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Legal Frameworks for Economic Transition in Iraq— Occupation Under the Law of War vs. Global Governance Under the Law of Peace

*Antonio F. Perez**

I. INTRODUCTION

After over a decade as the ruling conventional wisdom under the rubric of the so-called Washington Consensus, the prospect of reconstruction and development through fiscal austerity, privatization and liberalization of markets is under considerable attack today from many quarters. One common theme of these challenges—to what has been received wisdom—focuses not on the technical characteristics of development, but rather its connection to political development.

Some, like Hernando De Soto, argue that legal reform is the magic bullet in the effort to capture capital residing in illegal black-market economies in the Third World.¹ Additionally, De Soto argues that freeing up this concealed capital is essentially a political task, involving the transfer of power from developing country elites to the masses working and building in these illegal economies. Like De Soto, Fareed Zakaria also focuses on politics. However, Zakaria argues that excess democratization in developing societies undercuts the capacity of local elites to make and enforce policies that facilitate long-term growth.² Thus, either too little or too much local democracy is an impediment to development, depending on your point of view. Furthermore, Joseph Stiglitz, former Chief Economist of the World Bank and the Clinton Administration Chairman of the Council of Economic Advisers, argues that too little international democracy is the real source of failure in implementing Washington Consensus policies; if the International Monetary Fund (“IMF”) were politically accountable as the Federal Reserve Board and Treasury are in the United States, the Fund would never have insisted on premature liberalization of the financial system in East Asian countries. In sum, Stiglitz claims undemocratic global governance produced the Asian financial crises of 1997, its cascading effects on the real Asian economy, and the political destabilization that followed in the countries that had not resisted IMF mandates. These developments undermined prospects for gradual transition to democracy by

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1. See HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL* 153-206 (2000) (describing “the mystery of legal failure”).

2. See FAREED ZAKARIA, *THE FUTURE OF FREEDOM* 89-118 (2003) (describing the rise of “illiberal democracy” and its consequences); see also AMY CHUA, *WORLD ON FIRE* 147-75 (2003) (making the inverse, but arguably parallel, argument that free market economic policies in developing, but ethnically heterogeneous societies perversely undermine democracy by accentuating ethnic cleavages).

de-legitimizing factions that favored cooperation with the IMF and subsequently inherited non-performing economies.³

In short, a new emerging anti-Washington Consensus may be that avoiding premature democratization, as in China, facilitates economic development; while premature liberalization and privatization, as in Russia and Indonesia, undercuts democratic transition by reducing the legitimacy of liberal capitalists. Now comes the case of Iraq, which, like many dangerous situations, tends to concentrate the mind. It forces us to reflect deeply on the lessons of development policy under the Washington Consensus.

This is a worthy debate, and one that should be part of an international discussion on development policy in post-war Iraq. However, lawyers, as Hernando De Soto points out, aren't really very good at thinking outside the box on this kind of issue, largely because we are usually too wedded to the status quo.⁴ But we can help to provide a framework for legal transition. Specifically, we can observe that a debate about implementing Washington Consensus or anti-Washington Consensus policies assumes that all options on an appropriate mix of pro-democracy and pro-market development policies are feasible as a matter of international law. For example, Iraq may suffer from the plight of what Zakaria calls "trust fund states," which are systematically corrupted by their possession of easy income from their natural resources.⁵ It has been proposed that, like the residents of the state of Alaska, Iraqis may benefit from an oil fund trust that would ensure that the proceeds from this critical natural resource be shared with the Iraqi people and invested wisely for their future betterment.⁶ One would hope that the occupying power in Iraq would have the legal authority to create such a regime, but that may not be so. If the war was intended, not merely to eliminate weapons of mass destruction, but rather (which now seems to be the only tenable objective) to create a stable, democratic, free-market economy in the Middle East that would serve as a focal point for regime change throughout the region, it may have been fundamentally misconceived. Essentially, the real limits on the authority of an occupying power were misunderstood. If this is so, then the only solution to restore international policy flexibility—so that good policy, rather than bad law, dictates development strategy in Iraq—is for the United States to seek another Security Council Resolution. However, this paper first turns to the real limits imposed by the law of war on the reconstruction options available to the occupying power in Iraq and second to the broader options arguably available under international occupation authorized or ratified by the United Nations.

3. See JOSEPH STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 251-52 (2003) (arguing for democratic accountability for international financial institutions); *id.* at 109 (discussing the Federal Reserve Board's political accountability).

4. See DE SOTO, *supra* note 1, at 197-201.

5. See ZAKARIA, *supra* note 2, at 75.

6. See Thomas J. Palley, *Combating the Natural Resource Curse with Citizen Revenue Distribution Funds: Oil and the Case of Iraq* (Open Society Institute, July 2003) at <http://www.fpif.org/papers/ord2003.html> (last visited Oct. 20, 2004) (copy on file with *The Transnational Lawyer*).

II. UNITED STATES OCCUPATION OF IRAQ AND THE LAWS OF WAR

Clearly, a central United States objective in occupying Iraq was to achieve there what it had achieved through its occupation of Germany and Japan after the Second World War, namely, the creation of a democratic and market-oriented regime changing the geopolitics of the region.⁷ But to understand the relevance of the law of war in Iraq's economic development, it is necessary to turn back a page or two in history. The controlling legal concept, the so-called mini-constitution of the law of occupation,⁸ is found in Article 43 of the 1907 Hague Regulations.⁹ Article 43 provides that "[t]he authority of the legitimate power having passed into the hands of the occupant, the latter shall take all measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."¹⁰ It is worth noting that the English translation has been questioned as insufficiently deferential to the preservation of the status quo in the occupied territory. This is because the French text refers to a duty to "ensure . . . [*la vie publique*]"—that is to say, the "civil life" of the occupied territory, which appears to be more restrictive than the occupying power's obligation under the English text merely to "ensure . . . public order and safety."¹¹ With respect to the occupying power's right to privatize state assets, of even greater relevance perhaps is Article 55 of the Hague Regulations, which provides that "[t]he occupying State shall be regarded only as administrator and usufructory of public building, real estate, forest, and agricultural estates belonging to the hostile State and situated in the occupied territory. It must safeguard the capital of these properties and administer them in accordance with the rules of usufruct."¹² Although the language is not clear, it seems well-understood internationally and even acknowledged by the United States that these rules, at the very least, cover the exploitation of all state-owned natural resources in the occupied territory—including oil.¹³

7. The leading account of the German militarism leading to the Second World War focuses on the role of cartels in the German economy and the failure of a true, independent middle class to emerge so as to check centralized governance. See generally RALF DAHRENDORF, *SOCIETY AND DEMOCRACY IN GERMANY* ch. 5-8, 14-18 *passim* (1967).

8. See EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 9 (1993); see also GERHARD VON GLAHN, *THE OCCUPATION OF ENEMY TERRITORY: A COMMENTARY ON THE LAW AND PRACTICE OF BELLIGERENT OCCUPATION* 33-34 (1957).

9. See Regulations Annexed to the Hague Convention No. IV of 1907, done at The Hague, Oct. 18, 1907, entered into force, Jan. 26, 1910, 36 Stat. 2277, T.S. No. 529, 1 Bevans [hereinafter *The Hague Regulations*].

10. See *id.* at art. 43.

11. See VON GLAHN, *supra* note 8, at 35.

12. See *The Hague Regulations*, *supra* note 9, at art. 55.

13. See Pieter H. F. Bekker, *The Legal Status of Foreign Economic Interest in Occupied Iraq*, Newsletter of the American Society of International Law 1, 9-11, n.16 (July 2003) (citing Art. 55 of the Hague Regulations, and Department of State Memorandum of Law on Israel's Right to Develop New Oil Fields in Sinai and the Gulf of Suez. October 1, 1976, reprinted in 16 I.L.M. 733 (1977)); Compare Art. 46(2), *The*

It is significant that, although Articles 43 and 55 were understood by scholars at the time to reflect pre-existing customary international law,¹⁴ the broad international adherence to these principles in the form of a multilateral treaty commitment occurred only at the Hague Conference. In the view of many, this 1907 Conference marks the moment when the sovereign equality of all states and the right of self-determination emerged as central, organizing principles of international law. This was in part because the conference for the first time included broad participation of the Latin American republics, which had steadfastly railed against Gunboat Diplomacy as practiced by the European Powers in order to collect sovereign debt. They agreed to participate in the Hague Conference only because U.S. Secretary of State and co-founder of the American Society of International Law, Elihu Root, lured them there in return for a promise to support the creation of an international arbitration mechanism to resolve the problem of sovereign debt and, thus, reduce the likelihood of European military intervention in the Americas.¹⁵ In essence, the Hague Conference reflected a tentative move away from pro-commercial intervention and toward a multilateral settlement of international economic spillover effects from development failures in emerging early twentieth century Latin American economies.

Nonetheless, the content of Articles 43 and 55 has very little to do with sovereign equality and self-determination norms. The Roman law concept of *usufruct* expressed in the Hague Convention reflected the premise that occupied territory, including both property and individuals, were possessions of the sovereign. Thus, the usufructuary right transferred to the occupying power certain rights which might be considered analogous to those of a life tenant in a common-law context. Basically, the occupying power was free to exploit a state's natural resources for its own gain so long as the underlying capital value of the asset was not reduced.¹⁶ It should not be surprising that, at a time when aggression was not clearly prohibited by international law, the occupying power would have the right, in effect, to finance its war out of the proceeds from occupation. In modern corporate law, a reasonable analogy might be the financing of an acquisition on the basis of the assets of the target firm. However, one does not need to look to a modern corporate law analogy to illustrate the potential abuse of the occupant's rights under the Hague Regulations. Sadly, one needs only to allude to the behavior of Japan in China, Germany in

Hague Regulations (stating "private property cannot be confiscated" and thereby suggesting that at least some state property can be confiscated for at least some purposes).

14. See BENVENISTI, *supra* note 8, at 8.

15. See, e.g., MARTHA FINNEMORE, THE PURPOSE OF INTERVENTION 29-46 (2003).

16. Of course, a narrow reading of the occupying power's authority as "life tenant" would require that only the resources and population of the territory defray the costs of occupation. Compare The Hague Regulations, *supra* note 9, at art. 48-9 (providing that tax authority is limited to enforcing the pre-war sovereign's tax system, plus imposing further taxes needed for the occupier's army or administration). Yet, even under this view, the occupying power would still have authority to regulate local currency. See *Aboitiz & Co. v. Price*, 99 F.Supp. 602, 614 (D.C. Utah 1951) (interpreting Article 43 to permit the occupying power to issue war currency). Thus, the occupying power could indirectly through currency regulation implement a scheme that would have the effect of transferring resources from the occupied territory to the occupier's treasury.

France, and the Soviets in what became East Germany, during the Second World War and in its immediate aftermath.

Still, to the extent that Articles 43 and 55 reflected pre-existing customary law favoring discretion for the occupying power, they were built on shifting intellectual sands. In the post-World War I environment, with the creation of the Mandate system under the League of Nations and the rise of the rhetoric, if not the reality, of self-determination, the usufructuary (or life tenant) model employed in the Hague Regulations was arguably colonized by a competing theory of the rights of the occupant. Usufructuary rights under Hague Law came to be described by commentators and accepted by states as more analogous to the rights of a trustee. Under that legal regime, which became the organizing concept under United Nations law for the treatment of the occupied territories of the Third World seeking their independence from colonial rule, the occupying power exercises dominion over the occupied territory and its inhabitants solely for the purpose of advancing the interests of the true beneficiaries of the trust, the people of the occupied territory.¹⁷ If, as some argue, self-determination of peoples through democratic self-governance is the controlling background justification for state sovereignty in the current international order, the rights of the occupying power under the now nearly century old Hague text can no longer be read literally. Instead, Hague law must be informed by values drawn from the United Nations (“UN”) Charter, such as self-determination and the right of permanent sovereignty over natural resources.¹⁸ Although these shifting conceptual foundations certainly did not change the precise legal effect of the Hague Regulations in the immediate aftermath of the Second World War, the political context was set for a revision of the laws of war so as to limit the discretion of the occupying power.

A major shift occurred with the adoption of the Geneva Conventions of 1949, which appeared to have closed gaps that allowed the United States to take the position that even the Hague Regulations of 1907 were inapplicable to the occupation of Germany and Japan. Strictly speaking, Article 2 of the Hague Regulations had provided that Hague principles would apply only to belligerent occupation, not to a situation where the government of the occupied power had completely dissolved. In that case, the question of the restoration of sovereign rights to the defeated government would simply not arise. In this situation (called the *debellatio* or sometimes subjugation) the occupying power would be subject only to the most general principles of international law and the so-called “dictates

17. See, e.g., VON GLAHN, *supra* note 8, at 31, 273-86.

18. The fundamental rights of a state “to choose its economic system” and to “freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities” are deemed fundamental in the *jus cogens* sense. See Charter of Economic Rights and Duties of States, G.A. Res. 3281 (XXXIX) (Dec. 12, 1974) 14 I.L.M. 251 (1975); see also LOUIS HENKIN ET AL.; CASES AND MATERIALS ON INTERNATIONAL LAW 93 (3d ed. 1993) (discussing effort by some states to claim that “permanent sovereignty over national resources” rises to the level of *jus cogens*).

of public conscience.”¹⁹ With respect to Germany, this was clearly the official position of the U.S. Government during World War II and its aftermath²⁰ and reflects the settled consensus of the post-war scholarship.²¹

19. In such cases, the so-called Martens Clause would nonetheless bind the occupying power. *See* The Hague Regulations, *supra* note 9 at xx, Preamble (declaring, “until a more complete code of the laws of war has been issued, . . . in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the laws of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of public conscience.”).

20. In his July 1951 letter to Congress transmitting his proposal for terminating the state of war with Germany, President Truman himself took the position that “rights of the Occupying Powers result from the conquest of Germany, accompanied by the disintegration and disappearance of the former government, and the Allied assumption of supreme authority.” *See* VON GLAHN, *supra* note 8, at 282 (quoting the Information Bulletin (Office of the High Commissioner for Germany), August 1951, p. 66). This clear statement of the applicability of *debellatio* or subjugation as the basis for U.S. occupation authority was expressed not only in general terms but through particular U.S. positions on legal issues that arose relating to U.S. rights as an occupying power. For example, with respect to measures such as decartelization and deconcentration of German industry taken by the United States as an occupying power in Germany after World War II, Forrest Hanneman, Chief of the Legal Service Division of the Office of the United States High Commissioner for Germany, felt the need to state that the Hague Regulations were inapplicable to the situation:

A sovereign nation which considered itself, after the cessation of hostilities bound by the provisions of the Hague Regulations would hardly have undertaken these unprecedented steps in imposing its will on the inhabitants of a conquered.

Marjorie M. Whiteman, 2 DIGEST OF U.S. PRACTICE OF INT’L L. 595 (1963) (quoting a letter, dated July 28, 1952, to Judge Advocate Division of EUCOM). The stated rationale for this conclusion was that:

By reason of the complete breakdown of government, industry, agriculture, and supply [the Allied Powers] were under an imperative humanitarian duty of far wider scope to reorganize government and industry and to foster local democratic governmental agencies throughout the territory.

Id. Notwithstanding its technical inapplicability, the United States made clear that it regarded the Hague Regulations as informing its practice as an occupying power. Hanneman added:

Insofar as there exists an accepted custom and practice of nations relevant to our situation it is largely our own practice, since our present situation is without international precedent. In determining any concrete problem of [the full extent of the powers which a belligerent occupant may rightfully exercise under the Regulations] it has consistently been the position of the legal advisers . . . that whenever, in light of the actual problem and all of the relevant factors, the Hague Regulations may be considered as expressing principles of international law which are pertinent to our situation, those principles should be observed by us.

Id. at 596. Thus, the precise formulation of this position suggests that the United States believed it had plenary discretion in determining whether to apply the Hague Regulations in any particular case.

By contrast, the United States appears to have relied on the consent of the Empire of Japan, pursuant to its unconditional surrender, to avoid application of the Hague Regulations and thereby effect fundamental changes in Japanese society and economy during the post-World War II occupation. *See* Marjorie M. Whiteman, 1 DIGEST OF U.S. PRACTICE OF INT’L L. 315 (1963) (quoting the instrument of surrender, signed September 2, 1945, which states: “The authority of the Emperor and the Japanese Government to rule the state shall be subject to the Supreme Commander for the Allied Powers who will take such steps as he deems proper to effectuate these terms of surrender”).

21. *See* VON GLAHN, *supra* note 8, at 27 (describing U.S. occupation of Germany and Japan as “hostile,” rather than “belligerent” occupation). He also describes the German surrender as unconditional, but the Japanese surrender as conditional and thus, unlike the German case, supplying by agreement the legal framework for occupation, and citing relevant authorities in support, including Jennings and Lauterpacht. *Id.* at 273-86; *see also* BENVENISTE, *supra* note 8, at 91-93; Adam Roberts, *What Is A Military Occupation?*, 1984 BRIT. YEARBOOK INT’L L. 249, 267-69 (1985) (treating the allied occupation of Germany and Japan as cases of *debellatio*); *but see* George Ress, *Germany, Legal Status After World War II*, 2 ENCYCLOPEDIA PUB. INT’L L.

However, after the adoption of the Geneva Conventions of 1949, this narrow interpretation of the scope of the Hague Regulations is probably no longer good law. As a general matter, it is widely believed that Geneva Convention rules continue the application of Hague rules except where Geneva rules specifically change the earlier Hague law.²² With respect to *debellatio*, Adam Roberts, the foremost international authority on the law of war, writes that the so-called Geneva law “appears to have substantially changed the situation. Under common Article 2 [common to all four Geneva Conventions] it would seem that they are applicable to post-surrender occupations, at least for as long as a state of war between the parties continues. . . .”²³ That said, Roberts also noted that the new Geneva Conventions technically permit the occupying power one year after the close of military operations to vary from the ordinary law of occupation. However, he quickly added that the 1977 Additional Protocol I, to which the United States is not a party, abrogates this exception—presumably for the purpose of seeking to undermine the possible Israeli argument that, to the extent the Hague and Geneva rules apply to the Occupied Territories, Israel would have the right to derogate from its obligations as an occupying power.²⁴ Thus, if this perception of Additional Protocol I of 1977 has risen to the level of customary international law, then even the tenuous one-year exception to Hague or Geneva rules would no longer be available to the United States.

567-68 (R. Bernhardt ed. 1995) (arguing that because *debellatio* requires the dissolution of the German “State,” rather than the mere collapse of Germany’s government, and the Occupying Powers took the position that Germany continued to exist as a state after the war, they therefore lacked the legal support for the existence of a *debellatio*).

22. Article 154 of the Fourth Geneva Convention provides that it is a “supplement” to the Hague Regulations. *See* Geneva Convention Relative to the Protection of Civilian Persons in Times of War, Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365 (entered into force Oct. 21, 1950) (suggesting the theoretical possibilities that the Hague Regulations remain in force unaffected by the Geneva Convention, that the Hague Regulations remain in force except to the extent they conflict with the Geneva Convention, and that the Hague Regulations take priority over the Geneva Conventions); *see, e.g.*, BENVENISTI, *supra* note 8, at 102-04 (arguing that Article 64 of the Fourth Geneva Convention conflicts with and substantially expands the authority of the occupying power to disregard local beyond what is permitted by Article 43 of the Hague Regulations). Benvenisti also cites specific provisions of the Fourth Geneva Convention obligating the occupying power to further the health, welfare and employment of protected persons. *Id.* A complete analysis of this dissenting view is beyond the scope of this essay. Yet, even if Benvenisti were correct that Article 64 broadens somewhat occupying power discretion, it does not seem likely that Article 64 could be interpreted to authorize a wholesale restructuring of Iraqi economy and society modeled on the U.S. occupation of Germany. The U.S. legal theory for that degree of occupying power intervention was predicated on the complete inapplicability of the Hague Regulations, not mere nuances in its drafting.

23. Roberts, *supra* note 21, at 270; *see also* VON GLAHN, *supra* note 8, at 281 (noting: “the situation at the end of hostilities in a future war may be very different from a legal point of view” because of Geneva Convention Article 6, which provides that “The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2.”); BENVENISTI, *supra* note 8, at 95 (noting that “Common Article 2 of all four 1949 Geneva Conventions, which defines their scope of application, does not make any exception with respect to *debellatio*”).

24. *See* Roberts, *supra* note 21, at 271-72.

In sum, the international community would probably now reject any claim by the United States of the *debellatio* exception to the limits imposed by the Hague Regulations of 1907 or Geneva Convention of 1949 on the rights and duties of the occupying power. At one time, in the midst of the Cold War, leading U.S. international lawyers would have found something like *debellatio* applicable to the case of regime change.²⁵ Today, however, after the end of the Cold War, conventional wisdom among U.S. international lawyers, many of whom are critics of the U.S. intervention in Iraq, probably would follow a similarly narrow interpretation of the discretion available to the occupying power under current humanitarian law.²⁶ Thus, the wholesale reconstruction of Japanese and German society and economy affected by U.S. occupying forces after the Second World War is probably no longer a viable precedent in international or domestic debates regarding regime-changing occupation under the current law of war.

Moreover, even if there were any doubt that the Hague Regulations applied to the U.S. occupation of Iraq, the matter seems to have been resolved—at least in the minds of the members of the Security Council. At a minimum, post-occupation Security Council resolutions do not endorse the possible United States argument that pre-existing Security Council resolutions authorize it, not only to use force against Iraq, but also to engage in whatever regime change the United States deems necessary to fulfill the purposes of the prior UN delegation of authority to establish peace and security in the Middle East in the aftermath of the first Persian Gulf war.²⁷

25. As McDougal and Feliciano wrote, at the height of the Cold War with respect to Allied de-Nazification policy in occupied Germany:

Without considering, for the moment, the question of applicability of the Hague Regulations, in whole or in part, to the situation of 'military [post-surrender] occupation,' the partial suggestion may be made that the reconstruction measures initiated and executed while the Allied occupation was indisputably a belligerent occupation need not necessarily be regarded as inconsistent with the [Hague] rule relating to fundamental institutions. The Allied belligerent occupants may fairly be said to have been 'absolutely respected' by their own security interests from respecting, for instance, the German laws with respect to the Nazi party and other Nazi organizations and the 'Nuremberg' racial laws. It is indeed difficult to envisage how the Allied occupants could be expected to protect their security interests if they were required to respect such laws.

MYRES C. MCDUGAL & FLORENTINO P. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER* 769 & n. 95, 96 (1961). Similar arguments may well be advanced today with respect to de-Baathification, but McDougal and Feliciano's approach probably no longer represents mainstream thought in the U.S. international law professoriat.

26. See, e.g., David Scheffer, *Beyond Occupation Law*, 97 AM. J. INT'L L. 842, 848 (2003) (stating: "The Allied occupations of Germany and Japan after World War II offer little guidance for the current occupation of Iraq. The Allies claimed exemption from the Hague Regulations, which proved critical since the plans for occupation would not have complied with then-existing occupation law"). Scheffer, formerly Ambassador At Large for War Crimes during the Clinton Administration, thus argues that under the Hague Regulations of 1907, the Fourth Geneva Convention, and Geneva Protocol I, "a society in political, judicial and economic collapse or a society that has overthrown a repressive leader and seeks radical transformation requires far more latitude for transformational development than would be anticipated." *Id.* at 849.

27. The United States has argued that, not only does it have the right to engage in anticipatory self-defense, but the Security Council authorization justified its use of force against Iraq. To be precise, Resolution 678 authorized the United States to use force against Iraq to restore international peace and security in the

The establishment of the Development Fund for Iraq, and the management authority conferred on the occupation forces, appear to follow the current understanding of the requirements of Articles 43 and 55 that the occupying powers use current income from capital assets for the benefit of the occupied territory.²⁸ Moreover, while paragraph 22 of Resolution 1483, adopted under Chapter VII of the Charter, determined that all states are obligated to treat as immune from attachment and execution in civil matters “Iraqi petroleum, petroleum products, and natural gas,” as well as proceeds that arise from sales thereof, until December 31, 2007,²⁹ the resolution’s preamble also refers to the “right of the Iraqi people freely to determine their own political future and control of their natural resources.” Arguably, because this language focuses on Iraq’s resources, it does not rule out such political measures as de-Baathification in Iraq, which may be necessary to allow the Iraqi people to

region. See S.C. Res. 678, Nov. 29, 1990, 29 I.L.M. 1560 (1990). Resolution 687 provided terms for the settlement of that conflict. See S.C. Res. 687, Apr. 3, 1991, 30 I.L.M. 846 (1991). Because Security Council Resolution 1441 determined that Iraq had been in material breach of resolution 687, it also re-authorized use of force—an authorization which the United States maintained had never in fact lapsed—by reviving the authorization granted in Resolution 678. See S.C. Res. 1441 (Nov. 8, 2002), 42 I.L.M. 250; see generally William H. Taft IV & Todd F. Buchwald, *Preemption, Iraq, and International Law*, 97 AM. J. INT’L L. 557 (2003) (adopting the rationale offered by the State Department Legal Advisor and his assistant for political and military affairs). But, to my knowledge, the United States has not publicly maintained that a purposive interpretation of prior UN resolutions authorize it to vary from the existing law of occupation authorization in order to change fully the regime in Iraq so as to “restore” international peace and security in the region. The merits of such an argument is well beyond the scope of this paper.

In any event, one wonders whether the State Department position relying also on Security Council authorization is not merely a post-hoc justification rather than the true rationale fully reflected the internal deliberations of the government as a whole. As was the case during the Cuban missile crises, in which the State Department publicly relied on OAS authorization while the Department of Justice advised the president that he was entitled to quarantine Cuba as an act of self-defense, it is possible that the Department of Justice may have emphasized the centrality of the anticipatory self-defense rationale in its advice to the White House. See John Yoo, *International Law and the War in Iraq*, 97 AM. J. INT’L L. 563, 575 (2003). Former Deputy Assistant Attorney General, Office of Legal Counsel, John Yoo publicly argued for the broader view, although he acknowledged that “Iraq could be seen as a unique case” because “the web of Security Council resolutions going back more than a decade, the United States and its allies could draw sufficient legal authority from those enactments alone.” *Id.* Thus, it is hardly likely that an administration committed to freeing the United States from the shackles of a multilateral veto on its right to use force in perceived self-defense would rely on authorization from the United Nations as the basis for broad discretion to engage in regime change in Iraq as an occupying power. Rather, the Bush administration would be expected to argue that the existing law of war permits it to engage in full-blown regime change in Iraq or, at a minimum, de-Baathification.

Finally, one might conceivably argue that Security Council authorization for regime change is located in the notion that Iraq is a “failed state” coupled with the pro-democracy obligations of the International Covenant on Civil and Political Rights, which the United States must apply in Iraq by virtue of the Security Council’s decision to “welcome” the establishment of the Coalition Provisional Authority as the governing authority in Iraq. See Phillip James Walker, *Iraq, Rule of Law: Iraq, Failed States and the Law of Occupation*, 33 INT’L L. NEWS 1 (Winter 2004) (Newsletter of the Section of International Law and Practice, American Bar Association) available at <http://www.abanet.org/intlaw>. But the notion of failed states, in this context, seems to replicate the idea of *debellatio*, which, as noted above, post-Hague law seems to have rejected.

28. See Eyal Benvenisti, *Water Conflicts During the Occupation of Iraq*, 97 AM. J. INT’L L. 860, 864 (2003) (discussing occupiers right to use public utilities for the benefit of the Iraqi people). *But see* David Scheffer, *supra* note 26, at 845-46 (suggesting, without specifying, that establishment of the Development Fund somehow grants the occupying powers rights that exceed the normal rights of occupation).

29. S.C. Res. 1483, ¶ 22, May 22, 2003, 42 I.L.M. 1021 (2003).

determine their political future.³⁰ Nevertheless, some even argue that Resolution 1483, together with subsequent Security Council resolutions, imposed even greater constraints on the discretion of the occupying power in Iraq, thus rendering it closer to a full-blown UN trusteeship requiring the United States to answer to the UN for its performance in something like a de-colonization process.³¹ Taken together then, these statements are consistent with the regime contemplated by Articles 43 and 55 of the Hague Regulations, in which the occupying power functions to some degree as trustee of an international trust for the benefit of the inhabitants of the occupied territory, and partially as an independent agent protecting its status as occupant, thus reaffirming not only the U.S.'s status as occupying power but also the applicable law of occupation. In short, in contrast to the clear Security Council authorization for the process of regime change effected through United States and other international occupation of Afghanistan,³² the best statement of the Security Council's position with respect to Iraq's occupation probably lies somewhere between the Scylla of liberating the occupying power from the shackles of humanitarian law and the Charybdis of rendering the occupying a mere agent of the international community.

Yet, some may argue that U.S. practice as an occupying power may not be fully consistent even with this moderate interpretation of the discretion available to reshape Iraqi institutions during the occupation. For example, some allocations (such as those with respect to telecommunications spectrum rights) border on final dispositions of Iraqi assets.³³ Certainly, any legal argument that the United

30. Cf. MCDUGAL & FELICIANO, *supra* note 25 (explaining that whether the Security Council does not rule out de-Baathification is, of course, a question separate from whether the existing international humanitarian law forbids de-Baathification). But one would expect international condemnation of this feature of the occupation policy in the Security Council debates on the subject, and no one (at least not anyone whose opinion is significant) appears to be mourning the fall of the Baath tyranny in Iraq.

31. See, e.g., Thomas D. Grant, *The Security Council and Iraq: An Incremental Practice*, 97 AM. J. INT'L L. 823, 840 (2003) (noting that Security Council Resolution 1511, perhaps drawing on the practice of the UN with respect to the de-colonization of trusteeship territories, "requests" that the Coalition Provisional Authority "report to the Council on the progress being made. . ."); see also S.C. Res. 1511, ¶ 6 October 16, 2003, 43 I.L.M. 254 (2003).

32. See S.C. Res. 1453, December 24, 2002 ("*Recognizing* the Transitional Administration as the sole legitimate Government of Afghanistan . . ."). But see Dino Kritsiotis, *On the Jus Ad Bellum and Jus In Bello of Operation Enduring Freedom*, The 96th Annual Meeting of the American Society of International Law 35, 38 (2002) (questioning, on grounds of proportionality, whether "regime change" is ever permissible in a case of the exercise of the right of self-defense).

33. See Bekker, *supra* note 13, at 10 & n.17 (explaining that such contracts or allocations, in any event, would not be binding on the parties after the termination of the occupation). The duty of nonrecognition in the courts of other states of contracts or other dispositions relating to the unlawful exercises of sovereignty by an occupying power is a principle of international law applicable not only to belligerent occupation, but also to international administration of territory when international administration is not properly authorized by the UN Security Council under Chapter VII of the Charter; see generally Antonio Perez, U.N. Council for Namibia, Cumulative Digest of United States Practice in International Law, 1981-88 (Marian Nash (Leich) ed., Office of the Legal Advisor, Dept. of State, 1993) (discussing U.S. nonrecognition of the effect of unlawful exercises of sovereignty by either the South African Government's or the UN General Assembly's Council for Namibia's with respect to the then non-self-governing territory of South-West Africa); see *infra* notes 36-41 (discussing the scope of the authority the Security Council has or may delegate to a state or group of states and whether that authority may exceed the authority normally available to a belligerent occupant).

States might make that it may derogate from Articles 43 and 55 of the Hague Regulations—even after the expiration of one year after the cessation of hostilities, whenever that might be said to have occurred—would be subject to substantial international criticism both under the law of war and supervening UN rules. Regardless of what precise view one takes of the legal effect of post-occupation Security Council resolutions on Iraq, the larger picture is that the U.S. occupation in Iraq is legally constrained in ways that U.S. policymakers may not have initially foreseen.³⁴ At a minimum, one can conclude that even if the United States deemed privatization of Iraqi oil resources essential to the emergence of an independent source of private power in post-occupation Iraq or to denying the post-occupation Iraqi government access to resources that would enable it to fund authoritarian internal policies or foreign aggression, neither traditional occupation law nor the applicable Security Council resolutions would appear to authorize this policy option.

Accordingly, the U.S. incentive to remain an occupying power in Iraq may have been less than it initially appeared, because it will not acquire through an extended occupation of Iraq the rights it had enjoyed in Germany and Japan after the Second World War to engage in full-blown regime change. While United States policymakers may have initially hoped to transform completely Iraq, it now seems quite clear that they were not fully aware of the limits imposed by the law of war on their ability to do so. In light of this, the benefits that might be derived from continued U.S. occupation of Iraq are far outweighed by its costs. Consequently, pro-democratic and pro-market regime change is not likely to be achievable through unilateral military intervention by the United States.

Yet, as the following section argues, there now seems to be little doubt that a UN-authorized, pro-democratic regime change is now permissible. If the current ground for legitimate intervention is through the collective authority of the United Nations, this should force us to concentrate our minds on the legal options available to the UN to derogate from Hague principles in the pursuit of internationally-authorized regime change. Kosovo provides a recent and important example of how a UN occupation can raise the question of the occupying authority's legal right to privatize state assets, encourage market liberalization, and presumably help to begin to create the conditions for democratic self-governance.

34. See Scheffer, *supra* note 26, at 850 (showing that one can argue that Resolution 1483 represented a missed opportunity to transcend the constraints of international humanitarian law and establish a legal framework for internationally-approved regime change in Iraq).

III. UN AUTHORIZATION FOR PRO-DEVELOPMENT, REGIME-CHANGING OCCUPATION

The issue of the authority of the United Nations to implement a privatization scheme in UN occupied territory is not free from legal doubt. However, a good case can be made that UN authority could be broader than an individual state or group of state's rights under the law of war. The question is simply whether the Security Council expressly or impliedly determines that privatization of state-owned assets is essential to the fulfillment of a UN mission established under chapter VII of the Charter. The situation in Kosovo provides an important example of how Security Council authorization for privatization of occupied state assets was approved—notwithstanding the potential applicability of the law of occupation to a situation in which the UN, albeit not a state governed by customary or conventional international law, might have been limited by the principles governing belligerent or hostile occupation.³⁵

At the outset, it should be emphasized that Security Council Resolution 1244 was adopted expressly pursuant to Chapter VII of the UN Charter and specifically includes a determination by the Security Council that the “situation in the region” constitutes a “threat to international peace and security.”³⁶ Therefore, under UN law and practice, any “decisions” of a resolution adopted on this basis would be binding on all states, including the Federal Republic of Yugoslavia (“FRY”), which is a member of the UN, and any future government of Kosovo, if it were independent and became a member of the UN. The above is true regardless of any other treaty obligations (whether prior to or later than the adoption of the UN Charter or the resolution itself) such states might have.³⁷

There may be limits on the Council's powers under Chapter VII, however. For example, it is assumed by many that the Security Council could not decide to violate a so-called *jus cogens*, or peremptory, norm recognized under the Vienna Convention on the Law of Treaties (“VCLT”).³⁸ While there is some debate whether the *jus cogens* provisions of the VCLT are, like the most of its other provisions, considered to reflect customary international law of treaty interpretation, it is inconceivable that the Council would claim the authority to violate such norms, even if they exist. The real question ordinarily is whether a

35. Recent authorities seem to take the view that to avoid a constitutional question as to the scope of UN authority, unless a contrary intention is clearly manifest, even if the UN is not bound as a state it is to be presumed to act in accordance with international humanitarian law. See, e.g., Ray Murphy, *United Nations Military Operations and International Humanitarian Law: What Rules Apply to Peacekeepers?*, 14 CRIM. L.F. 153 (2003); see Bulletin on the Observance by United Nations Forces of International Humanitarian Law, reprinted in 38 I.L.M. 1656 (1999) (describing the application of international humanitarian law to UN forces in situations of armed conflict).

36. See S.C. Res. 1244, preamble ¶ 12, June 10, 1999, 38 I.L.M. 1451 (1999).

37. See Charter of the United Nations, (June 26, 1945) arts. 25, 103, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153, 1976 Y.B.U.N. 1043 [hereinafter UN CHARTER].

38. See Vienna Convention on the Law of Treaties, (May 23, 1969) arts 31-32, 53, 1155 U.N.T.S. 331, 8 International Legal Materials 679 (1969).

particular norm is deemed to be so fundamental to the international order that neither treaties nor the other ordinary forms of international lawmaking should be considered sufficient to overturn them. But it seems doubtful that one could argue *jus cogens* norms prohibit privatization pursuant to UN-authorization under Chapter VII of the Charter.

There are also limits based on the Charter itself on the Security Council's powers under chapter VII to make binding decisions. Notwithstanding Article 25 of the Charter, these limits arguably include the "purposes" and "principles" of the United Nations,³⁹ which, in relevant part, include among others: the "sovereign equality" of Member states under Article 2(1); the duty of all member states to "refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action" under Article 2(5); the obligation of the UN itself to "ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security" under Article 2(6); and the obligation under Article 2(7) of the UN itself not "to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present charter," although "this principle shall not prejudice the application of enforcement measures under Chapter VII."⁴⁰ Indeed, UN administration of territory draws on historical precedents pre-dating the Charter, giving rise to the presumption that the UN is not in principle barred from exercising the full powers of governance in the appropriate case.⁴¹ Thus, again, it does not appear that these background norms could be interpreted to forbid UN-authorized privatization in the face of a Security Council Resolution adopted under Chapter VII.

39. U.N. CHARTER, *supra* note 37, at art. 25 (providing for the binding effect of Security Council "decisions" implicitly through operation of Article 103). *But see* *Libya v. United States*, 31 I.L.M. 662 (1992) (denying Libya's request for provisional measures to prevent action by the U.S. and U.K. to compel Libya to surrender persons responsible for the Lockerbie case but determining that it had jurisdiction to determine whether Libya's right under the Montreal Anti-Sabotage Convention could be superseded by a Chapter VII Security Council Resolution and thereby suggesting that some Security Council "decisions" conceivably might be *ultra vires*).

40. U.N. CHARTER, *supra* note 37, at art. 2. The precise language of article 2(7) gives rise, of course, to the negative inference that the other principles and policies stated in article 2 continue to apply in a chapter VII case. Thus, an argument, albeit strained, might be made that "sovereign equality" remains a limit on Security Council "decisions" under Chapter VII. It is doubtful, however, that this textual inference supplies a strong bulwark against Security Council authorized "regime change," if the Council were to determine that regime change were necessary and proportionate to resolve the situation that gave rise to its exercise of Chapter VII authority.

41. *See generally* Ralph Wilde, *From Danzig to East Timor: The Role of International Territorial Administration*, 95 AM. J. INT'L L. 583 (2001).

Thus, the heart of the question of whether the UN Mission in Kosovo (“UNMIK”) may privatize certain FRY property is one of interpreting the meaning of the applicable Security Council resolution on this narrow point. However, the general question of the applicable method of interpretation of Security Council resolutions is less clear than one might hope. There is, for example, no controlling authority establishing that Security Council resolutions are to be interpreted through the analytic framework supplied by the relevant provisions of the Vienna Convention on the Law of Treaties.⁴² This is because there is very little, if any, relevant judicial practice to shed light on this question.⁴³ Only recently has the Security Council begun to appear to “legislate” in any kind of a detailed way that would require judicial assessment of the scope of the powers delegated to an organ of the UN.

Yet, the so-called teleological method of interpretation, focusing on the object and purpose of a Security Council resolution, would seem especially appropriate where, as in the case of Resolution 1244, the Security Council has given UNMIK through the Secretary-General a broad mandate, namely:

to establish an international civil presence in Kosovo to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo . . .⁴⁴

It would seem appropriate, therefore, to interpret Resolution 1244 impliedly to confer upon UNMIK all power reasonably necessary to accomplish these objectives.

The principles stated in international treaty law that are arguably relevant to the interpretation of UN resolutions also give priority to the text of the resolution. Unfortunately, the question whether UNMIK is authorized to privatize FRY-owned property is not addressed specifically by the text. The most directly relevant provisions—operative paragraphs ten and eleventh(g), which specifically require UNMIK to assume responsibility for “reconstruction of key infrastructure and other economic reconstruction”—are silent in themselves. Nonetheless, the context for this language is the best evidence of its meaning, and that context includes other terms of the resolution, as well as the preamble

42. Strictly speaking, the counterpart provisions of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or Between International Organizations might also provide a frame of reference if Security Council resolutions were deemed to fit within either of its categories.

43. See generally Michael C. Wood, *The Interpretation of Security Council Resolutions* 2 MAX PLANCK YEARBOOK OF UNITED NATIONS 73 (Frowein and Wolfrum eds. 1998) (providing views of Deputy Legal Adviser, Foreign and Commonwealth Office, United Kingdom).

44. S.C. Res. 1244, ¶ 10, June 10, 1999, 38 I.L.M. 1451 1453 (1999).

and annexes. Thus, special weight should be given to operative paragraph seventeen, which:

[w]elcomes the work in hand of the European Union and other international organizations to develop a comprehensive approach to the economic stabilization and development of the region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity stability and regional cooperation. . . .⁴⁵

In this regard, the Stability Pact arguably is incorporated by reference into the Resolution itself. In pertinent part, the Stability Pact provides for:

creating vibrant market economies based on sound macro policies, markets open to greatly expanded foreign trade and private sector investment, effective and transparent customs and commercial/regulatory regimes, developing strong capital markets and diversified ownership, including privatisation, leading to a widening circle of prosperity for all our citizens. . . .⁴⁶

Thus, the text itself also appears to support the pro-privatization teleological interpretation of the Resolution.

Indeed, the reference to “other international organizations” in operative paragraph 17 further suggests receptivity to the applicable policies of the International Monetary Fund (“IMF”) and the International Bank for Reconstruction and Development and its affiliates (“World Bank”) (collectively, Bretton Woods Institutions), which favor privatization where feasible in support of economic reconstruction and development. While the term “other international organizations” is not defined in the resolution, it does implicitly refer to those organizations working “hand in hand” with the European Union. It is relevant that in language reported to the Security Council the day before the adoption of Resolution 1244, the Secretary-General stated that: “The United Nations and its specialized agencies should seek strategic partnerships with the European

45. *Id.* at 1454.

46. See *Stability Pact for South Eastern Europe Cologne*, June 10, 1999, available at <http://www.wilsoncenter.org/subsites/ccpdc/pubs/addm/stabfr.htm> (last visited Aug. 9, 2004) (copy of file with *The Transnational Lawyer*) (explaining that one might argue that operative paragraph 13—which “[e]ncourages Member States and international organizations to contribute to economic and social reconstruction as well as the safe return of refugees and displaced persons, and emphasizes in this context the importance of convening an international donors’ conference, particularly for the purposes set out in paragraph 11(g)” —suggests that UNMIK’s responsibilities are limited to immediate, short-term efforts to facilitate repatriation and relief). However, this reading would be inconsistent with other relevant materials. For example, there is an additional reference to the Stability Pact in paragraph 9 of Annex 2, as well as a more expansive reference to a “[c]omprehensive approach to the economic development and stabilization of the region” in the final paragraph of Annex 1, the G-8 Statement of May 6, 1999. The additional reference to “economic development” in Annex 1 thus suggests that no particularly narrow meaning should be given to the reference to “reconstruction” in operative paragraph 11(g). See S.C. Res. 1244, *supra* note 44.

Union, the Bretton Woods institutions, and other major actors, including non-governmental organizations and bilateral donors, to prepare reconstruction plans for Kosovo, as soon as possible.”⁴⁷ Thus, there should be no doubt that operative paragraph 17 refers not only to international relief agencies but also to the Bretton Woods Institutions. In light of these implied references to the IMF and World Bank, if Resolution 1244 had been intended to preclude privatization of FRY-owned property during the interim period, one would have expected to see language in the resolution expressly excluding the ordinary policies of the international institutions involved in international reconstruction and development. Moreover, international understandings of the sources of political discord in the territories of former Yugoslavia may well be deemed to include a judgment that excessive concentration of authority in the hands of central state authorities may have contributed to the desire of ethnic minorities to achieve political and economic autonomy.⁴⁸

In sum, the case of Kosovo suggests that UN authority can be employed to privatize state-owned assets if that would further the purposes of occupation in accordance with Chapter VII of the UN Charter. The UN’s failure to revitalize the economy of Kosovo through full implementation of Resolution 1244 is a political failure due to the lack of Great Power consensus on the future status of Kosovo, not a legal failure due to a lack of UN authority under the Charter.

IV. POLICY PARADOX

If UN practice with respect to Kosovo reveals the existence of UN authority to privatize state-owned assets and liberalize the economy of an UN-occupied territory, then presumably that authority could also extend to the creation of an Oil Trust Fund for the people of Iraq.⁴⁹ When the UN had an opportunity to create an oil trust fund for the people of a UN-occupied territory in East Timor, it

47. *Report of the Inter-Agency Needs Assessment Mission dispatched by the Secretary-General of the United Nations to the Federal Republic of Yugoslavia*, ¶ 11, Annexed to the Letter Dated June 9, 1999 From the Secretary-General Addressed to the President of the Security Council (S/1999/662) available at <http://www.reliefweb.int/w/rwb.nsf/s/F27BD943E308AF4B8525678D004FBCA1> (last visited Aug. 10, 2004) (copy of file with *The Transnational Lawyer*).

48. See generally SUSAN L. WOODWARD, *BALKAN TRAGEDY: THE CHAOS AND DISSOLUTION AFTER THE COLD WAR* (1995).

49. UN authority under Chapter VII to make determinations with respect to sovereignty over territory, and perhaps also with respect to natural resource allocations, is suggested by the UN Iraq-Kuwait Boundary Demarcation Commission’s role in setting the boundary between Iraq and Kuwait. This determination became internationally binding pursuant to Chapter VII of the Charter because it implemented the terms of Security Council Resolution 687, which had provided the cease-fire terms for the Persian Gulf War. See S.C.Res. 773 (August 26, 1992), 32 I.L.M. 1463. Still, Resolution 773’s precise language suggests a very narrow view of UN competence in this area. The resolution specifically states that the Boundary Demarcation Commission was “simply carrying out the technical task necessary to demarcate for the first time the precise coordinates of the boundary set out in [an earlier Iraq-Kuwait Agreement]” and that “this task is being carried out in the special circumstances following Iraq’s invasion of Kuwait...” See S.C. Res. 773. Thus, the particular facts of the case—namely, the earlier Iraq-Kuwait agreement on the allocation of sovereignty rights and the necessity of resolving the underlying source of the dispute—may limit the force of this precedent.

appears to have failed to do so, leaving it to the new post-independence authorities to resolve East Timor's maritime boundary dispute with Australia regarding the resources of the Timor Gap.⁵⁰ Thus, the irony is even if the UN has the power to make critical development choices for Iraq to create incentives for harnessing the natural resources of the Iraqi nation in ways that encourage market democracy to develop, it is not clear that the UN has the political will to do so. Meanwhile, although the United States as occupant may have had, at one point at least, the political will to occupy Iraq long enough to effect regime change along the lines of its reconstruction of Germany (perhaps through the creation of an oil trust fund), its legal authority to do so was questionable at best. As the United States withdraws because it cannot finish what it began, the UN most likely will refuse to fill the gap. Thus, the question remains: what is to become of Iraq?

50. See *Hours After Gaining Independence, East Timor Starts Process to Join UN*, News Centre, May 20, 2002 (reporting that in the early hours of independence East Timor's Chief Minister Mari Alkatiri and Australia's Prime Minister John Howard signed the Timor Gap Treaty), available at <http://www.un.org/apps/news/storyAr.asp>. (copy of file with *The Transnational Lawyer*). Admittedly, UN representatives played a critical role in negotiating the text of the treaty before independence, so as to ensure that East Timor's interests as that claims of the Government of Australia were vindicated. Although this proved "awkward" given Australia's role as the "leading military contributor" to the UN Mission and the "a principal financial donor to East Timor's reconstruction." See Ambassador Peter Galbraith, *The United Nations Transitional Authority in East Timor (UNTAET)*, *Proceedings of the 97th Annual Meeting of the American Society of International Law* 210, 211-12 (2003). However, nothing in the treaty structures how its benefits are to be shared by the people of East Timor.

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