in Japan as technical assistance (Embassay of Japan , 2015).Giving the international debt by the states is usually in the form of implementation of the projects and the concrete benefit for the lender country its order to reduce the rate of unemployment, disbursement of local materials and find a market for its products in the future. Our conclusion is that the best type of loan is a budget support loan for the borrower which in fact is of the majority of the Iraqi

loans in the form of implementation of projects by the lending companies themselves.

2.6 Iraq and Odious Debt

The term odious debt is dated back to history in 1898 when US to prevent Spain and forced debts on Cuba as the US pointed out to Spain that those loans were imposed on Cuba by force, for Spain's interest (Cheng, 2007, p. 13). We can define Odious debt as borrowed money which is used in roads antithesis to the people's interest such as suppress the people, personal purposes or, apartheid cleansing etc., with the awareness of the borrower, Sovereign debt or unfair debt is a kind of odious debt (Jubilee, 2003, p. 5). Odious debt doctrine provides that the debt of a regime is unenforceable and considered odious if the debt is not of people's interest and the debt is not used for the betterment of citizens in general. This doctrine has been suggested to be preferable mechanism of reducing the debt rate of Iraq after the ouster of Saddam's regime. During Saddam Hussein regime, Iraq incurred vast amounts of public debt, which can be categorized in the following term. Bilateral is owed to other nations, commercial is owed to corporations and multi-lateral is generally owed to the IMF and the WB. Estimates of the total Iraqi debt load in 2003 ranged from \$125 billion, which happened after regime change and the general consensus on the unsavory nature of Saddam's regime, as an opportune situation under which to implement the doctrine (Damle, 2007, p. 42).

In addition, the Bush Administration took the lead in advocating for Iraqi debt relief because Iraq was a constituting security risk to western countries and destabilizing force in the Middle East. A quick economic recovery would facilitate political stabilization in Iraq, which would in turn lead to a more stable Middle East. This is the greatest priority to UN and US as they considered Iraqi debt, odious debt. After the removal of Saddam regime in 2003, the UN charged the interim Iraqi administration to have a renegotiation with its creditors over Iraqi debts and request creditors, institutions and donors to work as a priority on these matters. For the sake of reconstructing and providing the government leverage over its creditors, Iraqi oil assets was immunized by UN from attachment by creditors until December 2007. UN made Justification of this immunization under the emphasis of rebuilding of Iraqi

infrastructure, its economy, and humanitarian and social services and not under the doctrine of odiousness (Katzman, 2006, p. 28).

2.6.1 Elements of Odious Debt

These element of odious debt include the debtor is undemocratic government, used loans for contrary to public usefulness and knowledge of the creditor.

2.6.2 Kind of Illegitimate Loans

- The loan was taken by dictatorial regime
- The loans have been used for morally blameworthy and for certain intended such as the purchase of landmines, weapons, and oppression of minority
- Rebuttal of the debt is a threat to essential of human rights.

Normally those loans are content of government guarantees and so they are unreasonable and unfair for poor nations to pay debts for dictatorship governments such as Mobutu SESE SEKO of Zaire. As Mobutu renamed the country, accumulated public debts is US\$14 billion, wealth of Mobutu equals the debt of the country (Ndikmana &James , 2003, p. 17). Iraq should be responsible for loans taken up by Saddam Hussein because according to Belka the prime minister of Poland who as economic consultant by CPA, he confesses that the %90 of Iraqi debt was a result of the war (Fayaz, 2010, pp. 42-68).

Democratic South Africa should be liable for debt incurred by the apartheid regime or that today's Argentina should be liable for the part of its foreign debt that was incurred during the military dictatorship in the 1970s and 1980s (Johnson, 2013, p. 19).The majority of dictatorial governments resort to loans used for specific purposes while creditors write off some debts under the name of odious debt which are not even in the same circumstances and conditions. Tanzania his debt of US \$800 million used to oppose ethnic minority, Indonesia owing US \$151 billion which is equal to 90 percent of its GDP, Argentina owed US \$77 billion which is equal to 75 percent of the country's GDP and Nicaragua's debt is over five times the country's GDP and also is former Yugoslavia who had received 66 percent debt reduction after the overthrow of Milosevic and Iraq (Damle, 2007, p. 43).

2.6.3 International Standard to Write off – Odious Debt

The total of odious debt in Iraq, Argentina and Philippines is equal to US\$ 309 billion and another side of the debt of 27 countries known as HIPC is totaling US\$ 99 billion which means that the odious debt in three countries is more than three times of HIPC countries. So odious debt could be overcome or at least reduce the odious debt using two options.

- By bilateral or multilateral creditors, this is best pattern to meeting some lending requirements, For example, loans from the IFC may not be used for military purposes, or for ethnic purpose.

- UN Secretary General Kofi Annan suggested that the international community should consider the establishment of what he called a debt arbitration process with greater balance between the interests of creditor and debtor countries (Johnson, 2013, p. 23). In general all the international duties must be paid, debts is one of the duties that must be paid according to international principles which is said each government is liable for the deeds of its predecessors. Recently odious debt had been an argumentative concept between theorists and practitioners, contents of the odious debt doctrine to query what characteristics make debt odious rather than simply debt have characteristics which are different from other debt. By this point some Scholars of contemporary international law believe the debt, hostile debt caused by war and all debts to dictator governments are odious debt and might be written off. According to this doctrine, successor governments should not be responsible for the debts incurred by previous despotic rule (Ocha, 2008, pp. 23-43).

The idea of odious debt were not recognize as an international standard which can be applied to get rid of odious debt and does not have a binding international Standard for the parties to distinguish between odious debt and another debt. But there are signs that suggested the use of odious debt by oppressive governments. But practically, how to get out in odious debt? It the answer to this question is that there is no choice except the return to the creditors. Understanding the new Iraqi government shows the difficulty to cancel their debts which only comes through the procedures of the Paris Club because the majority of Iraqi creditors were member of the club.

If the international community has a will to get out the odious debt, it must be with pledges to declare that all future contracts with a particular regime would be non-transferable. We can say that the odious debt is not an international principles and its practice is different between nation to another, the criteria for interest without pay and pay without interest. We see in people's perspective the future generation pay without interest, but from the specific regime the interest from this debt is without repayment. If the debt in general is a silent war then odious debt could be regarded slow death.

2.7 International Loan as a Mean of Rebuilding Post-Conflict States

International lending for post conflict states means return to normalization.

By economic activity and ability of those states with self-sustaining and apply international standard in internal and external relationships because rebuilding is not meant just for building bridge and streets but must be stable with security, fairness, power of economy and peace building. Loans in post conflict states must achieve those goals and for the service of people and country such that happened after WWII. The US allowed Britain to repay loans at a very least rate to rebuild also in 1953 the winner allies met in Britain to cancel most of Germany's loan so that it could easily rebuild (AUSA & CSIS, 2002, pp. 12-17).

The continuing violations of human rights of states after the conflict has led to concern among the international community, as fear would led to threat to international peace and risk of security. The international community to adjust my work to the principle of non-interference contained in the second paragraph of Article VII of the Charter of the UN and the transition to the principal to intervene will achieve the rebuilding of post-conflict nations based on freedom, equality and respect for human rights. And by intervention of international organizations because of international organizations are manifestations that have become an essential part of the international system that handles international problems. UN, according to the text of the article 24, 25, is the deputy of the member states which carry out the duties, international obligations and consequences for international peace and security (UN Charter Article 24-25). Knowing that the Charter of the UN in Article

II, paragraph seventh had clearly pointed to deprive of the UN's intervention within the domestic jurisdiction of states. That internal competence was whether under the League did not define or clarify a specific definition of the neither word nor preparations that indicate in the San Francisco to any unified position among the drafters of the Charter towards the meaning Intervene. UN to intervene in different shapes and styles, including supervision of elections in many parts of the world or the management of state affairs for themselves such as security and defense, media and judiciary as in Cambodia 1989 or select no-fly zones in Bosnia-Herzegovina, and Iraq at the end decided to reconstruction and construction (Ahmed, 2006, pp. 44-47). The state building after conflict operations had carried out by the UN.

2.7.1 Mechanism of SC for Participating in Rebuilding for Post-Conflict States

- Preventive diplomacy, preventing formerly conflict or to prevent escalation or converted into armed conflicts, UN has developed in recent years a network of early warning systems with regard to environmental hazards and the risk of a nuclear accident and the risk of starvation and disease. Since the SC adopted in late 1992 a decision unprecedented creation of a UN force for protection in the Former Yugoslav Republic of Macedonia as a preventive measure The establishment of demilitarized zones of preventive diplomacy order to remove any pretext to attack and to prevent the outbreak of conflict (Annan, 1998, pp. 24-27).
- Peace Making, by deployment of military and police personnel and civilians belonging to the UN in order for peace-keeping and expanding the possibilities of preventing renewed conflict, The UN Operation in Somalia has represented one of its models based on Chapter VII of the Charter, since sending nine and twenty thousand troops have been aimed at securing peace and humanitarian aid and rebuilding international institutions. Post-conflict peace building means the procedures and arrangements of the UN which is the reality of changing conflict environment and establishing a less disputes and new environment for the People. The aftermath of the rebuilding instill confidence arrangements, the disarmament of the warring parties and resettlement of refugees. Also, the security services and support of institutions and government reform are reenforced after civil conflicts.

- Humanitarian assistance and protection of the population, as happened in the former Yugoslavia, Somalia and Rwanda after the events of 1994.
- Disarmament of armed groups, If the UN-led peacekeeping operations in Mozambique between 1994-1996 has been successful on the field often than prepared to move to independence peacefully and democratically.
- Institution-building, Help local authorities in the training of personnel and restructuring or even the establishment of new civilian and military institutions as happened in Haiti, Somalia, Mozambique, Cambodia, Salvador and Iraq.
- Organizing elections and referendums, the first of these operations came legally to Namibia through the UNSC 435- 1975. The UN force has succeeded in creating the conditions and political conditions for free and fair elections (Ahmed, 2006, pp. 56-59). The building of the state in post-conflict way it is international intervention process, need to decisions conferred by working within the legal scope of the project, it was noted that they led the seven cases in the nation-building in post-conflict. The first of these operations in the early sixties in the Republic of Congo, followed by other operations conducted by the UN after 25 years representing countries such as Namibia, Cambodia, Mozambique, Slovenia East, Sierra Leone, Afghanistan and Iraq. So the standard for success the rebuilding after conflict is use of debt to set up to serve constitution institutions, strengthening the infrastructure and promote human rights.

Rebuilding as a relatively has risen to the argument after WWII, the aim of Rebuilding to response in three points:

- Fears of the new forms of the conflict following the end of the war,
- To avoid spread of civil wars in the third states, respect for human rights, and reduce problems of liquidity may be turned into insolvency
- For international pledges the achievement of international cooperation in solving international problems of an economic (Latffi, 2011, pp. 23-27).

Events of 11 September 2001, is the shift point from policies that provide aid and loans in Post-conflict conditionally, it considered international security and granting loans for post-conflict state are two sides of the same coin. The awarding of loans conditional on the integrity of election, building democracy, fight against terrorism,

open free markets, and free trade, if we focused on Iraq since 2003 there is a political and economic conversion, in highly centralized state to a pluralistic democratic state, in centralized economy to economic rely on the principles of free market, security situation in Iraq led to delay reconstruction and development in spite of the vast sums spent. Whether from external or internal sources, when reviewing countries experiences that have passed wars, crises find that trying to find successful models for reconstruction after the crisis, and perhaps one of the reasons that can be diagnosed is to look to rehabilitation as just rebuilding and not re-shape the relationship between society and national institutions. As it happened in Iraq the weak institutional capacity to provide services and to ensure the personal security of the citizens, Iraq is considered a star in the sky states that have passed on the war, when the international community through the UNSCR-1483, the international financial organizations holding the international conference for the reconstruction of Iraq in Madrid in October 2003 (ICI, 2003, pp. 2-3).

When the CPA examine the situation in Iraq and how to rebuild the research based on the reconstruction of Iraq in accordance with 14 field. The study estimated the cost of reconstruction US\$ 36 billion (Iraqanalysis, 2007, pp. 1-2). The rebuilding of states on loans and grants extent of their success or failure was the subject of controversy since the forties, a failure model in post-conflict reconstruction in both Somalia & Rwanda (GPF, 2001, p. 1). What happened to Iraq from repolitical and re-economic is unique, while it has been the case in Germany and Japan after WWII, it cannot be measured with Iraq.

CHAPTER THREE

IRAQ AND INTERNATIONAL LOANING

3.1 Iraqi Regimes Resorting to International Loaning

History of Iraqi borrowing come back to 1966 need five million ID got it internally through the sale of treasury bonds of the Republic of Iraq under Statement No. 23 of 1966, according to the law of borrowing and the issuance of Treasury remittances Law No. (63) For the year 1958 (Iraqi Parliment , 1963, p. 2). Internationally, flashback to 1980 when the US gave \$5 billion loans to Iraq (Hurst S. , 2009, p. 77). It is the testament that the loan which was taken for military purpose because the Iran–Iraq War started in September 1980 to August 1988 was an armed conflict have three names. Iraqi government called Qadisiyah Saddam, from the Iranian perspective known as a Holy defense and from the United States and west countries known as first Persian Gulf war, the longest conflict war of the 20th century (Fair, 2010, p. 1). Truce and cease-fire according to UNSCR 598-1987, which called for an end to fighting and return to pre-war boundaries, UN Secretary General report dated 9 December 1991, S/23273 explicitly cites Iraq's aggression against Iran in starting the war and breaching international security and peace (The Stutation between Iran and Iraq, n.d). It means the result of war are nothing except accumulation of debts, here catastrophe of Iraq began. During the war Iraq borrowed from Saudi Arabia US\$ 30.9 billion, Kuwait US\$ 8.2 billion, UAE US\$ 8 billion and an Atlanta branch of Italy's largest bank, Banca Nazionale del Lavoro US\$ 5 billion to Iraq from 1985 to 1989, and from west countries according to the Financial Times. Iraq received US\$ 35 billion in Loans, were wasted to buy arms and weapons technology, all the loans has been Government-guaranteed loans (Iraq Economic Data, 2003). The fiscal damages were also enormous, at the time exceeding US\$ 600 billion for each country when Iraq wake up saw himself under US\$130 Billion debts. Paris Club loaned great piece of these debts, how to repayment it's a question? It's debt must be paid there is

no choice without occupation, so the Iraqi government decided to occupy Kuwait. It means when occupied obtain three aims

- Requisition of Kuwaiti oil fields would fluctuate his Place and considerations in OPEC and its influence over the pricing of oil
- Fiscal issues would be on their way to disband
- Easy to control water of the Arabic Gulf

When the aim is clear, Iraq needs a reason for occupation finally found the reason the stealing of Iraqi oil by Kuwait because. Kuwait is setting up oil installations in the southern section of the Iraqi RUMAILA oilfield and extracting oil from it (Hallidy, 1994, pp. 114-121). Eventually Iraqi forces transgress Kuwait on 2 August 1990. During twenty-four hours has been occupied, as soon as the UNSC reply and considered Iraq It constitutes a threat to international security accordance with the provisions of Chapter VII of the Charter. Resolution 660 which called upon Iraq to withdraw all its forces from the positions they exist before in August 1990 (UNSCR 986, 1995). Four days did not pass before the UNSCR 660 passed its second UNSCR 661. It decided to take measures the economic Embargo against Iraq, which prevents all the economic, financial and commercial activities (UNSCR 986, 1995). After that UNSCR 665 / 1990, UNSCR 670 / 1990, UNSCR 678 / 1990, UNSCR 686 / 1991, this decision has ended the combat and did not lift the blockade despite the fact that Iraqi forces were withdrawn by UNSCR 660/90. It shows that the war is the head of the snake, which destroyed the people and the Iraqi economy and led to carrying debt. But from another point of view, it shows that the UNSCR regarding quantity and quality is uneven about the Iraq – Iran, and Iraq - Kuwait War finds great enthusiasm towards Kuwait, Unlike Iran despite that both the Iraq attack them.

3.1.1 The Issue of Compensation

The problem of set-off in the UNSCR under Chapter VII of the Charter, more than one

- UNSCR 674 / 1990

- UNSCR 686/1991
- UNSCR 687/1991

It also decided to establish a box to pay reparations and noted that all these decisions have been keen to stress the responsibility of Iraq under international law and not under any other law.

3.1.1.1 Characteristics of the Compensation Issues

This indemnity imposed by the UNSC under Chapter VII, the Council, has established a particular system of compensation invented the new rules of judicial applications not international practices and not supported by the SC, no internationally unprecedented. It is also characterized by legal nature. Violates the legal principle, a person incapable of being a judge in his case. Without foundation in international law and don't have practice on the committees of the compensation after the First and WWII (Anbuge, 1994, pp. 53-55).

The issue of set-off reaffirm in UNSCR 687, 692, 705-1991 that does not exceed 30% of the annual value of its exports of oil. SC passed the UNSCR 556/2003 Required to %5 down from compensation ratio of its oil export earning into a repatriation Fund (UNSCR1483, 2003, pp. 3-5). Compensate for the Iraq-Iran war must be pay by Iraq estimated in the UNSC report in 1991. The equivalent of \$97 billion, and for Kuwait The Commission has estimated US\$ 100 billion. In addition to the compensation imposed on Iraq accumulated debt and economic sanctions, which is permanent for ten years. The SC considers Iraq a threat to peace and international security, so they think the fall of the regime has to be. Even prior to the US occupation of Iraq, America government understood the importance of written-off Iraqi debt as a prerequisite to American success in Iraq. In the meantime Iraq debt had accumulated more than \$120 billion in public debt. Represented more than 400 percent of Iraq's annual GDP. Without war compensations and trade debt so the best way to rescue Iraq in government debt is considered this debt is an odious debt (Momani B & Garrib A, 2008, pp. 160-163).

3.2 Estimation of Iraqi Loans and Grant after the Ouster of Saddam's Regime

Iraq's Saddam era has estimated debt of \$130 billion. This has been the focus of numerous negotiations over the past three years among bilateral, multilateral, and commercial creditors. Attempt to reduce this debt to affordable level has become the main priority of the US government. Since 2003 there have been series of debt relief negotiations in a variety of fore, which has resulted to cancellation of a significant amount of Iraq's external debt. These negotiations led to an 80% reduction of Paris Club debt, negotiations with non-Paris Club bilateral creditors and Persian Gulf countries are ongoing, and the US forgave its Saddam-era debt, worth \$4.1 billion, in November 2004. To the US Iraq's debt comprises loan guarantees issued between 1983 and 1993 by the US Department of Agriculture for the sale of US agricultural products to Iraq. Iraq defaulted on \$2.19 billion of these guaranteed loans in 1991, just prior to the first Gulf War, the US department of agriculture paid off the creditors and assumed the debt, by the end of the Saddam regime. Accumulated interest increased Iraq's US debt to approximately \$4.1 billion (Katzmak, 2006).

There are four components of Iraq's external debt which are Paris Club \$42.5 billion, non-Paris Club \$67.4 billion, commercial debt \$20 billion and multilateral debt \$0.5 billion. At the period of Iraq's Paris Club debt relief agreement it was found out that Iraq's total external debt to Paris Club countries was \$37.15 billion, including interest. The estimation of IMF put the figure at \$42.5 billion (Weiss, 2011, p. 2).

3.2.1 Public Debt¹

The US has a great role in the written off Iraqi debt. Number of senior officials and Treasury Secretary called on official creditors to cancel Iraqi debt, US Congress approved a number of bills that deemed Iraqi debt to be odious and called on creditors including the IMF and WB to cancel outstanding claims (Mokhtar Lamani & Bessma Momani, 2007, pp. 9-14).

In April 2003, G7 meeting of finance ministers, the US wanted official creditors to share the burden of Iraqi debt and considered as odious debt, and ask for creditors to forgive Iraqi debt on moral basis. Iraqi debt relief under the moral basis because this concept has more effective for international community to support for writes off

debt. France, Germany and Russia refused this idea but eventually they agreed to write-off Iraqi debt conditionally. They have a Chance to share in the rebuild of Iraq(Weiss, 2011, pp. 27-32).Paris Club it is a forum of creditors without legal status ,in form of informal international . It's a de facto of international organization, it took part in all meeting of IMF, WB and Other international organizations.Such as UNCTAD, his activity rely on five principles, Consensus, decisions are based on a case-by-case, Comparability , solidarity and Conditionality. For Iraq the total debt of Paris club is \$42.5 billion. Finally Paris club decided to write off %80 of his debt in three stages , first % 30 of debt canceled, second Another %30 should be Written off when Iraqi government applicable the new program with IMF. This program have some international standard for Iraqi economy called a Stand-by Agreement. At last stage %20 would be written off, rely on meeting with IMF, the Paris club have one conditionally which is IMF must be responsible of reform of Iraqi economy. At the end debt of Paris clubs country is \$7.4 billion has been rescheduled.

3.2.2 Commercial Debt Creditors

For commercial debt, the creditors consist of private banks in Western Europe and Asia, some of them are a member of London club until London Club does not represent all of the lender. First meeting with them in Dubai in May 2005 IDRO try to satisfy them to write off % 80 of their debts such a Paris club according to the principle of equal treatment of Iraqi creditors.The London club established LCCG to be representative of all private creditors which include Union Banka Arabs, Arab International Bank ALUBAF, British Arab Commercial Bank BACB, Banka Nazionale del Lavoro BNL, BNP Paribas, Gramercy Advisors and Arab Investment Company. Commercial creditors don't agree with Paris Club agreements, but their issues fixed by IDRO, in 2006 when commercial lenders recorded 11,776 claims in this office, the value of the claim is equal to US\$ 19.7 billion. On July 26, 2005, Iraq announced the terms for its commercial debt renegotiation for small creditors less than \$35 million. Iraq would settle claims through a cash buyback and cancellation and for larger claims Iraq would seek a debt-for-debt swap, exchange issuing Iraqi

government bonds according to Iraqi Central Bank officials, \$21 billion in Saddam-era commercial claims have been settled (Timothy, n.d, pp. 34-38).

3.2.3 Non –Paris club debt claims

The table Showing Iraqi Non-Paris Club Debt in US \$.Million²

3.2.3.1 Stages to write off Iraqi Debt by Non-Paris Club Bilateral Creditors

Holding ICI in Egypt under the supervision of UN, WB, 60 states, and 12 regional, international financial institutions was attended. The aim of holding the meeting was for exemption of Iraqi debt, Iraq Obtain for some loans and grant, pledge to give Sunni more political authority, but Arab Gulf refused to write off their debts. In April 2008, UAE decided to write off %100 percent of his debts under the effect of US authority on November 21, 2004. Negotiations with non-Paris Club bilateral creditors including Saudi Arabia, Kuwait, and Qatar are ongoing (Momani B & Garrib A, 2008, pp. 159-165).

By negotiation of IMF, each of Czech, Hungary, Malaysia, Romania and South Africa, agreed to reduce their loans by the Paris Club agreement. Three countries decided to exempt the debts of 100%, last agreement with China to remaining shares of Iraq's debt of 8.5 billion, the final suspension the nominal debt stock is \$ 1.9 billion(Weiss, 2011, pp. 35-42).Now the compensation to Kuwait, amount \$4.6 billion, but Kuwait agreed to postpone his debt until 2017(IMF, 2016, pp. 33-36).

UN give Iraq legal immunity to protect Iraq from all the creditors from resolving their loans lawsuit by litigation, this protection includes protecting Iraqi oil production until 2007 (Mokhtar Lamani & Bessma Momani, 2007, pp. 134-137).

Finally, the Iraqi National Assembly declared that Iraq's debts are odious, and this is a new crime committed by the creditors who financed Saddam's oppression.

3.2.3.2 Grants and Loans for Rebuilding Iraq

After the ouster of Saddam, CPA estimates Iraq's reconstruction of about \$55 billion. The International community through ICI on Oct 2003 in Madrid for rebuilding Iraq with a small collection of \$ 17.006 billion in the form of Loan and Grant, some countries participated for reconstruction Iraq by different way such as Vietnam donated

rice and Sri Lanka gave 100 tons of tea. The table below show the donors of Iraq. US was happy with the result of the Conference, until 2007 which is estimated to collect more than \$33 billion in grants and loans ,include USA \$18.4 billion, Japan \$3.5 billion, WB \$ 5 billion ,IMF \$ 4.25 billion(Pan, 2003 , p. 1).

In spite of a large number of estimates and inconsistency on the actual numbers of Iraqi debt, as Iraqi Central Bank, this announced on their official website that the total debt of Iraq in 2010 is \$ 92.3 billion (CBI, 2012, pp. 1-2). Either according to another source Iraq's total debt is \$ 383 billion (Mamouri, 2007, p. 42).The most common figure today on the foreign debt is \$ 122.1 billion as of the end of 2015(IMF, 2016). While, KRG under \$17 billion debts (Anadolu, , 2015, p. 2). While Countries have debt on Iraq including is Arab Gulf State, \$30 billion. Japan \$9 billion, Russia \$8 billion, France \$8 billion, and Germany \$4 billion(Pan, 2003 , p. 1).Compare Iraqi GDP per capita in 1980 with the population of 13.25 million people, the average per capita income of more than \$ 3000, but in 2015 average per capita income is \$ 6.420(World Bank , 2015, p. 1).If the number of Iraq's population is 32.5 million and that a number of loans are \$122.1 billion every one of Iraq owes almost to \$3756 became the Iraqi economy to a catastrophic situation so that Iraq can be considered bankrupt countries compared in from other state. It is better to observe expenditure of Iraq's money based on international bidding laws by using neutral committee and the inclusion of equal opportunities for all global companies, depending on quality and efficiency in sharing the reconstruction of Iraq with Companies related to CPA before handing it over to Iraqi authorities. Iraqi authorities did not give the KRG share of these loans and grants, even tougher that they sever and freeze the KRG share of the Iraqi budget in February 2014, while under Iraqi constitution, KRG have 17% of this Fund. The table shows the grant and loan for Rebuilding Iraq (2003-2007)³.

3.3 Invade of Iraq and Economic Impact

There is international intervention in Haiti under the name of democracy, in Cuba 1906 under the protection of lives and freedom, in Bosnia for the purposes of a humanitarian. But the intervention in Iraq in 2003 is invasion under the Possess of

WMD, the intervention in Iraq under any name is not a question but it is an extraordinary intervention because US intervention that did not get a mandate from the UN unlike the interventions in Somalia, Haiti, Bosnia, and Afghanistan has a mandate from the UN by the US forces. However, it did not called international intervention, the US consider Occupier or a warrior of Iraq under international law, and the UN has recognized the legal status of this occupation according to UNSCR 1483(Stephen, n.d, pp. 7-9). In 8 May 2003 the US and the UK acknowledged their accountability as an occupying power in a letter to UNSC. Capsized legal status which identified the role of the UN in providing humanitarian relief as well as to promote economic reconstruction and development of Iraq. Under this resolution occupation forces replaced the IMF (UNSCR 986, 1995).

So the UN for the US is a means and uttermost at the same time and after the war ended, the SC adopted new resolution that welcomes the start of a new stage in Iraq and to end the occupation and pressure the importance of international support for Iraq based on the reconstruction of Iraq (UNSCR1483, 2003). The number of UNSCR related to Iraq is 107 Resolutions since 1974 until 2015⁴.

This consist of Iraq-Iran 17 Resolutions, Iraq-Kuwait 56 Resolutions, DFI 6 Resolutions, UNMOVIC 1 Resolution, IAEA 5 Resolutions, KRG 1 Resolution, International Cooperation 1 Resolutions, OIP 3 Resolutions, UNAMI 7 Resolutions, MF 3 Resolutions, Iraqi Situation 2 Resolutions, IAMB 1 Resolution, ISIS 4 Resolutions (UN, 2015). The last war by the US and Britain in 2003 pull down the Iraqi regime. This war caused devastation and annihilation of the Iraqi economy. After entering MF, they did opened the doors to foreign investment and allow the companies to own 100%, diminish taxes on foreign companies to achieve aim open the Iraqi economy to the world (CPA, 2003).

Approval of the establishment of the first ICB Law and the central bank intention completely independent it is a similar foundation for the Federal Reserve Bank of the US, and Iraq rebuilding and Infrastructure facility. The reconstruction of Iraq began and confined to foreign companies engaged their work by direct contracting of huge amounts. Especially in the fields of oil, water, roads, and, airports, led to the squandering, and Waste of Iraqi funds abroad (Fayaz, 2010, pp. 139-143).Iraq's

economy went towards free economy and emphasis on privatization, led to effect on Iraqi constitution in Article 25. That the free market and the privilege of foreign companies to own property, contracting directs contracts and makes privatization idea a new Idea. But Iraq's economy unable to revitalization even after handed a huge loan and grants.

3.3.1 Privatization in Iraq and Some Vigor Examples

Privatization began as a result of the arrival the Liberal governments in the UK and the US and toward the end of the seventies and the collapse of the Soviet Union. The socialist countries of Eastern Europe depend on the market mechanisms and the private sector for Evaluation of privatization and its impact on the economy of the former countries. Full scale privatization was assumed to improve efficiency in the use of the assets, enabling fairness in distribution of wealth and welfare, and helping the abolition of the mono-party system. Then, the benefit of the applicability of this market mechanism tool of privatization to the Iraq economy continues to generate numerous research evaluations.

3.3.1.1 The Experience of Venezuela

Venezuela's oil-rich with mineral wealth but lives under the line of poverty. The Economic crisis exposed the national capital to outside and decrease of domestic currency about a dollar (one USD equal to 2000 Bolivar) and with a foreign debt of \$ 43 billion. The government was forced to accept the implementation of privatization program under the auspices of the IMF & WB. For Financial stability, applicable their program led to rising fuel prices to 100% and public transport to 30% and decreased foreign exchange reserves about \$ 900 million, which is the lives of the majority of people had been challenging and began protests that erupted in capital Caracas.

3.3.1.2 Privatization in Algeria

It was signed with IMF which is based on

- To edit prices and devaluation of the national currency by 50%
- Liberation of public institutions

Privatization happened in Algeria accordance with the Order No. 95-22, 1995, which defined the general rules for the privatization of state property, and transfer of ownership of public enterprises to the private sector. It moved 40 banks and to the industry in 2010 and Algeria got a loan of \$ 260 million to be repaid over a period of 5 years from the IMF with access to rescheduling with the Paris Club at the end of May 1994. Reschedule worth 4.400 million dollars in 16 years, including four years are exempt from payment. Accumulated loans from 1995 -1998 is equivalent to 8.127% of the share of Algeria, the IMF has agreed to provide the loan after the submission of the government Letter of Intent. But the privatization program in Algeria subjected to several criticisms by the president, Abdul-Aziz Bouteflika, said this program impractical and called for a review of the program in 2005 the Algerian authorities decided to a significant reduction in foreign debt and not to rely on external financing.

Noam Chomsky says, *"I know many examples of developing nations ravaged their economy by freedom of the market, privatization, I do not know a single example in which one country succeeds builds its economy on the basis of freedom of the market, and who knows one example I am grateful to him to tell me "* (Fayaz, 2010, pp. 197-201). After Saddam's expel, Iraq's economy has not recovered, and it has to resort to loans again. But passing the investment law and encourage investors in his position, but before it must be thinking about preserving stability and security because foreign investors did not go for any places when his possessions under risk.

3.4 Iraq and Development Fund of Iraq

UNSCR 1483 termination the economic punishments against Iraq and established DFI on 2013. This fund under control CPA belong to Iraqi, for example, \$650 million seized belongs to UDAY the older son of the former Iraqi president, \$926.7 million confiscated by CPA(SIGIR, 2005). This resolution also called for the creation of an IAMB, to promote impressionability and financial accountability of the DFI (UNSCR 986, 1995). The Central Bank of Iraq-DFI account was created at the US Federal Reserve Bank of New York at the request of the CPA and Administrator. Spending from the fund, like the Iraq civil services, salaries, ministry budget,

currency exchange process, and purchase of tools for Iraqi security forces . Is subject to approval of Paul Bremer Managing Director of CPA(CPA,REG,2, 2003).

3.4.1 Development Fund of Iraq and Revenue Incomes

DFI available on Iraqi revenue from could be from the following

- Iraqi funds misappropriated by the heads of the former Iraqi regime and confiscated by the CPA
- Transfer of over \$1 million from the OIP
- New debt of Iraq
- Funds from the sale of Iraqi oil and natural gas (KPMG, 2004, pp. 7-9).

This fund is renewed annually UNSCR 1905- 2009 as well as the final decision in UNSCR 1956-2010 including the continuation of the fund for six months only. This new resolution to the UNSCR to ensure the continuation of paragraph 21 of resolution 1483-2003 to continuation of the deduction rate of 5 percent of its oil export for paid compensation to Kuwait (UNSCR1483, 2003).

President George W. Bush according to his authority vested him as President by the Constitution and the laws of the US, passed the E.O 13303 , 2003 to protect DFI. It's a legal shield for all contractors,creditors,lawsuit and all claims against Iraqi property (JT, 2006, pp. 2-3). That legal immunity of the fund renewed annually according to the E.O, 13350 2004, E.O, 13364, 2004, E.O, 13438, 2007, E.O, 2011, 13438, E.O, 13315, 13350, 13364, and 13438, on 2012, must continue beyond 2013. Barack Obama continued that immunity beyond May 22, 2013, the White House announced in 29 may 2014 the decision of US President lifted this immunity for DFI(The White House , 2012, p. 1).

3.4.1.1 DFI transfer to Iraqi Authorities

UNSCR 1546-2004, disband CPA and referred the manager of the DFI to the interim Iraqi government . Showing the CPA Squandering Iraq's money oddly and corruption allegations in his administration. Exporting oil illegally, later checking conducted by SIGIR have found that, of the US\$ 23 billion of Iraqi money held in the DFI and

US\$ 8.8 billion remains unaccounted for. While US & UK pledge to the international community to keep Iraqi money honesty. Otherwise the billions influx in DFI it's led to some Council member called for DFI black hole of irresponsibility(GPF, 2005, p. 1). There are some notes on DFI when under Iraqi hands. Managed by separate departments as the central bank of Iraq, without adequate human resource policies and practices relate to training evaluating counseling and promoting. There is no internal audit function for DFI, the executive of the payments are initiated by the ministry of finance director general of the accounting department alone with no limit. As he signs the request for transfer sent to the CBI and withdraw from it, this is considered a high risk, because someone have authority to sign on the bank payment transaction without approval authority, in another side all of the Iraqis income has not been deposit in DFI account(Ernst & Young, 2006, pp. 23-26).

Here focus is on Financial dues to the KRG in the international resolutions related to Iraq. If we see the UNSCR 986- 1995 known as OIP will be distributed and shared as 13% to KRG, 53% to other areas in Iraq, 66% for all Iraq as a whole and 34% compensation to Kuwait(UNSCR 986, 1995). As for Resolution 1330 – 2000, the quota was distributed again in the form below, 13% to KRG, 59% to other areas in Iraq, 72% for all Iraq as a whole, 28% compensation to Kuwait(UNSCR1330, 2000). This explicit indication that the financial ratio of KRG in 1995 equal to %19.6 in all Iraq incomes, but In 2000 the financial ratio of KRG in Iraq is equal to 18%, according to international resolutions. The share of KRG in imports Iraq is 19%, but it proved in the Iraqi budget that the percentage of KRG in Iraq is 17%, and this ratio is inconsistent with the real share of the Kurdish people. Therefore must be in the House of Representatives have to look at international standards, to determine the share of Kurdish people, According to Resolution(UNSCR1483, 2003).

The DFI under international supervision, the supervision committee consist of president of the WB, representative of IMF and representative of Arab Fund, submitting their annual reports to the SC based on paragraph 14 of the same decision that the fund is used for Iraqis. There is International control over the Fund, runs by the Iraqis themselves and shown the financial issues between the KRG and the central government, especially in 2013-2016 when there was dispute to serve the

budget of the Kurdish people unjustly. When under international control there are no differences in this level, but when managed by international committee better than the Iraqi authorities.

3.5 Human Rights and International Loaning for Post-Conflict States

The legal basis for participation of international institutions by granting loans to post- conflict countries in respect for human rights and peace stability. The general assembly on 11 August 2014 especially in Para 8 focused on post-disaster situations are somehow similar to post-conflict situations. Countries after conflicts and natural disasters are two sides of the same coin, because both of them have right of life, IMF contribute to the promotion of human rights by grant, debts of developing countries, including an estimated \$76 billion in 1995 in an effort to reduce poverty in the case of Burkina Faso, Rwanda, Cameroon, Cambodia, Uganda and Vietnam by asking for Industrialized nations to offer them loan. IFI offered instructions on how to use the loans for the benefit of issues concerning human rights by two ways:

- Commitment to not make loans available to governments that is not trustworthy because such loans could be used for personal purposes or in advancing the course of dictator systems. For example, in the nineties of the twentieth century, the WB prevent loans to Malawi, Zaire, Kenya, and China in the wake of its powers to commit the massacre of Tiananmen for reasons human rights.
- WB offers an annual loans ranging between 20 and 28 billion dollars for developing countries and post-conflict states with condition to use the loan for development and human rights issues such as education, and health. Including huge loans allocated in 1997 and 1998 economic support in Indonesia, Thailand, Brazil, and Argentina (The World Bank and ESC Rights , n.d). EU offered future loans to Algerian government to improve human rights situation, there is negative correlation between human rights repression and loan granting from IMF. In countries that have been under IMF agreements and watch of human rights observers, it must respect it. In another side The Secretary-General Ban Ki-moon, ask the debtor country to educe

Corruption because is hampering country and UN's ability to grow and prosper (UN news Center , 2012).

Rebuilding the state is not going to be easy, because the founding of the state of peace based on an active and influential democratic basis in the internal and international levels, especially that Iraq always poses the biggest challenge because is in a sensitive area. The invasion by US through military occupation even after failing to get a decision in UNSC, it means the US failed to secure support from the governments of France, China and Russia, the UNSCR issued Resolution 1483, which established a committee of the UNAMI that is aimed at speeding up the transfer of power and sovereignty to the Iraqi people as well as electoral and constitutional support and ensure the promotion of human rights. In the absence of the possibility of promoting human rights in light of ongoing military operations and sectarian violence, Iraq according this Resolution which mentions above IFI and donor countries start to participate in the reconstruction of Iraq. The donors' conference in Madrid in October 2003 was held which has been collecting huge sums in the form of grants and aid, To be sure international attention to human rights is one of the modern issues (Madrid Conference, 2003, p. 2).

On the other hand, if we look at human rights from perspective of corruption, it shows that corruption in Iraq is not like in other country in terms of number of cases. Because corruption in Iraq led to more pain against the Iraqi people, and contributed to a serious degree in human rights abuses. It weakens democratic institutions and with inverse relationship with the Human Rights. Iraq is not included in the Corruption Perceptions list in the world only after 2003. And in 2007, the country came the second among the most corrupt countries in the world (Global Transparency Organization, 2014). If we look in civilian situation, estimate of 151,383 civilians were killed due to violence between 2003- 2015. The number of people living below the poverty line increased by an estimated 2.8 million by end-2014, displacement of 3.2 million (The World Bank, 2016).

If we look at Iraq after taking international loans, the human rights abuses has not changed and this is an indication that the loans did not serve in Iraq for human rights issues. Iraq is one of the worst countries in the world in the field of human rights.

3.6 Iraqi Constitution and Legislative Framework for Borrowing

Public loans are divided into two parts

- Public loans depending on the spatial standard
- Public loans depending on willing standard

Public loans depending on the spatial standard are loans are divided according to this standard to internal loans and external loans. The interior loans is a loans obtained by the state of the natural or legal persons residing within the territory, regardless of nationality, whether they are citizens or foreigners. The external loans is a loans obtained by the state from international persons (Majeed, 2005 , pp. 23-25).

Public loans depending on willing standard are divided into 'the optional' and 'compulsory loans'. The optional loan is amount of money that the state gets it voluntarily, but the compulsory loan is a loan that the state gets it against the will of lenders (Khalid, 2000, p. 176).

The Legal Nature of the Public Loan

- Decade of adhesion contracts
- Administrative contract
- Contractual nexus

Internal Loan Characteristics

- Public loan is the decade of the administrative contracts
- Issued in accordance with the permission of the competent authority in accordance with private law

Similarities and Differences between Loan and Taxation

- Both of them are sources of revenue
- Both of them needs to specific law
- Both of them are paid by individuals

The Differences

- Tax contribution is compulsory while the public loan is optionally
- Tax is obligatory is without interest while the loan must be return with benefits
- The tax impact is on the revenue side, but the loan affects the expenditure side of the budget

- Tax considers the final revenue for the state while the loan considers the temporary revenue repaid in his time, Loans considered the financial constraint on state revenues and continue for years must pay by future generations. Hence, there are Jurists consensus on the existence of a special law passed by the legislative power to organize these issues without it considered borrowing process null and void (Khalid, 2000, p. 165).

The Mechanism of State for Obtain Public Loan

- Borrowing through banks or financial institutions
- Issuing bonds tradable on the stock exchange for public
- Issuing nominal bonds tradable on the stock exchange
- The issuance of government securities, such as Treasury Bills. For states to access public loans, it should check out for accurate statistics clarifying the income of individuals. The rates of inflation, Encourage individuals and institutions to buy government bonds in all different means such as advertising and statement of the advantages of these loans, and the state's ability to increase exports and reduce imports(Majeed, 2005 , pp. 64-69).

3.6.1 Position of the Iraqi Constitutions about Borrowing

- Iraqi Constitution 1925
"Not permissible for the government to hold a loan, or undertake to lead to the payment of money from the public treasury, except under a special law" article 95, also in article 100 *"Should the Minister of Finance presented to the House of Representatives, all the legal regulations for the allocation of funds, and all Regulations on loans Convened by the government."* (Iraqi consitution article 95, 1925).
- Iraqi interim constitution of 1958, there is no any text or any reference to the subject of loans in this constitution (Iraqi Consitution , 1958).
- Iraqi interim constitution of 1964, government exercising the issues relating the loan, article 69 (Iraqi Constitution Article 69, 1964).

- Iraqi interim constitution of 1968, contracting and granting loans in the powers of executive authority (Iraqi constitution , 1968).
- Iraqi interim constitution of 1970, granting loans in the powers of council of ministers, Article 62.
- Transitional Administrative Law 2003, which is written in article 25, the authority of interim Iraqi government the issues of economic policy and sovereign borrowing.
- Iraqi Permanent Constitution of 2005, focused on loan policy especially in article 110 (Iraqi constitution Article 110, 2005).

It's clear that the former Iraqi constitutions do not care about loans, sometimes the issue of loans transferred between the legislature and the executive. The Iraqi lawmaker does not have a steady approach, can be the reason come back for political and social stability, Iraq passed earlier periods of revolutions and coups and all former Iraqi constitutions are temporary, namely that political and social stability has not been achieved naturally. Under the Iraqi constitution, international loans is sometimes ratified by Iraq's parliament such as law of Ratification on financial agreement between the government of Iraq and the international development number 85 for the year 2007 and the law of Ratification letters between Iraq and Japan related to Japan's loan to Iraq number 59(Iraqi Parliament , 2007).

3.6.2 Position of the Iraqi Legislation about Borrowing

There are some Iraqi legislation which are related to loan issue such as

- Financial management and public debt law No. 94 of 2004
- Iraqi central bank law no 56 of 2004
- Bond law of Loan Iraq No. 58 of 1990 and amended by Law No. 9 of 1996
- KRG passed Law under name External borrowing Act, in June, 2015.
- Budget law 2016.

In Iraq, the state represented by ministry of financial is entitled to conclude internal loans with general legal persons, whether regional persons such as regions, provinces, or public utilities such as commercial government banks or with private persons such as private commercial banks. But compulsory loans did not address

Public Debt Law of 2004. This means that this type of loan the Administration cannot get it without pass own law (Public Debt Law , 2004).

If we look for Iraq budget law of 2016 Calculation of the revenues derived from the export of oil, the basis of the average price is US\$ 45 per barrel per day, the rate of export is 3,600,000 barrels per day including the oil of KRG. Estimated deficit for the budget is 29,432,214,180 ID, nearly equivalent of US\$ 250 Million. To cover the deficit, the Minister of Finance and suggested to resort borrowing from the IMF, WB and put domestic and foreign government bonds selling knowing that the value of all internal and external government bonds are US\$ 14 million (Iraqi Budget Law , 2016). The Minister of finance noted how dangerous it could be because IMF and WB do not lend Iraq only on reforms in Iraqi economy. Which is include the removal of subsidies on social protection network , food ration card and dispense of high number of state employees these reforms hit the class of the poorest in society, in another side the foreign loans have negative reflection on the market exchange rate, especially ID against dollar, because the international loans is usually repayment by hard currency the economic crisis in Iraq will not solve by these suggestions only but by resorting to reduce corruption. Also, Iraq needs to issue a special law which should include all the details related to the process of issuing public loans in various kinds and forms. Also to organize the forms of government bonds, the Central Bank must have an active role in this area without being limited to the Minister of Finance. Iraqi Constitution requires to the principle of legal authorization to borrowing, before getting any loans whatever internal or external, originally loan must be used for the benefit of people. Better authentication by parliament on all projects implemented by loan, the Parliament should be responsible for how the loan is disbursed and in this way can use loans for benefit of the people.

CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

The real control in today's world does not lie in military control or political, but more fundamentally is in economic control. A faceted that shows us the power of economic control in some countries was able to find out why they offer loans or grants to countries in need. Presently in the world, especially of the capitalist government, certainly there is no government or international donors provide a loan or grant without certain objectives and the benefits to be reaped sooner or later.

Borrower occasionally led to renunciations toward creditor and subsequently affects their industries and economic level in the near future. Loan is considered a method of direct intervention in economic policy of the country or certain privileges of lenders companies or to open door to the import of goods to the detriment of the domestic product it means that granting loans process is a mutual benefit.

But for grants or assistance until considered free of financial obligations, there is obvious cultural, intellectual and moral influences and domination from donor countries to recipient countries.

International financial institutions provide economic advice and loans to keep the global economic balance, but these institutions do not offer only loans and consulting, but give the plans and conditions on how to spend these loans. It is known that the international institutions are not liable for any international accountability about loan issue but subject directly to the executive boards which consist of counties according to their contribution. If those international loans spin the economic wheel of the country it affects the economy of the country in the long run. International loans are an effective way for the reconstruction of countries and succeeded in rebuilding Japan, and the nations of Western Europe.

In the case of Iraq, it is right to conclude the following points

- Amend the Iraqi constitution, by adding explicit legal provision focus on legal authorization in any internal or international loan process. And make the international loan negotiation to be under authority of parliament. Also consider as

illegitimate loan if received without prior permission from the parliament. How to expedite debt and grants should be by supervision of the parliament. This permission can protect Iraqi people from huge debts, absence of this permission led to next generation under previous debts.

- Now the internal borrowing under the auspices and authority of the Minister of Finance, is to avoid corruption and misuse of authority and suggested that the validity of the internal loan should be under the auspices of a body of the Iraqi Central Bank and subject to the supervision of Parliament because Iraq is in the early state of administrative and financial corruption. Such suggestions led to shrink the proportion of corruption which could subsequently reduce borrowing.
- And if the international financial institutions are not subject to accountability, it prevents the existence of an international standard and hence creates a mechanism lapses in issues of human rights and infrastructure development.
- In fact Iraq is a parliamentary and democracy state according to constitution, and comprises of a number of provinces and territories. Iraq after fall of the regime received on loans and extremely grants unparalleled in the world, but there is a lack of equality and justice on how to spend those loans and grants between provinces and region. For example, KRG did not get a constitutional dues on the loans and grants until there is permanent constitution in Iraq bluntly says in the article 103 to create a fund for the distribution of Iraq's imports equally. Hence Iraq needs to apply the principle of good faith and fidelity to dealing by the Iraqi authorities if they want to achieve peaceful coexistence and democracy.
- Showing that Iraq is not indebted before the war, it is then better for the new Iraq to avoid war, because this leads to economic disaster and Dark pits. Iraq should try to rely on internal resources and the pursuit of diversity of sources of production and revenue by not only relying on oil. Avoid international loan because it creates international loans which is a rhythm in the silent war.
- Iraq is considered a star in the sky of conflict states for loans and grants. If the reconstruction of Eastern Europe after the WWII need \$ 11 billion, and Iraq did not settle it economic with those huge loan and granting due to corruption, then it should be overlooked in good faith for both the KRG and central government.

4.2 Recommendations

- Establish international standard for odious debt and organize international arbitration competent to see off odious debt state. Lenders and people from indebted countries should avoid human rights issues. This arbitration have ability to determine odious debt, jurisdiction of the arbitral tribunal to consider the loans in general and especially loans in post-conflict countries to not repeat a use of loans for personal issues.
- It is better for Iraq to be self-reliant and not on International Financial bodies. During crisis it is better not to access International loans because the loan is an exceptional, responsibility and indebtedness component.
- Iraq should avoid International financial collapse by rather reducing oil exports innovation on multiple sources of internal revenue. While counties living without oil are economically stable, the oil rich countries like Iraq are unable to sustain its economy but rather at the mercy of creditors. Then the problem is not with oil and its value, but problem of who operates the oil business.
- According to the internal law, the budget of Iraq in 2016 is a deficit. Iraq have plan to borrow from the WB and it is known that WB loans are conditional on if Iraq is committed to give up its large number of employees, increase the prices of petrol and reduce the protection of the network of social protection. These conditions have negative effect on the Iraqi society, so it is better that Iraq avoid borrowing from WB.

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Creditor Nation	Debt Owed
Denmark	30.8
Russia	3,450.0
Japan	4,108.6
France	2,993.7
Germany	2,303.9
United States	2,192.0
Italy	1,726.0
United Kingdom	930.8
Austria	813.1
Canada	564.2
Australia	499.3
Spain	321.2
Brazil	192.9
Sweden	185.8
Belgium	184.5
Finland	152.2
Switzerland	117.5
Netherlands	96.7
South Korea	54.7
Total	\$20,917.9

Source: The Paris Club

The table Showing Iraq Paris Club Debt 2003, in US \$ millions, excluding interest.

Creditor state	Debt owed
Saudi Arabia	\$30,000
Kuwait	\$27,000
China	\$5,800
Qatar	\$4,000
United Arab Emirates	\$3,800
Romania	\$2,500
Serbia	\$2,000
Turkey	\$1,800
Bulgaria	\$1,700
Jordan	\$1,300
Poland	\$564
Czech Republic	\$147
Morocco	\$32
South Africa	\$24
Hungary	\$17
India	\$1
Total	\$80,685

² Source: Jubilee Iraq

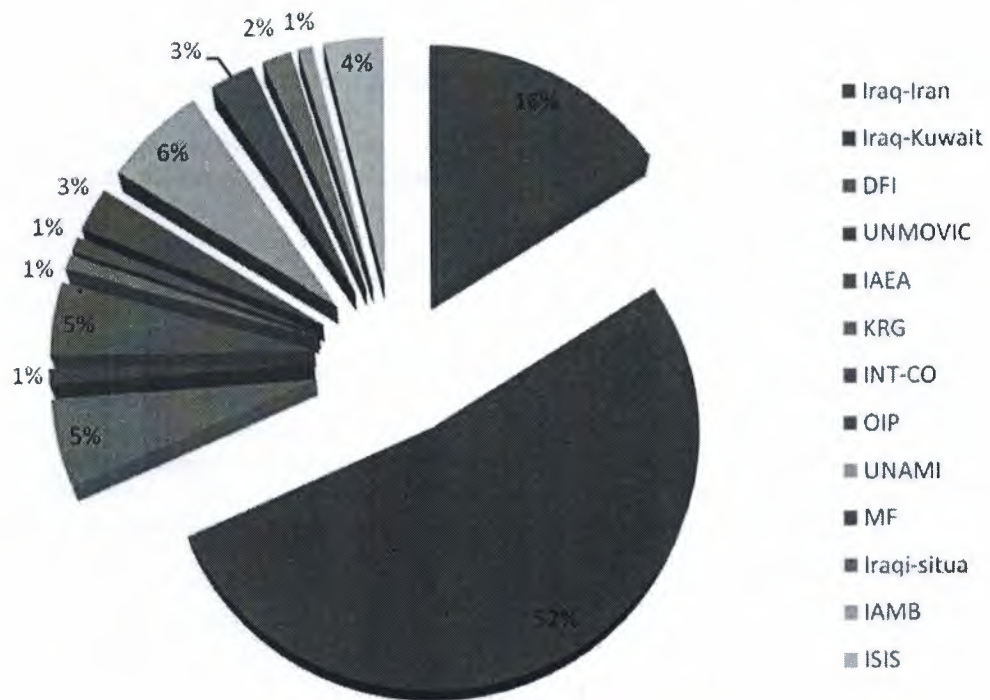
³

Donor	pledged offered in form the of grant	pledged offered in the form of loan	total pledged and or provided in excess of pledged	Grants provided	Loans provided
Australia	77,270	0	77,270	51,270	0
Austria	5,480	0	5,480	1,800	0
Belgium	5,890	0	5,890	5,881	0
Bulgaria	640	0	640	530	0
Canada	187,470	0	187,470	200,490	0
China	31,500	0	31,500	Not available	0
Croatia	333	0	333	333	0
Cyprus	120	0	120	120	0
Czech Rep	14,660	0	14,660	6,250	0
Denmark	61,950	0	61,950	18,825	0
EU	921,305	0	921,325	970,000	0
Estonia	80	0	80	80	0
Finland	8,834	0	8,834	8,830	0
German	4,150	0	4,150	10,000	0
Greece	7,148	0	7,148	7,148	0
Hungarian	1,670	0	1,670	1,670	0
Iceland	3,000	0	3,000	3,000	0
India	10,000	0	10,000	10,000	0
Iran	5,000	1,000,000	1,005,000	NOT available	Not available
Ireland	3,530	0	3,530	1,825	0
Italy	235,620	600,000	835,620	350,000	0

Japan	1,414,000	3,500,000	4,914,000	1,491,550	1,562,000
Republic of Korea	200,000	20,000	400,000	200,000	0
Kuwait	500,000	0	500,000	135,000	0
LITHUANIA	30	0	30	30	0
LUXEMBOURG	2,559	0	2,559	2,559	0
Malta	27	0	27	Not available	0
NETHERLAND	12,885	0	12,885	12,900	0
New Zealand	6,110	0	6,110	6,110	0
Norway	23,710	0	23,710	23,710	0
Oman	3,000	0	3,000	Not available	0
Pakistan	2,500	0	2,500	600	0
Portugal	600	0	600	600	0
Qatar	100,000	0	100,000	27,500	0
Saudi Arabia	500,000	0	500,000	87,000	0
Slovenia	420	0	420	334	0
Spain	248,000	0	248,000	213,700	0
Sweden	33,000	0	33,000	18,600	0
Turkey	60,000	0	60,000	27,500	0
UAM	215,000	0	215,000	77,000	0
UK	650,330	0	650,330	852,000	0
Vietnam	700	0	700	700	0
WB	0	3,000,000	3,000,000	0	241,000
IMF	0	2,550,000	2,550,000	0	436,000
total	5,558,521	10,850,000	16,408,521	4,825,445	2,239,000

Source: UN, WB, and state department data.

UNSCR relating to Iraq since 1974-2015



Vienna Convention on the Law of Treaties. 2012.

