Hacettepe University Graduate School of Social Sciences

Department of International Relations

TRANSFORMATION OF THE INTERNATIONAL LAW OF OCCUPATION: CASE OF IRAQ

Hülya KAYA

Master's Thesis

Ankara, 2018

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05 Mart 2018

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05 /03 /2018

Hülya KAYA

ETİK BEYAN

Bu çalışmadaki bütün bilgi ve belgeleri akademik kurallar çerçevesinde elde ettiğimi, görsel, işitsel ve yazılı tüm bilgi ve sonuçları bilimsel ahlak kurallarına uygun olarak sunduğumu, kullandığım verilerde herhangi bir tahrifat yapmadığımı, yararlandığım kaynaklara bilimsel normlara uygun olarak atıfta bulunduğumu, tezimin kaynak gösterilen durumlar dışında özgün olduğunu, Tez Danışmanı **Prof.Dr. Ali Murat ÖZDEMİR** danışmanlığında tarafımdan üretildiğini ve Hacettepe Üniversitesi Sosyal Bilimler Enstitüsü Tez Yazım Yönergesine göre yazıldığını beyan ederim.

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ABSTRACT

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The *sui generis* structure of the 2003 Occupation of Iraq is analyzed thoroughly within the context of transformation assertions of the classical concept of belligerent occupation by the rapacious hegemons. The evolution of the traditional law of occupation compounded with the building blocks of *republicanism principle* based on the sovereignty and the codification of *the conservationist principle*. It was acknowledged that a great power state would pursue her hegemonic desire by unlawful waging war with transformative occupation incentives despite for the first time officially assigned as an occupying authority. The 2003 Occupation of Iraq was not a last minute deal for the US when it is thoroughly read between the lines of the process which was triggered with the adoption of the UNSCR 661 on 6th of August in 1990 till the creation of *the Coalition Provisional Authority (CPA)* and *the Development Fund for Iraq* in advance by the Bush Government and consecutively endorsement of these acts by the UNSCR 1483 dated 22 May 2003. The understanding of equal sovereignty of states was violated not only by the superpower state US but also with the connivance of the UN. UNSCR 2001 dated 28 July 2011 was manifestly exposed that a non-Western state Iraq's sovereignty was not equal as the Western sovereign states' and *ipso facto* Iraq had been whittled down to size by the US-led manipulation of the UN in the public eyes of 'the civilized European-Western nations'. The current international law of occupation embodies enough norms for the protection of the sovereign rights of the occupied state's people satisfactorily till occupant's transfer of the *de facto* sovereignty to the *de jure* sovereign of the occupied territory. The 2003 occupation of Iraq has crucial importance for comprehending both prevalent and prospective imperialist operations and the violations of law caused by them.

Key words

Classical concept of belligerent occupation, law of war, traditional law of military occupation, international law of occupation, the occupation of Iraq, republicanism principle, the conservationist principle, the Coalition Provisional Authority, de facto sovereign, de jure sovereign.

ÖZET

KAYA, Hülya. *Uluslararası İşgal Hukukunun Dönüşümü: Irak Olayı*. Yüksek Lisans Tezi. Ankara, 2018.

2003 Irak İşgali'nin nev'i şahsına münhasır yapısı, aç gözlü hegemonlarca klasik muharip devlet işgal kavramının dönüştüğü söylemleri kapsamında enine boyuna tahlil edilmiştir. Geleneksel işgal hukukunun gelişimi, yapı taşları olan egemenlik kavramına dayanan cumhuriyetçilik ilkesi ile konzervasyonist ilkenin kodifikasyonu ile birleşerek oluşmuştur.Büyük güç olan bir devletin, ilk defa işgalci güç olarak resmen tayin edilmesine rağmen, dönüştürücü işgal saikleriyle yasadışı savaş açarak hegemonyacı arzularının peşinden gittiği gerçeği kabul edilmiştir. 6 Ağustos 1990 tarihli ve 661 sayılı BM Güvenlik Konsey Kararı'nın kabulü; Geçici Koalisyon Yönetimi ve Irak Kalkınma Fonu'nun önceden ihdas edilmesi ve müteakiben bahse konu eylemlerin 22 Mayıs 2003 tarihli ve 1483 sayılı BM Güvenlik Konsey Kararı ile tasdik edilmesi ile tetiklenen sürecin satır araları tamamen okunduğunda; 2003 Irak İşgalinin son dakika anlaşması olmadığı anlaşılacaktır. Devletlerin egemen eşitliği anlayışı, sadece süper güç olan ABD'nin değil aynı zamanda BM'nin de bu işgal suçuna müsamaha göstermesi ile ihlal edilmiştir.

28 Temmuz 2011 tarihli ve 2001 sayılı BM Güvenlik Konsey Kararı, Batılı bir devlet olmayan Irak'ın egemenliğinin Batılı devletlerin egemenlikleri kadar eşit olmadığını ve aslında 'medeni Avrupalı-Batılı ulusların' gözleri önünde, ABD önderliğinde ve ABD'nin kendi çıkarları için BM'nin kullanılması ile Irak bir anlamda hizaya getirilmiştir. Mevcut uluslararası işgal hukuku, işgalci gücün işgal ettiği toprak parçası üzerindeki fiili egemenliğini hukuki egemene devredene kadar işgal edilen devletin halkının egemen haklarını yeterince koruyacak normları bünyesinde barındırmaktadır. 2003 Irak İşgali, hem hâlihazırdaki ve muhtemel emperyalist harekâtları hem de onların sebep olduğu hukuk ihlallerini idrak etmek için hayatî önemi haizdir.

Anahtar Sözcükler

Klasik muharip devlet işgali kavramı, savaş hukuku, geleneksel askerî işgal hukuku, uluslararası işgal hukuku, Irak'ın işgali, cumhuriyetçilik ilkesi, konzervasyonist ilke, Geçici Koalisyon Yönetimi, fiilî egemen, hukukî egemen.

INTRODUCTION

The President's State of the Union Address[1] on the 28th January 2003 gave the first signal of an operation to Iraq. As FOX, Gregory H. expresses that the invasion of Iraq by the United States in March 2003 sparked great controversy and debate in gaining the support of a broad coalition of international partners had difficulty in its search for an international blessing for the regime change intervention[2]. When the toppling of Saddam statute[3] in central Baghdad was broadcasted on 9th of April in 2003 in worldwide media; it was a show off for the United States and the United Kingdom to promulgate the end of the invasion and their taking control of the capital of the state of Iraq. Despite passing of almost fifteen years from the occurrence of this event; it has left trace in the memories of the people as a striking scene. Claiming of Iraq's proliferation of weapons of mass destruction and bringing democracy to a state which is ruled by an autocratic dictator, the jus ad bellum namely the legality of the 2003 invasion of Iraq received great attention of extensive scholars[4].

Iraq's intervention has a strong impact on the law of occupation as it is well-known. The thesis you are about to read is concerned with the law of occupation. From the Westphalian state system to the Napoleonic wars, invasion and occupation were quite understandable in absolute monarchic manner in which the land belongs to the absolute monarch. However the rise of republicanism that occurred after French revolution complicated the manner. Benvenisti argues that "With the French Revolution, however, a new concept emerged-national self-determination-which would ultimately restrict the authority of the occupant. Under this concept, among other things, the territory of the

[1] The President's Statute of the Union Address, Office of the Press Secretary (Jan 28, 2003), http:// www.whitehouse.gov/news/releases/2003/01/20030128-19.html
[2] FOX, G. (2005). The Occupation of Iraq. Geo.J.Int'l L., 36, 195, 262. Access: 08 Sep 2015, HeinOnline.
[3] Saddam statute toppled in central Baghdad Access: 21 January 2018, http://edition.cnn.com/2003/WORLD/meast/04/09/sprj.irq.statue/
[4] Toone, Jordan E. (2012). Occupation Law During and After Iraq: The Expedience of Conservationism Evidenced in the Minutes and Resolutions of the Iraqi Governing Council. *Florida Journal of International Law, 24*, 469. Access: 08 April 2014, HeinOnline.

state belongs to its people, not to the king." [5] That's why, belligerent occupation is a concept which is related with the rise of the principle of republicanism. As Bhuta cited from Oppenheim; Lauterpacht -that is an eminent international law scholar- dates the first usage of 'belligerent occupation' to 1844, in the writings of the German publicist Hefter[6.] .Due to the law of occupation's development as part of the law of war, belligerent occupation was referred to in legal literature as a possible by-product of military actions during war.[7]

Belligerent occupation is a concept that war is an intercourse among legal personalities. The situation of war's being of an intercourse among legal personalities takes root from the Rousseau-Portalis doctrine. The Rousseau-Portalis doctrine is named after J.J.Rousseau and the French jurist Jean-Etienne-Marie Portalis and it was admitted that war was characterized as a relationship between states, not between individuals. The necessary outcome of the idea of the republicanism (which assumes that the people of the country that is occupied has the sovereignty of the lands on which they are dwelled) requires the occupied lands to be ruled by this people. The law of occupation is acknowledged as the reflection of the equal sovereignty of the nation states. Within this respect, occupying power undertakes the duties of a 'de facto' sovereign and she respects the rights and privileges of the 'de jure' ousted sovereign. In this context, occupier's legislative authority is constrained and this is consolidated concretely in a treaty form in Article 43 of the Hague Regulations later in 1899 and 1907. This is called

as the *conservationist principle*. In fact, recognition of the conservationist principle was developed by the Italian jurist Pasquale Fiore in 1865. As Benvenisti cites from Fiore, "According to our principles, all nations are equal and autonomous and have equal right to sovereignty in their territories, they do not succumb to the law of force, and their territories do not pass to the dominion of the victorious power if it arbitrarily and

[5] Benvenisti, E., The International Law of Occupation, [Electronic version]. Princeton and Oxford: Princeton University Press. p.25, Access: 19 December 2017, https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/Benvenisti.pdf
[6] Bhuta, N. (2005). The Antinomies of Transformative Occupation. *Eur.J.Int'l L.16(4)*, 721. Access: 14 March 2015, http://ejil.org/pdfs/16/4/315.pdf, doi: 10.1093/ejil/chi145
[7] Benvenisti, E., The International Law of Occupation, [Electronic version]. Princeton and Oxford: Princeton University Press. p.3, Access: 19 December 2017, https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/Benvenisti.pdf

violently occupies them."[8] It can be clearly observed that the conservationist principle is one of the main principles which determines the 19th century international relations *within Europe*. Meanwhile, the sovereign equality of the nation states and the related conservationist principle were already accepted as customary international norms. The European states convened in order to transform these customary international norms into a significant treaty form which they were going to abide by with consent in 1899 in the Hague. The dominant belief at that century in Europe was that international law encircles the relations between the 'civilized nations'. The principles of law of war and the law of occupation which is accepted as the by-product of war were applicable exclusively among the civilized European states. Prof.Benvenisti stunningly cites from Lassa Oppenheim "The family of civilized nations has the discretion to consent to the entry of a new member based on the family's assessment of the new entrant's being a civilized state which was in constant intercourse with members of the Family of Nations."[9] As Yutaka Arai-Takahashi cites from Anthony Angie "the European standard of civilization constituted the benchmark against which different levels of civilization attained by non-Western states were measured."[10]

Beginning with the Lieber Code[11] in 1863 and Articles 2 and 3 of the Brussels Declaration[12] of 1874, the conservationist principle was consolidated in Article 43 of both the 1899 and the 1907 Hague Regulations. Article 43 of the Hague Regulations states an occupying power's authority as follows:

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[8] Benvenisti, E. (2012). The International Law of Occupation. Oxford University Press: Oxford, 29.(cited from Pasquale FIORE, 'Nuovo Dritto Internazionale Pubblico', p.177 (1865)). https://global.oup.com/academic/product/the-international-law-of-occupation-9780199588893?cc=tr&lang=en&

[9] Ibid, p.31, 32.

[10] Arai-Takahashi Y.(2012), Preoccupied with occupation: critical examinations of the historical development of the law of occupation. IRRC No.885, 78. Access: 19 December 2017, https://www.icrc.org/en/international-review/article/preoccupied-occupation-critical-examinations-historical-development-law, doi:10.1017/S1816383112000495

[11] (Lieber Code), Instructions for the Government Armies in the Field, issued as General Orders No.100 of 24 April 1863, Article 3. Access: 19 December 2017, http://avalon.law.yale.edu/19th_century/lieber.asp

[12] Article 2 of the Brussels Declaration states that: The authority of the legitimate power being suspended and having in fact passed into the hands of the Occupying Power, the latter shall take all the measures in its power to restore and ensure, so far as possible, public order and safety.

> The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

The evolution of the international law of occupation during the nineteenth century and its codification in the 1907 Hague Regulations on Land Warfare was in fact, the extension of the main principles recognized in international law that sovereignty lies in people, not in a political elite and, sovereignty may not be alienated through the use of force[13]. The conservationist principle stands for the proposition that the occupying power is prohibited from instituting significant changes to the legal, political, economic, and social institutions of the occupied state[14]. For Boon, the conservationist principle presumes that occupations are temporary, non-transformative, and limited in scope.[15]

In fact, several definitions of the military occupations were made by the scholars. In reality, there was not a definition problem of the military occupations. There were serious problems related to the framework and the limits of the application of the law of military occupations. As Adam Roberts cited from Von Glahn, Glahn argues that "Conventional international law recognizes only one form of military occupation: *belligerent occupation, that is, the occupation of part or all of an enemy's territory in time of war;* this is the type of occupation covered by the Hague Regulations and the Fourth Geneva Convention of 1949."[16] Whereas Prof. Roberts himself construes and broadens that definition with the argument that 'the terms of the 1949 Geneva Conventions, and particularly common Article 2 *apply to an occupation arising from an*

Article 3 the Brussels Declaration states: To this end, it shall maintain the laws which were in force in the country in time of peace, and shall not modify, suspend or replace them unless necessary."

[13] Eyal BENVENISTI, The International Law of Occupation, pp.6, 95 (1993).

[14] Cohen, J.L. (2007). The Role of International Law in Post-Conflict Constitution-Making: Toward a Jus Post Bellum for "Interim Occupations", NY.L.Sch.L.Rev., (51), 496, 503, 527. Access: 21 December 2017, http://www.nylslawreview.com/wp-content/uploads/sites/16/2013/11/51-3.Cohen_.pdf

[15] Boon, K.E. (2008). Obligations of the New Occupier: The contours of a jus post bellum. *Loy.L.A.Int'l&Comp.L.Rev., 31*, 101.Access: 04 February 2015, HeinOnline.

[16] Roberts, A.(1985). What is a military occupation?. *British Yearbook of International Law, 55*, 262. Access: 14 March 2014, http://bybil.oxfordjournals.org/.

armed conflict not constituting a war, and also to other cases of occupation of a territory of a party, even if the occupation meets with no armed resistance.' With holding the provision of the 1977 Geneva Protocol I, Article 4, he further confirms that the law is applicable even in cases where there is doubt about the legal status of the territory in question. In his analysis of military occupation he has defined seventeen types of occupations in categories of wartime, post-war, peacetime and other possible categories. Prof. Roberts has argued that most occupants have failed to recognize the applicability of the law of occupation to de facto occupied territories, irrespective of whether or not these resulted from proxy wars of the two superpowers during the Cold War.[17]

Till the adoption of the UN Charter two devastating World Wars had been witnessed. In 19th century European nation states the general war concept and the law of occupation were applied between the civilized nations of Europe. With the signature of the UN Charter in San Francisco on 26 June 1945, for the first time in history with the prohibition of use of force as a striking principle, the difference of being a civilized or an uncivilized state has been abolished. UN Charter Article 2, para.1 states that "The Organization is based on the principle of the sovereign equality of all its Members." And also in Article 2, para.4 it states that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." Whether they are civilized or uncivilized, developed or underdeveloped it was acknowledged that all member states enjoy the right of being 'sovereign equals' in the international state system. That was the landmark of universalization of *the republicanism principle* which was applicable exclusively among the 19th century European states. Lately, not only the limits of occupation's framework is mostly created problems among occupants and the scholars but also increasingly joining of international organizations to states as occupiers of a territory created the problem of which types of norms those international organizations are going to be entitled. In post-Cold War period the international state system was accustomed to witness post-conflict transformation of the occupied states as a common feature. That

[17] Ibid. pp. 261,274, 299, 301.

post-conflict transformation is accomplished mostly with getting legitimacy via Chapter VII of the United Nations (UN) Charter, whether it is so-called as post-conflict reconstruction or nation-building.

During and after the Cold War, a vast of cases of occupations had occurred. Then, why the US and UK occupation of Iraq posed a dilemma for international lawyers? As it is cited by Major Matthew R. Hover; In February 2003, the Deputy Secretary of Defense Paul Wolfowitz addressed that: "We are not talking about the occupation of Iraq, we are talking about the liberation of Iraq…Therefore, and when that regime is removed we will find [the Iraqi population]…basically welcoming us as liberators."[18] It can be manifestly claimed that in providing a substantial definition of military occupation there are not only the problems of a clear-cut framework of the military occupations but also the problems caused by the occupying powers by not admitting themselves as the occupiers in the sense of law of military occupation. According to Benvenisti, most states since 1907 have refused to adopt the moniker of occupier in their occupational activities, and most contemporary occupants ignored their status and their duties under the law of occupation.[19]

Another issue supporting the uncertainty trend in the above-mentioned discussion is the law of UN resolutions which are formed right after the occupation of Iraq. The SC Res. 1483 dated 22 May 2003 and adopted under Chapter VII of the UN Charter, expressly recognized the United States, the United Kingdom of Great Britain and Northern Ireland as the Occupying Powers that were bound to abide by the obligations under applicable international law.[20] In that document occupying authorities were clearly mentioned and they were accepting to undertake the duties and responsibilities of occupying authorities with regard to applicable international law.

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[18] Hover, M.R. (2012). The occupation of Iraq: a military perspective on lessons learned. *Interantional Review of the Red Cross, 94 (885)*,340. Access: 19 December 2017, https://www.icrc.org/en/download/file/.../irrc-885-hover.pdfDoi: 10.1017/S1816383112000458.

[19] Benvenisti, E., The International Law of Occupation, [Electronic version]. Princeton and Oxford: Princeton University Press. pp.4-6, Access: 19 December 2017, https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/Benvenisti.pdf

[20] UNSCR 1483, 22 May 2003, preamble, para.13. Last Access: 19 December 2017, http://unscr.com/en/resolutions/1483

Post Iraqi occupation, the effort of occupying authorities' getting endorsement for their acts via the consecutive collection of UN resolutions was construed by Harris as compelling of US to attempt to multilateralise the occupation despite its being a primarily unilateral intervention. He stated that "the Bush Administration, despite strong unilateral impulses and the bad blood that inhered from the rancorous international debate that preceded the invasion, realized that international support and resources were prerequisites to a successful occupation of Iraq."[21]

On the contrary, Prof. Roberts states that in public use, the United States avoided the term occupying power, but before the United Nations and in the quasi-legal documents associated with the United Nations, the United States acknowledged itself as being bound by all of the responsibilities attendant to occupation. The occupation of Iraq by the United States and the United Kingdom was in fact supporting the change of idea which is determined by Prof. Roberts. Prof.Roberts clarifies this change as follows:

> Put crudely, the traditional assumption of the laws of war is that bad (or potentially bad) occupants are occupying a good country (or at least one with a reasonable legal system that operates for the benefit of the inhabitants). In recent years, especially in some Western democratic states, various schools of thought have been based on the opposite idea, crudely summarized as good occupants occupying a bad country (or at least one with a bad system of government and law).[22]

In fact, the foundations of the occupation were laid at the end of the 15th century with the conquest and colonization of the New World namely America in 1492.

Spanish colonists were asserting the claims of declaring war to Indians of the New World and justifying in various grounds their right of colonization. The Spanish Kingdom was getting its colonization right from Popedom. Spanish conquerors and colonists were claiming that the Indians were also violating the natural law due to being pagans. In the era of ending the medieval ages and opening a New Age the issues of

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[21] Harris, G.T. (2006). The Era of Multilateral Occupation. *Berkeley J.Intl L., 24*; 59, 66, 67. Access: 14 March 2014, http://scholarship.law.berkeley.edu/bjil/vol24/iss1/1

[22] Roberts, A. (2006). Transformative Military Occupation: Applying the Laws of War and Human Rights. A.M.J.INT'L.L., (100), 609. Access: 24 August 2015, HeinOnline.

whether the Indians or people whom are not Christians have the rights were being questioned. Meanwhile, "Francisco de Vitoria, (born probably 1486, Vitoria, Álava, Castile—died August 12, 1546), Spanish theologian would argue for his defense of the rights of the Indians of the New World against Spanish colonists and for his ideas of the limitations of justifiable warfare."[23] In the just war theory, morality of war from the Christian perspective commented by St.Augustine and the justification of war was discussed by St.Thomas Aquinas in the 13th century.[24] "After three centuries had passed, Francisco de Vitoria would expand their theories of just war in a new form. He would argue that just war which a political society could declare to another political society must be equipped with three criterias. These are as follows: 1-Enough just cause, 2-Legitimate authority, 3- True aim. Primarily, a political society which is about to declare war to another, must be encountered absolutely uncompensated serious injustice namely *injuria accepta*. Secondly, only a political monolith can have the right to declare war. And thirdly, at the end of the war, the acquisition of the merely the right which is attacked by the adversary must be aimed. In case of not obeying the third criteria, a war which is started as just may turn into an unjust act."[25] The theory of just war and the international law comments of Francisco de Vitoria would be expanded by Francisco Suarez with his theory of international law mainly based on individual justice aim of the nation states which is based on the respect of the rights of the independent states. [26] With Suarez, the just war and international law theories of Vitoria would become concrete as the auto-limitation of political power, state of law, rule of law and liability of the state. In the 21st century, the morality, ethics and the justification of declaration of war would be discussed by philosopher Michael Ignatieff' in a new context. Right after the September 11 terrorist attack, consecutive responsive Afghanistan operations, Iraq invasion and occupation, especially Western community and the scholars were clogged with the well-known philosopher Michael Ignatieff's arguments. In his 'The Lesser Evil-Political Ethics in an Age of Terror' titled book which was published in 2004, Ignatieff had argued that "the lesser evil position maintains that necessity may require us to take actions in defense of democracy which

[23] https://www.britannica.com/biography/Francisco-de-Vitoria last access: 21 January 2018.
[24] http://www.iep.utm.edu/justwar/. Last Access: 21 January 2018.
[25] Akal, C.B. (2013). Modern Düşüncenin Doğuşu İspanyol Altın Çağı, Dost Kitabevi Yayınları, s.73-76. (Tez yazarı tarafından İngilizceye tercüme edilmiştir.)
[26] Ibid, p.275.

will stray from democracy's own foundational commitments to dignity. While we cannot avoid this, the best way to minimize harms is to maintain a clear distinction in our minds between what necessity can justify and what the morality of dignity can justify, and never to allow the justifications of necessity—risk, threat, imminent danger—to dissolve the morally problematic character of necessary measures. Because the measures are morally problematic, they must be strictly targeted, applied to the smallest possible number of people, used as a last resort, and kept under the adversarial scrutiny of an open democratic system."[27] Mark A. Drumbl agrees with Ignatieff's arguments and also for him "in case of taking a decision in a position of lesser evil the obligation of a relevant liberal democratic state is "open adversarial review," or a "duty of adversarial justification," in which governments must justify the steps they take in public before legislatures, courts, and public opinion. This process should be subject to what Ignatieff calls the "conservative test," namely, "are departures from existing due process standards really necessary?" For Ignatieff, "democracy depends on distrust, freedom's defense requires submitting even noble intentions to the test of adversarial review. Democracies need to be particularly vigilant about the duty of adversarial justification, and willing, as the Israeli Supreme Court put it, *to train to win with one hand tied behind their backs*."" [28] Of course while trying to choose the lesser evil position the lesser evil acts or decisions may turn into greater evil ones for Ignatieff. He argues that "Keeping lesser evils from becoming greater ones is more than a matter of democratic accountability."[29] If the necessary coercion which would be enforced by the officials of the liberal democratic state is *morally problematic* they should choose the 'lesser evil' according to Ignatieff's argument. The argument of Ignatieff may sound well in a short notice reaction of a shocking terror attack but as it is witnessed in Afghanistan Al-Qaide case and the following 2003 Iraqi occupation –that will be discussed comprehensively below-have proved that this kind of interpretation of the

[27] Ignatieff, M. (2004).The Lesser Evil-Political Ethics in an Age of Terror, *Princeton University Press,* p.9. Accessed: 12 November 2017, http://press.princeton.edu/chapters/s7578.html

[28] Drumbl, M..A. (2004). 'Lesser Evils' in the War on Terrorism, *36 Case W. Res. J. Int'l L.* p.p.341-344. Accessed: 12Novemeber 2017, http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1397&context=jil

[29] Ignatieff, M. (2004). The Lesser Evil-Political Ethics in an Age of Terror, *Princeton University Press,* p.21. Accessed: 12 November 2017, http://press.princeton.edu/chapters/s7578.html

relevant course of actions taken by the officials of a liberal democratic state can cause hazardous consequences both for the officials, public executives of the relevant liberal state and the adversary states, their citizens and also citizens of other states which are suffered the related consequences of the so-called “lesser or greater evil” positions or acts. As Christopher Dawson criticizes that "…as soon as men decide that all means are permitted to fight an evil then their good becomes indistinguishable from the evil that they set out to destroy."[30] That’s why; with all those justifications, by the occupation of Iraq, some scholars argued that the imperatives of contemporary occupations render the ‘conservationist principle’ anachronistic in contemporary international law.[31]

With all these considerations, it should be emphasized that the international law consists of the necessary potential in order to explain the meaning of the concept of the occupation. In this study, with bearing in mind the international law’s potential of being a considerable arsenal while signifying the contemporary occupations, the contention of transformation of the international law of occupation will be discussed in the context of 2003 occupation of Iraq.

Part I of this thesis provides an overview of the historical development and codification of the classical concept of belligerent occupation from 19th century occupations to current international law of occupations. This evolution would be elaborated with the emergence of the republicanism and the conservationist principles of the international law of belligerent occupation.

In Part II, the unilateral efforts of US surveying the occupation of Iraq as of Iraqi occupation of Kuwait on 2 August 1990 and multilateralization of her occupation of Iraq with consecutive United Nations Security Council Resolutions would be argued in detail. Additionally, avowedly piercing the armor of the ‘conservationist principle’ of the traditional law of occupation by the U.S.-led occupying powers with 2003

[30] Dawson, C.(2012). *The Judgment of the Nations*. Washington: The Catholic University of America Press. Retrieved November 12, 2017, from Project MUSE database..

[31] i.e. Nehal BHUTA, The Antinomies of Transformative Occupation, 16 EUR.J.INT’L L. p.721(2005); David J. SCHEFFER, Agora (Continued): Future Implications of the Iraq Conflict: Beyond Occupation Law, 97 AM.J.INT’L L. p.842 (2003).

occupation of Iraq by means of the orders, regulations and memorandums which are enacted under the auspices of the Coalition Provisional Authority-CPA would be analyzed. The thesis would **conclude** with arguments of the core concept of *occupatio bellica*'s embodying enough norms in order to cope with so called contemporary transformative occupations. Otherwise, it will pave the way for substantive powerful states' anachronistic desire of imperial democratization in view of the transformative occupation as it is egregiously tested by the US, its Coalition forces and the United Nations in the 2003 occupation of Iraq.

PART I.
THE CLASSICAL CONCEPT OF BELLIGERENT OCCUPATION

Within the evolution of the international law, the classical concept of belligerent occupation should be evaluated with the general theory of war in the nineteenth century. With the acknowledgement of the Rousseau-Portalis doctrine, war was waged between the belligerents 'namely their governments and armies' and civilians were protected as much as possible from the damages caused by war. The most famous expression of this idea was the statement of King William of Prussia on 11 August 1870, "I conduct war with the French soldiers, not with the French citizens." As it is witnessed in the 1870-1871 Franco-Prussian War, war may last long but it might end with partial or total occupation of the enemy territory or with the exceptional case of *debellatio*. War was generally ended with a peace treaty and the occupied territory might be ceded to the occupying state in the subsequent peace treaty. The security of occupant's troops and the maintenance of order and safety of the occupied territory were important for the occupant. It had no interest in the laws of the area under its effective control. The occupation period was relatively short and temporary.

With those scourges of 1870-1871 Franco-Prussian War, on the initiative of Czar Alexander II of Russia the delegates of 15 European States met in Brussels on 27 July 1874 to examine the draft of an international agreement concerning the laws and customs of war submitted to them by the Russian Government. It was referred as the Brussels Declaration but never ratified. With the efforts of the Institute of International Law, both the Brussels Declaration and the Oxford Manual formed the basis of the two Hague Conventions on land warfare and the Regulations annexed to them, adopted in 1899 and 1907. At the heart of The Hague Peace Conferences, article 42 and mainly 43 emerged as a cornerstone within the concept of occupation. The article 43 of the Hague Conventions manifestly acknowledged that the conservationist principle defining the traditional law of occupation lays at the heart of the international law of occupation. It should be accepted that the occupant should provide effective military authority over the occupied territory. The sovereign rights of the ousted government were still owned by

the people of the occupied territory and the occupant should preserve the sovereign rights of the ousted government as a 'de facto sovereign' during its administration.

Additionally, the local inhabitants and their properties should be protected from the occupants' harmful acts and procedures. As Benvenisti argues within the concept of classical concept of belligerent occupation; "Article 43 was a pact between state elites, promising reciprocal guarantees of political continuity, and thus, at least to a certain extent, rendering the decision to resort to arms less profound."[32] In other words, as soon as an accord was reached between the state elites on the transfer of sovereignty, the duty of local inhabitants' to abide by the occupant's exercise of authority would be ended.

When we come to 20th century, the general war concept was simultaneously evolved with the evolution of the character attributed to the state. From now on, not only military personnel but also civilians were undertaking the necessary contribution for the war efforts of the relevant state. Starting with the World War I, in the twentieth century wars, armies and civilians were intricate and total war was accepted rather than the general war concept.

The changing character of war was also become solid with the adoption of new provisions in the documents of usages of laws and war. Primarily the principle of self-determination was included in the United Nations Charter Article 1 and Article 55 dated 1945. With the adoption of the common article 2 to Geneva Conventions dated August 12, 1949; abovementioned Conventions had become also applicable to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Consecutively, with the adoption of the Additional Protocol I to the Geneva Conventions of 12 August 1949, dated 8 June 1977, Article 1 para.4; its application would cover the armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning

[32] Benvenisti, E., The International Law of Occupation, [Electronic version]. Princeton and Oxford: Princeton University Press. p.29, Access: 19 December 2017, https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/Benvenisti.pdf

Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Due to emerging of an international system with the UN Charter in 1945 and adopting the provision of the prohibition of use of force; it was accepted that all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations. With the adoption of the UN Charter due to the evolution of the international law and the law of occupation between 1945-1990 periods, an occupying authority cannot be accepted in the substitute for the will of the occupied state's people. The internal structure, organization and administration of a state are not issues of the international law. As of 1945 with the adoption of the UN Charter the law of occupation had become universal. Right after the Cold War namely in 1990s the great powers have denied all the acquisitions of the 1945-1990 period which was realized with the universalization of the law of occupation. After the 1990s, in international relations the general concept of war between states diminished apparently. The states were reluctant to talk about war between themselves. But there were still armed conflicts and occupations all around the world. The new hegemons of the American and the European continents were surveying for the new domains. As it was in the 19th century; "Military occupation of non-European territories was sufficient for the European powers to claim sovereign rights over those territories."[33] The new age occupants were seldom composed of merely states but mostly states partnering with an international organization or a non-state actor. Meanwhile occupations were lasting so long and it was taken too much time for transferring the sovereignty to the ousted sovereign. Of course Article 43 of the Hague Conventions was in hand, but occupants' refraining from the defamation of occupying authority and during that lengthy occupation period the blurring of the framework of the administrative authority of the occupant in order to obtain political and economic self-

[33] Arai-Takahashi Y.(2012), Preoccupied with occupation: critical examinations of the historical development of the law of occupation. *IRRC No.885*, 76. Access: 19 December 2017, https://www.icrc.org/en/international-review/article/preoccupied-occupation-critical-examinations-historical-development-law, doi:10.1017/S1816383112000495

interest in the occupied territory caused the decrease of the application of the relevant article by occupants of the modern day occupations.

In sum; in Part I, providing with historical overview and the comprehensive definition of the traditional law of occupation, it would be demonstrated that; with the contribution of the Geneva type law, the conservationist principle of the classical concept of occupation was operational today as it was applicable before. Norms are created by people but they are not self-operated unless people do. Of course there were several type of occupations till the 2003 occupation of Iraq. These occupations were conducted for so-called transformative purposes. As of 1990 it was realized that occupying authorities had started to stray from the path of the understanding of the equality of the sovereign states. From the realist perspective of the international relations theory, states are bad, seeking for more power and that's why they wage war to each other. I do acknowledge that the legitimacy of waging war and occupying partly or totally an enemy territory could be discussed in various aspects. Instead, the law of occupation stands for the jus in bello subtitle of the international law of armed conflict. It can be clearly observed that mostly 'great powers' of the modern day state system and their spokesman contend that these related norms of traditional law of occupation are obsolete and insufficient for the so called 'de facto modern law of occupation' as it is argued by Grant.T.Harris.[34] As it is manifestly witnessed in the occupation case of Iraq in 2003, from the inhabitants of the 'weak state' or 'fragile state' perspective, it would be understood that the spirit of the conservationist principle provides a legal safeguard for the sovereign rights of the ousted government and the humanitarian safeguard with the contribution of Articles 47 and 64 of the Fourth Geneva Convention for the local inhabitants of the occupied territory.

[34] Harris, G.T. (2006). The Era of Multilateral Occupation. *Berkeley J.Intl L., 24*; 37. Access: 14 March 2014, http://scholarship.law.berkeley.edu/bjil/vol24/iss1/1

1.1 HISTORICAL OVERVIEW

Law of occupations is a part of *jus in bello* of the international law. It has been a long period of codification process and evolution of customary norms. Historically the occupation was always an extended result of a war. In fact there was always a presumption of imagination of what occupation is but there were a lot of questions about its limits of application. Jean-Jacques Rousseau, in Le contract social (1762) expounded the theory that war is a relationship between States, while men become enemies by chance, not because they are citizens of belligerent States, but because they are soldiers.[35] "The most famous expression of this idea was the statement of King William of Prussia on 11 August 1870, 'I conduct war with the French soldiers, not with the French citizens." This is also known as the Rousseau-Portales doctrine, according to which "wars were directed against sovereigns and armies, not against subjects and civilians."[36] This disavowed the predominant conception, extensively codified in the treatise by the Prussian general Carl von Clausewitz, Vom Kriege (On War, 1838)[37], that war ought to be conceived as a struggle involving the entire populations of belligerent States. Emmerich de Vattel moulded the modern concept of belligerent occupation and introduced the principle that occupied population and their respective goods and property were entitled to legal protection. De Vattel claimed that only by a peace treaty closing the hostilities the sovereign of an occupied territory could cede its sovereign rights to the occupying power.[38]

Despite these developments, as it is noted by Nehal Bhuta, US and English courts held that military occupation conferred the 'fullest right of sovereignty' on the occupant: US

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[35] Nicolosi, S.F.(2011). The law of military occupation and the role of de jure and de facto sovereignty. *Polish Y.B. Int'l L, 31*; 170. Access: 02 March 2015, HeinOnline.

[36] Benvenisti, E. (2003). The Security Council and the Law on Occupation: Resolution 1483 on Iraq in Historical Perspective. Israel Defense Forces L Rev., (1), 19, 20, 23. Access: 19 December 2014, HeinOnline.

[37] https://www.gutenberg.org/files/1946/1946-h/1946-h.htm

[38] de Vattel, E. (1758).Law of Nations or the Principles of Natural Law [Electronic version]. Book III, Ch. 13, para. 197-200, Access: 19 December 2017, www.lonang.com/exlibris/vattel/vatt-313.htm.

v Rice, 4 Wheaton 254 (1812); The Foltina, 1 Dodson 451 (1813) as late as 1813.[39] By this way, in those courts of common law it was decided that a conquered territory forms immediately part of the King's dominions. As Nehal Bhuta cited from G.F. von Martens in 1795 *Summary of the Law of Nations,* von Martens mentions *the right of the conqueror* instead of a *belligerent occupant*. For him, a conqueror has the right to subject conquered inhabitants to his domination, to make them swear fealty to him, and to exercise certain rights of sovereignty over them. The conqueror is not obliged to preserve the constitution of a conquered country or province, nor to leave the subjects in possession of the rights and privileges granted them by their former sovereign.[40]"As Oppenheim recounts, in former times, enemy territory occupied by a belligerent was in every point considered as his state property, so that he could do what he liked with its inhabitants. He could devastate the country with fire and sword, appropriate all public and private property therein, and kill the inhabitants, or take them away into captivity, or make them take an oath of allegiance. He could, even before the war was decided, and his occupation was definitive, dispose of the territory by ceding it to a third state."[41]*A separate legal category of belligerent occupation* which provides rights and obliges duties to the occupying power emerges after the end of the Napoleonic Wars and the reconstruction of the European order at the Congress of Vienna in 1815.

Occupatio bellica namely the belligerent occupation occurs in a temporary manner when an invader obtains the military control of a territory, provisionally administers it without exercising the rights of the ousted sovereign. Contraposition to *occupatio* bellica, *debellatio* arises with the demise of all military institutions of a state and her legal personality and there is certain type of subjugation achieved by the invader. Nehal Bhuta defines "*occupatio bellica* as an intermediate status between invasion and conquest, during which the continuity of the juridical and material constitution is maintained." To him, "*debellatio* is a certain quality of subordination that is achieved by

[39] Bhuta, N. (2005). The Antinomies of Transformative Occupation. Eur.J.Int'l L.16(4), 725. Access: 14 March 2015, http://ejil.org/pdfs/16/4/315.pdf, doi: 10.1093/ejil/chi145

[40] Ibid. p.p.726-727

[41] Fox, G.H. (2008). Humanitarian Occupation. [Electronic version]. Cambridge University Press..p.233. Access 19 December 2017, https://books.google.com.tr/books?id=nqEtn_nFmyEC&printsec=frontcover&hl=tr&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false

the invader, and which permits him to re-find the political order of the territory afresh."[42] Bhuta clearly determines that due to the absence of any discussion as late as 1801, of the distinction between the rights of a conqueror and the rights of a military occupier tends to reinforce his argument that 'belligerent occupation' as a legal institution arises only after the Congress of Vienna.[43]

In this context, as a legal institution belligerent occupation or *occupatio bellica* necessitates a direct relationship between the occupying forces and the inhabitants of the occupied territory. Occupying power is responsible for maintaining and restoring public order. Occupying power has the factual power of command. But differentiated from the commissarial dictatorship or European land order, the factual power of command of the occupying power is limited by the constraints of the international law. Thus, he can use this factual power of command as soon as this power is legitimized and constrained with the rules of international law. These constraints which delimit the occupying forces using of force on the inhabitants and the properties of the occupied territory are military necessity and maintaining public order.

As Bhuta stunningly expresses that "belligerent occupation in its 19th century manifestation was applied exclusively to land wars between European sovereigns. A state of belligerent occupation could arise only in the context of a state of war, and only sovereigns could declare war upon one another. Sovereignty was a 'gift of civilization' and was, almost exclusively, a recognized attribute only of members of the 'European family of states'."[44] It can be clearly understood that during this evolution of the phenomenon of occupation, it was located under the jus in bello of the law of armed conflict in order to regulate the conduct of war of the occupying powers. It was accepted as a by-product of the actual hostilities between the sovereigns. As Eyal Benvenisti clearly mentions "These rules stemmed from the universally accepted principle that sovereignty may not be alienated through the use of force."[45] "The concept of

[42, 43] Bhuta, supra note 39, p. 726.

[44] Ibid, p. 729.

[45] Benvenisti, E., The International Law of Occupation, [Electronic version]. Princeton and Oxford: Princeton University Press. p.5. Access: 19 December 2017, https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/Benvenisti.pdf

belligerent occupation was distinguished from the older 'right of conquest' which ipso facto ascribed full sovereignty over conquered territory and the total subjugation of its inhabitant-absolute dominion to the victor in a war."[46]

During this historical evolvement of the belligerent occupation, when we have come through twentieth century, various form of quasi-occupation actions were witnessed. But they were not clear-cut by-products of the actual fighting. As Benvenisti argues the occupations result of a threat to use force that prompted the threatened government to concede effective control over its territory to a foreign power were the German occupation of Bohemia and Moravia in March 1939 and the German occupation during World War II of Denmark. Also occupation could be established through an armistice agreement between the enemies. For example, the "Armistice Agreement" that established Allied control over the Rhineland in Germany in 1918. Also it could be the outcome of a peace agreement. For instance the Israeli occupation of the Gaza Strip did not change its status despite the 1979 Peace Treaty with Egypt. Additionally, states have become reluctant to explain what their status are when they are conducting actual fighting and using effective control and authority outside their own territory.[47]

In fact the related states' activities more or less evoking the elements of belligerent occupation but in the modern international state system it has sparked a controversy about a common definition of occupation, its elements, varieties, rights and obligations of an occupying force and the applicable law to each type of occupations.

Till the 2003 occupation of Iraq there were many occupations witnessed by both the international state system and the legal scholars. Some of them were also still under discussion. As Gregory H. Fox states that "An occupier has traditionally been precluded from substantial changes in the legal or political infrastructure of the state it controls."[48]

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[46] Cohen, J.L. (2007). The Role of International Law in Post-Conflict Constitution-Making: Toward a Jus Post Bellum for "Interim Occupations", *NY.L.Sch.L.Rev., (51)*, 496, 503. Access: 21 December 2017, http://www.nylslawreview.com/wp-content/uploads/sites/16/2013/11/51-3.Cohen_.pdf

[47] Benvenisti, supra note 45, pp. 3, 4

[48] Fox, G.H. (2012) Transformative occupation and the unilateralist impulse. *IRRC No.885*, 245, 261. Access: 22 October 2015, https://www.icrc.org/en/international-

In fact his explanation is the reflection of the well-known principle of the *'conservationist principle'* of the international law of occupation. Post-Cold War there were various cases named as liberal democratic transformation, post-conflict transformation, extra-territorial administrations. When it is asserted that the law of occupation is transformed as most of the scholars argued, *ipso facto* they intent to justify the jus ad bellum objectives of the occupying authorities whether their act is called as intervention, invasion or occupation. *Iraqi transformative occupation* by the two great power states mainly within the leadership of the US in the current international system showed how a public discourse of so-called liberating a weak-power state with the claim of bringing democracy may turn into a drastic goal of a great power state for empowering her hegemonic subsistence.

Finally; what went wrong in Iraq and then why an important debate has sparkled among the scholars? Has the international law of occupation really transformed in the modern era? What is a belligerent occupation or military occupation? Can there be transformative occupations? All these questions direct us to go deeper in order to cover the scope of the meaning of the conservationist principle, within the definition of traditional law of occupation. In order to obtain this principle's meaning, primarily it should be set forth in which evolutionary codification process the law of occupation developed? Who decides the relevant territory is occupied? Does the applicability of the law of occupation changes in accordance with the so called definitions related to the occupied territory such as belligerent occupation, military occupation, and multilateral occupation, occupation by United Nations or similar forces? Let us take a step and get closer to the problematical area of the definition of the conservationist principle.

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review/article/transformative-occupation-and-unilateralist-impulse, doi:10.1017/S1816383112000598

PART I.

THE CLASSICAL CONCEPT OF BELLIGERENT OCCUPATION

1.2 THE DEFINITION OF TRADITIONAL LAW OF OCCUPATION: THE CODIFICATION OF THE CONSERVATIONIST PRINCIPLE

1.2.1. The Codification Process till the 1907 Hague Regulations

Late nineteenth century and in the twentieth century there were respectable efforts in the codification process of the international law of occupation. These codification efforts turn into the understanding of partly again customary international humanitarian law at the beginning of the twenty-first century. This process is mainly composed of court decisions, military manuals[49], other non-binding documents[50] and studies of the eminent legal scholars. In order to understand the original framework of the traditional law of occupation, its codification process should be set forth in a concise manner.

Chronologically, within the military manuals, the most renowned one is the Lieber Code which was prepared by Francis Lieber and promulgated as General Orders No. 100 by President Lincoln on 24 April 1863. “The "Lieber Instructions" represent the first attempt to codify the laws of war. They were prepared during the American Civil War by Francis Lieber, then a professor of Columbia College in New York, revised by a board of officers and promulgated by President Lincoln. Although they were binding only on the forces of the United States, they correspond to a great extend to the laws and customs of war existing at that time. The "Lieber Instructions" strongly influenced the further codification of the laws of war and the adoption of similar regulations by other states. They formed the origin of the project of an international convention on the

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[49] Benvenisti, E., The International Law of Occupation, [Electronic version]. Princeton and Oxford: Princeton University Press. p. 7. Access: 19 December 2017, https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/Benvenisti.pdf.
U.S. War Manual (the Lieber Code dated 1863). (E.Benvenisti states that “Other military codes following the basic principles are the Bluntschli Code, prepared in 1866 for the German army, and the French manual for officers prepared in 1893, as well as the manuals of the British, Italian, and Russian armies.)

[50] The Brussels Declaration of 1874 Access: 19 December 2017, http://web.ics.purdue.edu/~wggray/Teaching/His300/Handouts/Brussels-1874.html and the Oxford Manual on the Laws of War on Land of 1880 https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/385ec082b509e76c41256739003e636d/6a5d425d29d9d6dbc125641e0032ec97?OpenDocument

laws of war presented to the Brussels Conference in 1874 and stimulated the adoption of the Hague Conventions on land warfare of 1899 and 1907."[51]

'The Lieber Code' composes of 157 articles. Meanwhile the most important ones in order to frame the law of occupation are as follows:

> **Article 1.** A place, district, or country occupied by an enemy stands, in consequence of the occupation, under the Martial Law of the invading or occupying army, whether any proclamation declaring Martial Law, or any public warning to the inhabitants, has been issued or not. Martial Law is the immediate and direct effect and consequence of occupation or conquest. The presence of a hostile army proclaims its Martial Law.
>
> **Art. 3.** Martial Law in a hostile country consists in the suspension, by the occupying military authority, of the criminal and civil law, and of the domestic administration and government in the occupied place or territory, and in the substitution of military rule and force for the same, as well as in the dictation of general laws, as far as military necessity requires this suspension, substitution, or dictation. The commander of the forces may proclaim that the administration of all civil and penal law shall continue either wholly or in part, as in times of peace, unless otherwise ordered by the military authority.
>
> **Art. 6.** All civil and penal law shall continue to take its usual course in the enemy's places and territories under Martial Law, unless interrupted or stopped by order of the occupying military power; but all the functions of the hostile government – legislative, executive, or administrative -whether of a general, provincial, or local character, cease under Martial Law, or continue only with the sanction, or, if deemed necessary, the participation of the occupier or invader.

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[51] Convention (II) with Respect to the Laws and Customs of War on Land (Hague, II) (29 Jul 1899). https://www.opcw.org/chemical-weapons-convention/related-international-agreements/chemical-warfare-and-chemical-weapons/hague-convention-of-1899/ (last visited on 22 January 2018).
Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. https://www.icrc.org/ihl/INTRO/110 (last visited on 22 January 2018).

As it is defined as one of the non-binding instruments of the international law of occupation, "On the initiative of Czar Alexander II of Russia the delegates of 15 European States met in Brussels on 27 July 1874 to examine the draft of an international agreement concerning the laws and customs of war submitted to them by the Russian Government. The Conference adopted the draft with minor alterations. However, since not all the governments were willing to accept it as a binding convention it was not ratified. The project nevertheless formed an important step in the movement for the codification of the laws of war. In the year in which it was adopted, the Institute of International Law, at its session in Geneva, appointed a committee to study the Brussels Declaration and to submit to the Institute its opinion and supplementary proposals on the subject. The efforts of the Institute led to the adoption of the Manual of the Laws and Customs of War at Oxford in 1880. Both *the Brussels Declaration* and *the Oxford Manual* formed the basis of the two Hague Conventions on land warfare and the Regulations annexed to them, adopted in 1899 and 1907. Many of the provisions of the two Hague Conventions can easily be traced back to the Brussels Declaration and the Oxford Manual."[52]

The Brussels Declaration of 1874 provides as follows:

> Art. 2. The authority of the legitimate Power being suspended and having in fact passed into the hands of the occupants, the latter shall take all the measures in his power to restore and ensure, as far as possible, *public order and safety.*
>
> Art. 3. With this object he shall maintain the laws which were in force in the country in time of peace, and shall not modify, suspend or replace them unless necessary.

The Oxford Manual on the Laws of War on land of 1880 provides:

> Art. 6. No invaded territory is regarded as conquered until the end of the war; until that time the occupant exercises, in such territory, only a 'de facto' power, essentially provisional in character.

In fact the aims of the people whom invoke these provisions are to stress that the occupation regime is provisional and occupant's effective temporary control of an enemy territory does not confer upon the sovereignty over the occupied territory to him.

[52] https://www.icrc.org/ihl/INTRO/135 (last visited on 13 May 2017)

When we come through 1899 and 1907 Hague Regulations[53] we come up with the milestone of the traditional law of occupation which triggers the application of the full body of law of occupation. Article 42 of the Hague Regulations states that, "territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."[54] Meanwhile, Article 43 of the Hague Regulations which is referred to as the mini constitution of the traditional law of occupation[55] states that:

> "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, *public order and safety*, while respecting, unless absolutely prevented, the laws in force in the country."

In fact the first English translation of Article 43 from French was this. One of the eminent international law scholar Eyal Benvenisti, cited from Schwenk[56], asserts that the first English translation of Article 43, which used the phrase "public order and safety" in lieu of "l'ordre et la *vie publics*," was incorrect. Schwenk also suggested the use of more comprehensive phrase used here, namely "public order and *civil life*." Major Breven C. Parsons also argues that "public order and safety" should be defined as "public order and civil life". This corresponds to an occupant's duty to the local

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[53] One of the purposes for which the convening of the First Hague Peace Conference in 1899 was "the revision of the declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, and not yet ratified" (Russian circular note of 30 December 1898). The Conference of 1899 succeeded in adopting a Convention on land warfare to which Regulations are annexed. The Convention and the Regulations were revised at the Second International Peace Conference in 1907. The two versions of the Convention and the Regulations differ only slightly from each other. The provisions of the two Conventions on land warfare, like most of the substantive provisions of the Hague Conventions of 1899 and 1907, are considered as embodying rules of customary international law. As such they are also binding on States which are not formally parties to them. In 1946 the Nüremberg International Military Tribunal stated with regard to the Hague Convention on land warfare of 1907: "The rules of land warfare expressed in the Convention undoubtedly represented an advance over existing International Law at the time of their adoption ... but by 1939 these rules ... were recognized by all civilized nations and were regarded as being declaratory of the laws and customs of war". The International Military Tribunal for the Far East expressed, in 1948, an identical view. The rules embodied in the Regulations were partly reaffirmed and developed by the two Protocols Additional to the Geneva Conventions of 1949 adopted in 1977. https://www.icrc.org/ihl/INTRO/195 (last visited on 13 May 2017).

[54] Hague Convention No.IV Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land art. 42, 36 Stat. 2277, 205 Consol. T.S. 277, (Oct. 18, 1907) [hereinafter Hague Regulations]

[55] "Article 43 is a sort of miniconstitution for the occupation administration; its general guidelines permeate any prescriptive measures or other acts taken by the occupant." Eyal Benvenisti, 'The International Law of Occupation", Princeton University Press, p.7.

[56] Schwenk, E.H. (1945).Legislative Power of the Military Occupant Under Article 43, Hague Regulations. Yale L.J., (54), 393. Access: 19 December 2014, HeinOnline.

inhabitants to allow return to normal daily life, including social and economic life.[57] Naturally there can be different ways of interpretations and commentaries about the relevant article. Nevertheless, it can be argued that the interpretation of the term 'safety' as 'civil life' is going to provide a sort of "broader maneuver area" for the occupying authority in the occupied territory for justifying her changing the indigenous laws in force prior to the occupation.

In essence, article 43 of the 1907 Hague regulations with the principle of providing effective military authority over the occupied territory (Art. 42. of the 1907 Hague Regulations: Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.) constitutes the core principle of 'conservationism' within the concept of traditional occupation law.

Additionally, Article 43 of the Hague Regulations gave the first signal of the distinction of the 'de facto' power of the occupant and the 'de jure' power of the ousted sovereign. While as Benvenisti cited from Von Glahn that "the Hague Regulations give no clear-cut answer to the problem of sovereignty into the hands of the occupant."[58]. On the contrary, Prof. Benvenisti argues that "It is, however quite clear that the framers of the Hague Regulations unanimously took the view that an occupant could not claim sovereign rights only because of its effective control over the occupied territory. Moreover, many authorities even went further, denying the occupant any *legal right* to control such territory. According to this latter view, Article 43 did not grant the occupant an entitlement to administer the territory; rather, it merely recognized *the fact* of its effective control, and set out to delimit it. As Benvenisti cites from Bothe, also asserts that "International law does not grant rights to the occupying powers, but limits the occupier's exercise of its *de facto* powers." But there are other commentators who

[57] Parsons, B.C. (2009). Moving the Law of Occupation into the Twenty-First Century. *Naval L.Rev., 57*, 8. Access: 03 February 2015, HeinOnline.

[58] Benvenisti, E., The International Law of Occupation, [Electronic version]. Princeton and Oxford: Princeton University Press. p.8. Access: 19 December 2017, https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/Benvenisti.pdf

do find international law as granting certain legal powers to the occupant.[59] Also in modern way of interpretations of article 43 of the 1907 Hague Regulations, Schwenk states that "It is interpreted as meaning that the exercise of sovereignty by the ousted power is suspended and passes *de facto* into the hands of the occupying power."[60]

For Benvenisti, "At issue is the extent to which the occupant must adhere to *the status quo ante bellum*. This question becomes more pressing as the occupation is protracted. According to him; the occupant's duty to respect the laws under Article 43 should be construed as including the duty to respect non-statutory prescriptions, and even the local administration's interpretation of the local statutes and other instruments. Any deviation from such an interpretation should not be justified as a "fresh reading" of the interpreted instrument, but rather by the necessity to deviate from the former operative interpretation, necessity that must be justified under Article 43. "[61]

[59] Benvenisti, E., The International Law of Occupation, [Electronic version]. Princeton and Oxford: Princeton University Press. p.6. Access: 19 December 2017, https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/Benvenisti.pdf
[60] Schwenk, E.H. (1945).Legislative Power of the Military Occupant Under Article 43, Hague Regulations. Yale L.J., (54), 393. Access: 19 December 2014, HeinOnline.
[61] Benvenisti, supra note 59, p.11.

1.2.2. The 1949 Geneva Conventions and the 1977 Additional Protocols to the Geneva Conventions of 1949

The events of World War II showed the disastrous consequences of the absence of a convention for the protection of civilians in wartime. Grant T.Harris states that "the Fourth Geneva Convention of 1949 was drafted as a result of the World War II experience to better extend the protections of the laws of war to civilians and to further address the rights and duties of occupying powers."[62] It contains a rather short part concerning the general protection of populations against certain consequences of war (Part II), leaving aside the problem of the limitation of the use of weapons. The great bulk of the Convention (Part III - Articles 27-141) puts forth the regulations governing the status and treatment of protected persons; these provisions distinguish between the situation of foreigners on the territory of one of the parties to the conflict and that of civilians in occupied territory. The Convention does not invalidate the provisions of the Hague Regulations of 1907 on the same subjects but is supplementary to them (see Article 154 of the Convention).[63] Article 2 common to the four Geneva Conventions states that:

> "In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.
>
> The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.
>
> Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in

[62] Harris, G.T. (2006). The Era of Multilateral Occupation. *Berkeley J.Intl L., 24*; 1,9. Access: 14 March 2014, http://scholarship.law.berkeley.edu/bjil/vol24/iss1/1

[63] https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AE2D398352C5B028C12563CD002D6B5C&action=openDocument accessed on 13 May 2017.

> their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof."

Also GC IV, Article 6 states that:

> "The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2.
>
> In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations.
>
> In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.

Protected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by the present Convention."

In the codification timeline of the Hague Regulations the legal ground were the sovereignty lies in the state and used on behalf of state's political elites and transferred as soon as an accord was reached. As Professor Benvenisti construed that there were two significant contributions of the 1949 Geneva Conventions and Additional Protocols supplementing them: "first, it delineates a bill of rights for the occupied population…second, it shifts the emphasis from political elites to peoples."[64] Additionally, the Fourth Geneva Convention with the adoption of the Additional Protocol I, Article 1, para.4 attempted to broaden the application of the law of occupation. Grant T. Harris states that "the Fourth Geneva Convention attempts to reduce ambiguity of the law of occupation by explicitly clarifying that the Convention applies to any case of occupation, thus incorporating any kind of non-treaty based occupation."[65] Adam Roberts underpinned this argument stating that "after the entry into force of the 1949 Geneva Conventions, it became

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[64] Benvenisti, E. (1993).The International law of Occupation. Princeton: Princeton University Press. p.105.

[65] Harris, G.T. (2006). The Era of Multilateral Occupation. *Berkeley J.Intl L., 24*; 6. Access: 14 March 2014, http://scholarship.law.berkeley.edu/bjil/vol24/iss1/1

doubtful whether a claim ever again be made that an occupation fell outside the framework of the laws of war, or would not be subject to certain conservationist provisions."[66]

Geneva Convention IV, Art. 64 clearly elaborate that:

> "The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.
>
> The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the Present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them."

Mainly Hague Regulations Articles 42 and 43 and with the supporting article of the Fourth Geneva Convention Article 64 constitutes the legal basis of the traditional law of occupation namely the "conservationist principle". As Gregory FOX stunningly construes:

> "The occupying power is competent to legislate both to maintain security while it exercises governing authority and to fulfill the obligations under occupation law that secure basic rights for the local population. But because the occupier possesses no local legitimacy or necessary stake in the welfare of the territory after it departs, it is not competent to enact reforms that

[66] Adam ROBERTS, 'Transformative Military Occupation: Applying the Laws of War and Human Rights', 100 A.M.J.INT'L.L.p.603 (2006)

> fundamentally alter governing structures in the territory and create long-term consequences for the local population."[67]

In essence, "Article 43 of the Hague Regulations imposes a trusteeship on the occupier that requires "preserving the status quo" and forbids transforming the occupied territory, but does permit the occupier to establish a "system of administration" to preserve the status quo and to protect the local population."[68] As Prof. Benvenisti strikingly argues that with the changing requirements of the states in the twentieth century divert them to various types of methods of occupation. For him "Article 43 proved an extremely convenient tool for the occupant: if it wished, it could intervene in practically all aspects of life; if it as in its interest to refrain from action, it could invoke the "limits" imposed on its powers".[69]

Also with the adoption of the Protocol Additional to the Geneva Conventions of 12 August 1949, And Relating To The Protections of Victims of International Armed Conflicts (Protocol I), of 8 June 1977 reaffirms and develops the provisions of protecting the victims of armed conflicts and supplements measures intended to reinforce their application. [70] Additionally, besides containing the basic provisions of the foundation of respect for the human person in cases of armed conflict not of an international character; Additional Protocol II, recalls the international instruments relating to human rights offering basic protection, emphasizes the need to ensure a better protection for the victims of those armed conflicts in its preamble.[71]

In sum; with the changing character of the state and reflection of the human rights provisions to the traditional law of occupation, the codification of the related norms and

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[67] FOX, G. (2005). The Occupation of Iraq. *Geo.J.Int'l L.,36*, 240. Access: 08 Sep 2015, HeinOnline.

[68] Bejesky, Robert (2015) CPA Dictates on Iraq: Not an Update to the Customary International Law of Occupation but the Nucleus of Blowback With the Emergence of ISIS. *Syracuse Journal of International Law and Commerce: 42*, 280. Access: 14 December 2015, HeinOnline.

[69] Benvenisti, E. (1993).The International law of Occupation. Princeton: Princeton University Press. p.11.

[70] the Protocol Additional to the Geneva Conventions of 12 August 1949, And Relating To The Protections of Victims of International Armed Conflicts (Protocol I), of 8 June 1977 [hereinafter Additional Protocol I]

[71] The preambe of the Protocol Additional to the Geneva Conventions of 12 August 1949, And Relating To The Protections of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977 [hereinafter Additional Protocol II]

its customary evolution proceeded in a very comprehensive manner by the adoption of the 1949 Geneva Conventions and Additional Protocols supplementing the related Geneva Conventions. Right after the Cold War, several cases emerged suiting to the notion of traditional law of occupation but the purposes of the occupants were conflicting with the traditional law of occupation's conservationist principle using *de facto powers* of the temporarily ousted sovereign and to respect the indigenous laws in force in the occupied territory unless absolutely prevented from doing so as in Article 43 of the Hague Regulations. In the law of occupation before 1945 generic rule of the prohibition of the use of force; the end goal of the occupier was the occupation or annexation of the occupied territory which is reached at the end of a war. On the contrary, in so called modern day occupations, the end state of the occupation may be humanitarian intervention, nation-building or reconstruction of the occupied territory. The tendency of the eminent scholars to vindicate the attempts of several occupations which are conducted based on the motives of the related occupants' transformative impulses was commonly witnessed.

PART II: WHAT HAPPENED IN IRAQ?

Between the beginning of 19th century and late first half of the 20th century the international law of occupation namely the occupatio bellica had evolved contemporaneously with the changing character of the state, its structural and administrative positioning within the international law. As it is particularly analyzed in the first part of this thesis, the initial steps of this evolution was the acknowledgement of the conservationist principle in the traditional law of occupation with the reflection and extension of the republicanism principle amongst the civilized European states. That was a stunning occasion but the field of application of this new concept was framed with being an acceptable member of those 'civilized' sovereign European states.

Due to the political, economic and industrial developments of that era's empires and nations in the 20th century the humanity witnessed the sufferings of two devastating World Wars. Allied occupation of Germany during the World War II was construed as debellatio which was interpreted as the transfer of sovereignty to the victors namely occupying authorities till the adoption of the 1949 Geneva Conventions. With the adoption of the UN Charter in 1945, the framework and the applicability of the international law of occupation was discussed on the basis of the sovereignty of the related state. Possible consequences of occupation of a state would be exclusively the substitution of the de jure sovereignty of the occupied territory to the de facto sovereign with regard to articles 42 and 43 of the Hague Regulations.

There were other developments also more or less simultaneously. On October 24, in 1945 with the adoption of the United Nations Charter, in the end of a long debate, in the preamble of the United Nations Charter the states acknowledged that:
"We the peoples of the United Nations determined;

- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom."

Although these words were written down in a simplistic manner in the 1945 UN Charter, it was based on the 'equality of the each of the sovereign states' which were undertaken this legal responsibility with their signing and ratifying of this Charter with their consent. In reality, these statements were the expression of the 'acquisitions' of the humanity after witnessing two devastating World Wars. The 1945 UN Charter was and still is a historical document. The document was formed and materialized by the pioneering states which were the victors of the Second World War eventually. This reality had its reflection as a solid provision of Article 23 of the UN Charter which mentions the composition of the UN Security Council as follows:

> Article 23: "Security Council shall consist of fifteen Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council."

The right of each of the "Big Five" namely each of "The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America" to exercise a "veto" on action by the powerful Security Council provoked long and heated debate during the 1945 San Francisco Conference. The smaller powers feared that when one of the "Big Five" threatened the peace, the Security Council would be powerless to act, while in the event of a clash between two powers not permanent members of the Security Council, the "Big Five" could act arbitrarily. They combat therefore to have the power of the "veto" of the "Big Five" should be reduced. But the great powers unanimously insisted on this provision as vital. By this way they were claiming that when there is a threat to the international peace and security they would be the 'guarantor states' and defend the

rights of the small powers. Eventually the smaller powers conceded the point in the interest of setting up the world organization as the United Nations.

In addressing the final session of the 1945 San Francisco Conference, President Truman said that "The Charter of the United Nations which you have just signed is a solid structure upon which we can build a better world. History will honor you for it. Between the victory in Europe and the final victory, in this most destructive of all wars, you have won a victory against war itself. ….With this Charter the world can begin to look forward to the time when all worthy human beings may be permitted to live decently as free people."[72]

Despite these invaluable developments, the international system of states lived the Cold War period until late of 1991. Within this period, the international state system had evolved to bipolar system. States were affiliated with the two main blocs namely NATO and the Warsaw Pact. Mainly the two great powers the USA and the USSR were rapidly arming nuclear weapons. There were not clear-cut fighting between those great powers but small powered states were despairingly taking their parts closer to one of those great powers due to the possible, anticipated conflict. In that period Iraq were taking part in closely to USSR. Right after the dissolution of the USSR in 1991, the international system of states has turned to a unipolar system with USA and this emerged the danger of exposure of menaces of the small power states. There was not a balance of power such as in the bipolar international system. Due to the prevalence of the bipolar system between 1945-1990 periods and the USSR presence versus USA; UNSC could not be operated from the USA's aspect at least.

Within this context, it shows us that when we talk about the international law of occupation and its evolution we can not exclude the international organizations such as UN which was emerged in the duration of the evolution of the international system of states and the international law. Because with the Article 2, para.4 of the UN Charter it was adopted that "All Members shall refrain in their international relations from the

[72] http://www.un.org/en/sections/history-united-nations-charter/1945-san-francisco-conference/index.html (lastly accessed on 22 January 2018).

threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

Meanwhile, in order to discuss comprehensively the case of 2003 Iraqi occupation and cover its being of unique and striking case of occupation, it should be put forward how the unilateralist occupation of Iraq had been legitimized and multilateralized with relevant UN Security Council Resolutions and practices. Despite existing and prevailing customary and codified international law of occupation norms, it was acknowledged that a great power state would pursue her hegemonic desires by manipulating the international mechanisms in order to provide legitimacy to her unlawful waging war and inadequacy of application of the relevant provisions of the international law of occupation as an "officially designated" occupying authority.

PART II.

WHAT HAPPENED IN IRAQ?

2.1 LEGITIMIZATION AND MULTILATERALIZATION OF THE UNILATERALIST OCCUPATION OF IRAQ WITH RELEVANT UN SECURITY COUNCIL RESOLUTIONS AND PRACTICES

After the Cold War there was no balance of power and the great power states were plunge into a quest for new power sources. With the Iraqi occupation of Kuwait on 2 August 1990 the great powers mainly the US and the UK were alarmed. Because Iraq was full of crude oil, petroleum and natural gas reserves. In fact as Denis Halliday argues that "Since 1945, manipulated and corrupted by the five permanent members, the UN Security Council has often been brutally employed to serve the narrow interests of the powerful. This is as intended by the 'victors' of World War II if one reads between the lines in the Council's terms of reference as set out in the UN Charter."[73] In fact all the states were sovereign and equal according to the 1945 Charter of the United Nations and a member state's threat or use of force to another member state is prohibited manifestly in 1945 UN Charter Article 2 paragraph 4. For powerful states, a sovereign state, here the case of Iraq, holding one of the inestimable crude oil, petroleum and natural gas reserves could not be casted adrift in the hands of Saddam Hussein. The primitive version of the republicanism principle had risen from the grave. Despite being in the 21st century international state system, sovereignty was valid among the European nations–now with the continent of the America's involvement- namely the Western nations. As it is conspicuously articulated by Yutaka Arai-Takahashi, "Ironically, non-Western nations were considered 'sovereigns' only for the purpose of transferring their sovereignty to the corporation.".[74]

In fact, international state system was more or less accustomed to witness the manipulation or stifling of the United Nations Security Council decisions and

[73] Halliday, D. (2006). The UN and its Conduct during the Invasion and Occupation of Iraq. Empire's Law, The American Imperial Project and the War to Remake the World. (2006). Edited by Amy Bartholomew, London: Pluto Press.

[74] Arai-Takahashi Y.(2012), Preoccupied with occupation: critical examinations of the historical development of the law of occupation. IRRC No.885, 78. Access: 19 December 2017, https://www.icrc.org/en/international-review/article/preoccupied-occupation-critical-examinations-historical-development-law, doi:10.1017/S1816383112000495.

resolutions. What makes the interesting of the 2003 Iraqi Occupation by the occupants is that with Letter dated 8 May 2003 from the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the President of the Security Council[75] and the endorsement of the Letter by the UN Security Council Resolution 1483 dated 22 May 2003.[76] The occupant US was releasing to the public that she had established Coalitional Provisional Authority as a temporary civilian administering body in Iraq and the Office of Reconstruction and the Humanitarian Assistance. And she had announced that her aim is to bring democracy, rule of law and the human rights to Iraqi people and further rebuilding of the Iraqi security forces, reconstruction of the economy and infrastructure. Stunningly, after two weeks of the addressing of the Letter, on 22 May 2003 UNSCR was articulating the desire of the US with her corporate UK as defining them 'Occupying Authorities' in Iraq. By this resolution both of the occupants and the Coalition forces were undertaking the legal rights and duties of an occupant under the relevant international law and especially international humanitarian law. And as it would be clearly determined in the connective orders, regulations and memorandums of the Coalition Provisional Authority and as it is truthfully determined by Gregory H. Fox; "Iraq was the only case in the era of Geneva Law in which an occupier has legislated for an explicitly transformative purpose."[77]

Nevertheless, during the issuance of various resolutions by manipulating the will of the UNSC, the defined occupants' acts were looking good on paper. As it is argued by Hans Von Sponeck; "Since the illegal invasion of Iraq, there has not been a single debate in the Security Council about the fundamental disregard by the coalition forces of existing conventions created to ensure that the occupation armies act in accordance with the Hague and Geneva Conventions to which they are parties.". [78]

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[75] http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Iraq%20S2003538.pdf (Lastly accessed on 22 January 2018).
[76] http://unscr.com/en/resolutions/1483 (Lastly accessed on 22 January 2018).
[77] Fox, G.H. (2012) Transformative occupation and the unilateralist impulse. *IRRC No.885*, 265. Access: 22 October 2015, https://www.icrc.org/en/international-review/article/transformative-occupation-and-unilateralist-impulse, doi:10.1017/S1816383112000598
[78] von SPONECK, H. (2006). The Conduct of the UN, Empire's Law-The American Imperial Project and the 'War to Remake the World' edited by Amy Bartholomew, London: Pluto Press (2006). https://www.globalpolicy.org/component/content/article/168/37746.html (accessed on 19 Aug 2017).

2.1.1 The surveying of US for the legitimization of occupation of Iraq in March 2003 with the Operation Iraqi Freedom

In fact, after the 1945-1990 historical periods, on 2nd of August 1990, The United Nations Security Council was declaring that "it was alarmed by the invasion of Kuwait on the same day by the military forces of Iraq. It manifestly demanded that Iraq must withdraw immediately and unconditionally all its forces to the positions in which they are located on 1 August 1990."[79] Immediately afterwards, with the adoption of the UNSCR 661 on 6th of August in 1990, The UN was using the authority of the article 51 of the UN Charter and Iraq was encountering with the economic sanctions except for the supplies strictly for medical, humanitarian purposes and foodstuffs. The time had passed and with the UNSCR 678 dated 29 November 1990, the UN was again calling upon Iraq to obey the provisions of the UNSCR 660 dated 2 August 1990 due to her lack of obedience to the relevant consecutive UNSC resolutions issued earlier. The UN was declaring that it was acting under the authority which has its grounds under Chapter VII of the UN Charter in all the relevant resolutions.

On January 16, 1991, Operation Desert Storm began. The conflict, as known as *the Gulf War*, was waged by a U.N.-authorized coalition force from 34 nations led by the United States, in response to Iraq's invasion of Kuwait. On February 28, 1991, President Bush declared suspension of offensive combat and laid out conditions for permanent cease-fire. [80]

Despite all callings, the UN adopted the SC Resolution 687 dated 3 April 1991. Acting under chapter VII of the Charter; as measures, Iraq should unconditionally accept the destruction, removal and rendering harmless all chemical and biological weapons and

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[79] S.C. Res. 660, U.N. SCOR, 2932nd mtg., U.N. Doc.S/RES/660 (Aug 2, 1990). https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/10/IMG/NR057510.pdf?OpenElement (lastly accessed on 22 January 2018)

[80]https://www.army.mil/article/161166/operation_desert_storm_remembered_by_those_who_served (lastly accessed on 24 January 2018).

all ballistic missiles with a range of 150 kilometers.[81] Most importantly, UNSC decided the formation of a Special Commission which shall carry out immediate on-site inspection of Iraq's biological, chemical and missile capabilities, based on Iraq's declarations and the designation of any additional locations by the Special Commission itself. Also Iraq should have reaffirmed unconditionally its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968. The creation of a fund to pay compensation for claims and the establishment of a Commission that would administer the fund in order to compensate for the damages and losses occurred as a result of Iraq's unlawful invasion and occupation of Kuwait were also decided. With the provisions which were set forth by the UNSCR 687 dated 3 April 1991, concomitantly a formal ceasefire between Iraq and Kuwait was declared. But as soon as the related resolution provisions were thoroughly examined, it was a clear 'containment policy' with the economic embargo applied to Iraq by the great powers. By these sanctions, in order to provide the obedience of Iraqi government to the provisions of the relevant SC resolutions, in essence; the people of Iraq were facing off poverty, unemployment, unhealthy living conditions in their own country due to the economic isolation and making use of the Iraqis own petroleum and petroleum products for the fund which was established for the compensation to Kuwait and third states.

UNSCR 986 dated 14th April 1995 had strikingly more drastic provisions. "The SC requested the Secretary-General to establish an *escrow account* for the purposes of the resolution 986, to appoint independent and certified public accountants to audit the money which had been obtained with the permission of the export of petroleum and petroleum products originating in Iraq, including financial and other essential transactions directly relating thereto, sufficient to produce a sum not exceeding a total of one billion United States dollars every 90 days for the purposes set out in this resolution, and to keep the Government of Iraq fully informed. It also decided that the funds in the escrow account shall be used to meet the humanitarian needs of the Iraqi population and for the following other purposes, and requests the Secretary-General to use the funds deposited in the escrow account:

[81] S.C. Res. 687, U.N. SCOR, 2981st mtg., U.N. Doc. S/RES/687 (Apr 3, 1991) http://www.un.org/Depts/unmovic/documents/687.pdf .

(a) To finance the export to Iraq, in accordance with the procedures of the Committee established by resolution 661 (1990), of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs, as referred to in paragraph 20 of resolution 687 (1991) provided that:

(i) Each export of goods is at the request of the Government of Iraq;

(ii) Iraq effectively guarantees their equitable distribution, on the basis of a plan submitted to and approved by the Secretary-General, including a description of the goods to be purchased;

(iii) The Secretary-General receives authenticated confirmation that the exported goods concerned have arrived in Iraq;

(b) To complement, in view of the exceptional circumstances prevailing in the three Governorates mentioned below, the distribution by the Government of Iraq of goods imported under this resolution, in order to ensure an equitable distribution of humanitarian relief to all segments of the Iraqi population throughout the country, by providing between 130 million and 150 million United States dollars every 90 days to escrow account; the United Nations Inter-Agency Humanitarian Programme namely the so-called "Oil for Food Programme" would operate within the sovereign territory of Iraq in the three northern Governorates of Dihouk, Arbil and Suleimaniyeh, except that if less than one billion United States dollars' worth of petroleum or petroleum products are sold during any 90 day period, the Secretary-General may provide a proportionately smaller amount for this purpose."[82] In reality with consecutively issued and filled with harsh sanctioned resolutions, Iraq would get the humanitarian relief and the necessary foodstuffs in return for exporting its petroleum or petroleum products no less than one billion United States dollars' worth. Iraq was fully inside of economic press.

5Interestingly the mentioned escrow account would enjoy the privileges and immunities of the United Nations. In spite of all these sanctions, to cap it all; Iraq was still bound by the payment of her foreign debt in accordance with the appropriate international mechanisms. The UNSCR 986 was concluding that "UNSC affirms that nothing in this

[82] S.C. Res. 986, para.6, nu.7,8 U.N. SCOR, 3519th mtg., U.N. Doc. S/RES/986 (Apr 14, 1995) https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/109/88/PDF/N9510988.pdf?OpenElement

resolution should be construed as infringing the sovereignty or territorial integrity of Iraq". In essence, these statements were the reflections of the relevant hegemonic states' greediness and in a sense equivocation in a legally binding UN Security Council resolution. In 1990, the international state system that was composed of the equal, sovereign states was inch by inch losing its acquisitions obtained by the acknowledgement of the UN Charter dated 1945. Those acquisitions were in fact the reflections of the universalization of 'the republicanism principle' and the related 'conservationist principle' of the international law of military occupation.

With UNSCR 1409 dated 14 May 2002 in paragraph 1; Security Council reminds of its previous relevant resolutions, including resolutions 986 (1995) of 14 April 1995, 1284 (1999) of 17 December 1999, 1352 (2001) of 1 June 2001, 1360 (2001) of 3 July 2001, and 1382 (2001) of 29 November 2001, as they relate to the improvement of the humanitarian programme for Iraq. It decided to adopt the revised Goods Review List (S/2002/515) and the revised attached procedures for its application for implementation on 30 May 2002 as a basis for the humanitarian programme in Iraq as referred to in resolution 986 (1995) and other relevant resolutions.[83] Previously the export of all commodities originating from Iraq and the import and supply of any commodities to Iraq except for medical, humanitarian needs and the necessary foodstuff were prohibited according to paragraph seven of resolution 661 dated 6 August 1990. In addition to the items abovementioned, with regard to the annex 1 of the UNSCR 1382 dated 29 November 2001; command, control, communication and simulation items; sensors, electronic warfare, and night vision; aircraft and related items; specialized radar equipment; non-civil certified aircraft; non-x-ray explosive detection equipment; naval-related items; air independent propulsion (AIP) engines and fuel cells specially designed for underwater vehicles, and specially designed components; marine acoustic equipment; explosives; missile-related items; conventional weapons manufacturing; biological weapons equipment were proposed as additional items that should be included to the Goods Review List. The first United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) teams arrived in Baghdad 17 days later than

[83] S.C. Res. 1409, para.6, nu.2, U.N. SCOR, 4531st mtg., U.N. Doc. S/RES/1409 (May 1.2002) http://www.un.org/Depts/unmovic/documents/1409.pdf

the adoption of the UNSCR 1441 dated 8 November 2002. With Resolution 1454 dated 30 December 2002, the SC was requesting from the Committee established due to the resolution 661 dated 1990, additional items to be reviewed or deleted from the Goods Review List. Humanitarian needs would be supplied due to their urgency. [84]

In the meantime, the first 25.000 U.S. troops started deploying to Persian Gulf Region as of **1st January 2003**. On January 19, 2003; Hans Blix, chief weapons inspector for the UN, carries a message to Saddam Hussein warning him of the "seriousness of the situation". "They are supporting you because they know that evil-doers target Iraq to silence any dissenting voice to their evil and destructive policies," Saddam told senior military officers and his son Qusay, commander of Iraq's elite Republican Guards, Reuters reported. France and Russia pledged to veto any resolution authorizing force.
On March 16, 2003, Blair and Spanish Prime Minister José María Aznar convened for a summit in the Azores. They announce the next day will be the Security Council's last chance to act. The Council did nothing. On 17th March 2003, President Bush issued an ultimatum to Saddam, giving him 48 hours to leave the country or face war. On 19th March 2003, cruise missile and bomb salvos hit Baghdad an hour after the deadline passed.[85] *Operation Iraqi Freedom* had begun with the President Bush's address to the nation. [86]

In the mentioned speech, President Bush called out his nation with a heroic speech that "To all the men and women of the United States Armed Forces now in the Middle East, the peace of a troubled world and the hopes of an oppressed people now depend on you. That trust is well placed." President Bush was publicly claiming that "We come to Iraq with respect for its citizens, for their great civilization and for the religious faiths they practice. We have no ambition in Iraq, except to remove a threat and restore control of that country to its own people."[87] With the lead of the U.S. and the related states, 'good

[84] S.C. Res. 1454, para.6, nu.1 and 4, U.N. SCOR, 4683rd mtg., U.N. Doc. S/RES/1454 (Dec 30, 2002) http://unscr.com/en/resolutions/1454
[85] http://www.warchronicle.com/iraq/news/timeline_two_wars.htm accessed on 29 January 2017.
[86] http://www.warchronicle.com/iraq/news/President%20Bush%2019%20March%202003.htm accessed on 29 January 2017.
[87] Ibid.

countries with good faith' were invading and occupying a country Iraq which is potentially bad. This statement was concurrently the reflection of the U.S. policy evolved right after the September 11, 2001 that had become concrete in *the National Security Strategy (NSS) of the United States of America* dated September 2002 with a key concept named "***pre-emptive and preventive actions***" namely pre-emptive self-defense. "The NSS notes that terrorism and weapons of mass destruction in the hands of rogue states have made preemption more attractive as a policy option, but it does not lay out specific criteria or guidelines for determining when the U.S. should carry out preemptive attacks. In addition, the NSS seeks to build more integrated intelligence capabilities, to coordinate with allies to form a common assessment of the most dangerous threats, and to transform our military forces to ensure our ability to conduct rapid and precise operations to achieve decisive results. It offers few concrete recommendations to achieve these objectives."[88]

The doctrine of preemptive self-defense drew attention of almost all of the states and the relevant academicians as soon as it had been articulated. "The doctrine of preemption as outlined in the NSS does reflect and respond to important changes in the balance of international threats and opportunities. Yet declaring, interpreting and adhering to this doctrine may compromise U.S. credibility and influence, and may require very expensive investments to build U.S. capacity to act unilaterally. Although the doctrine clearly lays out the reasons why preemption may be a desirable option, it offers little consideration of how preemption could negatively affect international law and institutions, the reputation of the U.S., and its force structure. Although rogue states, WMD, and terrorists do threaten the U.S., the nature and the immediacy of the threats they pose, and the best options for addressing those threats, should remain open to debate."[89]

Namely, right after the terrorist attack of the September 11, 2001; the Bush Administration's doctrine of preemptive self-defense stunningly sounded well for

[88] The Bush Administration's Doctrine of Preemption (and Prevention): When, How, Where? (Feb 2014) Council on Foreign Relations. http://www.cfr.org/world/bush-administrations-doctrine-preemption-prevention-/p6799 retrieved January 2017.

[89] Ibid.

combatting rogue states which were harboring terrorists whom had the capacity of utilizing weapons of mass destruction. In reality, international state system was not facing off an armed attack defined as in the UN Charter article 51[90]. Principally, a member state of the UN Charter was not recoursing an armed attack to another member state of the UN Charter which is responsive in the context of the classical understanding of individual or collective self-defense.

In a nutshell, when we go through all the considerations, it can be argued that all the before-mentioned UNSC resolutions in the international law arena and the striking deviation occurred with the preemptive and preventive self-defense doctrine in the US foreign policy which had become concrete and been reflected in the National Security Strategy of the US were in a sense, preparation and 'surveying' of the invasion and the consecutively occupation of Iraq by the hegemonic states with the leadership of the US as a superpower in the international state system. Professor Sean D. Murphy clearly argues that "To the extent that the intervention in Iraq in 2003 is regarded as an act of preemptive self-defense, the aftermath of that intervention may presage an era where states resist resorting to large-scale preemptive self-defense. The intervention in Iraq highlighted considerable policy difficulties with the resort to preemptive self-defense: an inability to attract allies; the dangers of faulty intelligence regarding a foreign state's weapons programs and relations with terrorist groups; the political, economic and human costs in pursuing wars of choice; and the resistance of a local populace or radicalized factions to what is viewed as an unwarranted foreign invasion and occupation."[91]

In sum; right after the 1990s, the international order of the states lost its acquisitions gained with the UN Charter dated 1945. There were many attempts of armed conflicts

[90] Article 51: Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security." http://www.un.org/en/sections/un-charter/chapter-vii/ retrieved on 21 May 2017.

[91] Sean D. Murphy, The Doctrine of Preemptive Self-Defense, 50 Vill. L. Rev. 699 (2005); http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1899&context=faculty_publications Retrieved on 21 May 2017.

triggered by the member states of the UN to the other members between 1945-1990 periods. The international law which was provided with the UN Charter system was on the rocks. There was not a constant and assumed legally binding practice of the UN about an armed attack whether treaty or customary norms formed. In fact, the infrastructure of the occupation of Iraq had been built by abovementioned resolutions of the UN and with the containment policy applied to Iraq by the hegemonic great power states. Iraq was being prepared for an unconditioned occupation. In reality, the changed foreign policy of US by the Bush doctrine of the preemptive self defense was the leverage of the invasion of one of the so-called rogue states Iraq which had been claimed having potential weapons of mass destruction and laboring terrorists in her territory. As it is reflected in the NSS of US in 2002, the US was assuming herself as a superpower and casting herself a role of reordering the international state system with the mechanisms of intervention, invasion, occupation and post conflict nation-building in order to compel the so called rogue states realigning with the international peace and order. Iraqi occupation proved that the understanding of equal sovereignty of states was violated not only by the superpower state US but also with the acts and negligence of such a well-accepted international organization as the United Nations.

2.1.2 Multilateralization of the unilateralist occupation of Iraq by US with relevant UN Security Council Resolutions and practices

As it is well established with the acts of the US and trying to obtain the consent of the rest of the states publicly by the abovementioned UN resolutions, it could be claimed that the occupation of Iraq in 2003 was not a last minute deal.

UNSCR 1472 dated 28th March 2003 was the first UNSC resolution issued right after the invasion of Iraq. In para.10, nu.1 of the UNSCR 1472, all parties concerned were requested to strictly abide by their obligations under international law, in particular the Geneva Conventions and the Hague Regulations, including those relating to the essential civilian needs of the people of Iraq, both inside and outside Iraq. When the related resolution thoroughly analyzed even itself was conflicting with the spirit of Geneva Conventions and the Hague Regulations. In para. 10, nu.7 of the UNSCR 1472, it was stressed that all applications outside the Oil-for-Food Programme submitted by the United Nations agencies, programmes and funds, other international organizations and non-governmental organizations (NGOs) for distribution or use in Iraq of emergency humanitarian supplies and equipment, other than medicines, health supplies and foodstuffs, shall be reviewed by the Committee established pursuant to resolution 661 (1990), under a 24-hour no-objection procedure. In fact, the occupying power was also manipulating the UN agencies in order to reach her goals in the occupied territory.

Letter dated 8 May 2003 from the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations[92] addressed to the President of the Security Council was the leading indicator of the US intent in order to multilateralize her unilateralist occupation of Iraq. The letter was historically striking. Because it was overtly knocking the bottom out of UN Charter international state system which was inaugurated in 1945 based on equality of the states and their sovereignties. The United States of America, the United Kingdom of Great Britain and Northern Ireland and Coalition partners' purpose was ostensibly to ensure

[92] http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Iraq%20S2003538.pdf (retrieved on 03 June 2017).

the complete disarmament of Iraq of weapons of mass destruction and means of delivery in accordance with United Nations Security Council resolutions. With this letter they have created *the Coalition Provisional Authority*, which includes *the Office of Reconstruction and Humanitarian Assistance*, to exercise powers of government temporarily, and, as necessary, especially to provide security, to allow the delivery of humanitarian aid, and to eliminate weapons of mass destruction. Essentially, before international public eyes', the superpower US was in an attempt to justify what she had done by promising democracy, rule of law, fundamental freedoms and equal protection and justice under law to the people of Iraq without regard to ethnicity, religion or gender. That was the good part of the occupation of Iraq led by US and the Coalition partners. This letter was not so blameless, in fact. There were clear signs which were articulated in the letter as forming a representative government, rebuilding Iraqi security forces, economic reconstruction and repairing of Iraq's infrastructure and natural resources showing the intent of the US and the Coalition forces was extremely more than the traditional international law of occupation components. As Prof. Özdemir argues that in the example of Iraq, it was seen that the principles which prevailed along the 19th century as the occupying authority's respect of the rights of the private property of the inhabitants of the occupied territory; not intervening in the private economic relations based on contracts and the occupant's not executing as a constituent power were transformed, too.[93]

UNSCR 1483 dated 22 May 2003 was another striking document in international law historically. In its paragraph 14 it was stated that "Noting the letter of 8 May 2003 from the Permanent Representatives of the United States of America and the United Kingdom of Great Britain and Northern Ireland to the President of the Security Council (S/2003/538) and recognizing the specific authorities, responsibilities, and obligations under applicable international law of these states as occupying powers under unified command (the "Authority")".[94] This resolution also includes the assignment of a Special Representative to Iraq by SC, the establishment of a *Development Fund for Iraq* to be

[93] Özdemir, A.M. (2011). Güç Buyruk, Düzen. Ankara; İmge Kitabevi Yayınları.s. 177-179, 182.

[94] .SC. Res. 1483, para.14, U.N. SCOR, 4761st mtg., U.N. Doc. S/RES/1483 (May 22, 2003) https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/368/53/PDF/N0336853.pdf?OpenElement

held by the Central Bank of Iraq and to be audited by independent public accountants approved by the International Advisory and Monitoring Board of the Development Fund for Iraq; the sales of petroleum, petroleum products, and natural gas from Iraq following the date of the adoption of this resolution in consistent with prevailing international market best practices and all proceeds from such sales shall be deposited into the Development Fund for Iraq until such time as an internationally recognized, representative government of Iraq is properly constituted.[95] Additionally, UNSCR 1483, para.19, n.22 mentions that "…, until December 31, 2007, unless the Council decides otherwise, petroleum, petroleum products, and natural gas originating in Iraq shall be immune…and that proceeds and obligations arising from sales thereof, as well as the Development Fund for Iraq, shall enjoy privileges and immunities equivalent to those enjoyed by the United Nations."

Following important UNSCR was resolution 1500 dated 14 August 2003 adopted. With this resolution; firstly, Governing Council of Iraq was established on 13 July 2003; secondly, the UN Assistance Mission for Iraq (UNAMI) was established for an initial period of twelve months mandate under UNSCR 1483.[96] In the beginning its mandate was based on Chapter VII of the Charter of the United Nations. History would show us that through its resolution 2299, adopted on 25 July 2016, the Security Council would extend the mandate of UNAMI until 31 July 2018.[97]

UNSCR 1511 dated 16 October 2003 was essential also. The SC was calling upon the member states for their international support for restoration of conditions of stability and security in Iraq; welcoming the decision of the Governing Council of Iraq to form a *preparatory constitutional committee* to prepare for a constitutional conference that will draft a constitution to embody the aspirations of the Iraqi people. Also it was inviting the Governing Council to provide the Security Council, for its review, no later than 15 December 2003, in cooperation with the Authority and, as circumstances permit, the Special Representative of the Secretary-General, a timetable and a programme for the drafting of a new constitution for Iraq and for holding of the democratic elections under

[95] Ibid. Para.8, 12, 20.
[96] http://unscr.com/en/resolutions/1500; para.5 (accessed on 3rd June 2017).
[97] http://unscr.com/en/resolutions/2367 (accessed on 20 Aug 2017).

that constitution.[98] SC was authorizing *a multinational force under unified command* to take all necessary measures to contribute to the maintenance of security and stability in Iraq additionally in order to contribute to the security of the United Nations Assistance Mission for Iraq, the Governing Council of Iraq and other institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure. Also UNSCR 1511 was emphasizing the importance of establishing effective Iraqi police and security forces in maintaining law, order and security and combating terrorism.[99]

7In all the relevant UNSC resolutions, SC was underscoring that the sovereignty of Iraq resides in the State of Iraq, reaffirming the right of the Iraqi people freely to determine their own political future and control their own natural resources. That was looking good on paper. Saddam government was already ousted. The Coalition Provisional Authority which was established by the Letter dated 8 May 2003 from the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the President of the Security Council was in fact equipped with temporary powers. CPA established a quasi-governmental body titled as the 'Iraqi Governing Council-IGC' on 13 July 2003. IGC was officially recognized by the UN Security Council Resolutions 1483 and 1511. IGC was the principal body of the Iraqi interim administration. IGC was still attached to the CPA. That was indicating that CPA namely provisional authority which was constituted by the occupying powers and their partners was exceeding its authority within the limits derived from the conservationist principle of the traditional law of occupation with intent to change the constitution. That attempt would lead not only the government change but also a regime change in Iraq. As Christopher Greenwood argues that "Existing administrative and legislative structures and the political process may be suspended for the duration of the occupation but an occupant will exceed its powers if it attempts, for example, to create a new state, to change a monarchy into a republic or a federal into a unitary government. An occupant may, therefore, suspend or bypass the existing administrative structure where there is a legitimate necessary of the kind discussed but any attempt at effecting permanent reform or change in that structure will

[98] https://www.iaea.org/OurWork/SV/Invo/resolutions/res1511.pdf
[99] Ibid. Para.1, n.13, 16.

be unlawful."[100] On the contrary, Michael N. Schmitt & Charles H.D. Garraway characterize the Iraq transformation not as a regime change but as a by-product of legitimate security-related reforms.[101]

UNSCR issued another stunning resolution on 8 June 2004 numbered UNSCR 1546. SC was "Welcoming the beginning of a new phase in Iraq's transition to a democratically elected government, and looking forward to the end of the occupation and the assumption of full responsibility and authority by a fully sovereign and independent Interim Government of Iraq by 30 June 2004"[102] This resolution was full of contradictions. Harris argues that "A similar tension exists in Security Council Resolution 1546, which declared that the occupation would conclude by June 30, 2004, rather than rely on the standard tenets of the law of occupation to determine when an occupation ends. UN Security Council Resolution 1511, passed under Chapter VII, declared that sovereignty was embodied in the US-picked Iraqi Governing Council and urged creation of a timeline to draft a constitution and to conduct elections."[103]

The classical concept of belligerent occupation which has evolved through the centuries was overthrown by UNSCR 1511 dated 16 October 2003 and UNSCR 1546 dated 8 June 2004. In the strict sense the conservationist principle, Coalition Provisional Authority namely the occupying powers were solely stationing in Iraqi territory as "de facto sovereigns". Sovereignty of Iraq was still laid on 'de jure' Iraqi people, in essence.

UNSC issued the resolution 1546 dated 8 June 2004. By this resolution UNSC was "endorsing the formation of a sovereign *Interim Government of Iraq*, as presented on 1 June 2004, which will assume full responsibility and authority by 30 June 2004 for

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[100] Greenwood, C. (1992). 'The Administration of Occupied Territory in International Law, in International Law And The Administration Of Occupied Territory.p.p.241, 247. (Emma Playfair ed.). Clarendon Press: Oxford, p.243.

[101] Fox, G. (2012). Transformative occupation and the unilateralist impulse. *International Review of the Red Cross, 94(885)*, 237-266. doi:10.1017/S1816383112000598

[102] http://unscr.com/en/resolutions/doc/1546 (accessed on 4 Jun 2017).

[103] Harris, G.T. (2006). The Era of Multilateral Occupation. *Berkeley J.Intl L., 24*; 1, 6, 9, 37, 59, 66, 67. Access: 14 March 2014, http://scholarship.law.berkeley.edu/bjil/vol24/iss1/1http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1301&context=bjil

governing Iraq while refraining from taking any actions affecting Iraq's destiny beyond the limited interim period until an elected *Transitional Government of Iraq* assumes office and welcoming that, also by 30 June 2004, the occupation will end and the Coalition Provisional Authority will cease to exist, and that Iraq will reassert its full sovereignty."[104]

As it is analyzed previously, UNSC was frequently reiterating the independence, sovereignty, unity, and territorial integrity of Iraq. But by the UNSCR 1546, para.9; SC was welcoming the commitment of the Interim Government of Iraq to work towards a federal, democratic, pluralist, and unified Iraq, in which there is full respect for political and human rights. In reality, two major powers-US and the UK- in the UNSC were concomitantly sweeping away the UN in order to legitimize and multilateralizfe their hegemonic goals in Iraq and violating the current international law of occupation. As Prof.Özdemir argues that the Interim Government of Iraq which was established by Coalition Provisional Authority had neither power of taking decisions nor execution of them and its legislative power was limited to bringing in bills.[105]

In 28 June 2004 was announcing that US was transferring power back to Iraq. In the broadcasting it was stated that:

> "The United States has handed power back to the Iraqi people at a low-key ceremony in Baghdad. US administrator Paul Bremer transferred sovereignty to an Iraqi judge at a handover brought forward two days in an attempt to prevent the occasion being marked by bloodshed. Mr Bremer flew out of the country shortly after. His departure ends 15 months of US control in Iraq. Iraq's interim Prime Minister Iyad Allawi, who attended the handover in the city's heavily-guarded "Green Zone", said it was an "historic day" for Iraq."[106]

Operation Iraqi Freedom started on 20 March 2003 and ended on 01 May 2003. It had legally different phases. As Pedrozo argues that "Without question, the invasion of Iraq by coalition forces in March 2003 was an international armed conflict, which quickly transitioned into a period of belligerent occupation in May 2003. With the establishment of the CPA in June 2003, the occupation period ended; however, a violent insurgency

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[104] SC. Res. 1546, para.23, U.N. SCOR, 4987th mtg., U.N. Doc. S/RES/1546 (Jun 8, 2004) http://unscr.com/en/resolutions/doc/1546 (accessed on 4 Jun 2017).

[105] Özdemir, A.M. (2011). Güç Buyruk Düzen. Ankara: İmge Kitabevi Yayınları. p. 182.

[106] http://news.bbc.co.uk/onthisday/hi/dates/stories/june/28/newsid_4517000/4517865.stm (Accessed on 04 June 2017).

quickly evolved."[107] Meanwhile as Adam Roberts argues that "In public use, the United States avoided the term "occupying power", but before the United Nations and in the quasi-legal documents associated with the United Nations, the United States acknowledged itself as being bound by all of the responsibilities attendant to occupation."[108] Despite the US claiming to undertake the responsibilities of the occupying authority; as of January 2004, Coalition forces had roughly 9.500 individuals in detention.[109] The US had not taken account of the outbreak of such kind of insurgency. "The international armed conflict quickly transformed into a period of belligerent occupation that began on May 8, 2003 with the establishment of CPA. Although the occupation phase ended on June 30, 2004 when the CPA was disestablished and the Interim Government of Iraq assumed full authority for governing Iraq, coalition forces and the ISF remained engaged in an armed conflict with the insurgents. The continued presence of the multinational forces during this phase of the conflict was at the request of the government of Iraq and was authorized by Security Council Resolutions 1511, 1546, 1637, 1723 and 1790. With the expiration of the UN mandate on December 31, 2008 and the entry into force of the US-Iraq security agreement on January 1, 2009 US military activities have been further limited."[110]

With regards to the UNSCR 1546 dated 8 June 2004; established Interim Government of Iraq would be on duty until the formation of an elected Transitional Government of Iraq. The Interim Government of Iraq had assumed full responsibility and authority as of 30 June 2004. On 15 October 2005 Iraq voted in a general referendum held at the national level for the purpose of approving a new Constitution for Iraq.

> "On October 15, 2005, nearly ten million Iraqis cast ballots in a national referendum on a new constitution. The charter had been prepared in the wake of the American-led campaign to depose Saddam Hussein from power, and in the midst of a raging insurgency. The final draft was extremely controversial, especially with the minority Sunni Arab community, which feared that the draft's

[107] Raul A. "Pete" PEDROZO. Legal Bases for Military Operations in Iraq. 86 Int'l L. Stud. Ser. US Naval War Col. 45 2010, p. 55.
[108] ROBERTS, A. (2006). Transformative Military Occupation: Applying the Laws of War and Human Rights'. 100 A.M.J.INT'L.L.p. 609
[109] Coalition Provisional Authority Briefing, Jan.8 2004,www.defenselink.mil/transcrits/2004/tr20040108-1121.
[110] Pedrozo, R.A "Pete". (2010) Legal Bases for Military Operations in Iraq. Int'l L.Stud. Ser. US Naval War Col., (86), 55. Access: 03 September 2015, HeinOnline.

> version of federalism would threaten the unity of Iraq. Over widespread Sunni opposition in the referendum, however, the constitution won the approval of over seventyeight percent of Iraqi voters nationwide. It entered into effect two months later, with the election of a new National Assembly under its auspices."[111]

One year and three months later of the formation of the Interim Government of Iraq, UNSC announced the establishment of *the Transitional Government of Iraq* to work towards a federal, democratic, pluralistic, and unified Iraq, in which there is full respect for political and human rights with the UNSC resolution 1637 dated 8 November 2005.[112] Also, UNSCR reaffirmed the authorization of the multinational force as set forth in resolution 1546 (2004) and decided to extend the mandate of the multinational force as set forth in that resolution until 31 December 2006. Interestingly with the resolution 1637, SC requested that the United States, on behalf of the multinational force, continue to report to the Council on the efforts and progress of this force on a quarterly basis.

In the international state system, history of the international law of occupation had never witnessed such type of 'so called transformative occupation'. Iraqi occupation had allegedly legitimized by the issuance of several United Nations Security Council resolutions. The so called occupying authorities namely the US and the UK invaded and then the Coalition Provisional Authority (CPA) and the coalition partners led by them occupied Iraq. Before international public's eyes the occupants tried to absolve themselves from the unlawful acts, and they manipulated the United Nations authorities in order to legitimize their actions. Additionally, they multilateralised their occupational efforts in Iraq by calling upon other member states' political, military and economic support via the UN for taking away the burden of the Iraqi occupation from themselves as the occupying hegemonic powers.

In fact, as the interim prime ministers Ibrahim Aleshaiker Al-Jaafari's Letter dated 27 October 2005[113] as the Prime Minister of Iraq addressed to the President of the

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[111] Feldman, N. & Martinez, R. (2006). Constitutional Politics and Text in the New Iraq: An Experiment in Islamic Democracy. *Fordham L.Rev. 75*, 883. Access: 04 June 2017. http://ir.lawnet.fordham.edu/flr/vol75/iss2/20.

[112] SC. Res. 1637, para.6, U.N. SCOR, 5300th mtg., U.N. Doc. S/RES/1637 (Nov 8, 2005) http://unscr.com/en/resolutions/doc/1637 (accessed on 4 Jun 2017).

[113] http://unscr.com/en/resolutions/doc/1637. P.4

Security Council ; and the Letter dated 11 November 2006 from the Prime Minister of Iraq Nuri Kamel al-Maliki addressed to the President of the Security Council in UNSCR 1723 and 1790[114]; there was manifest request from the interim Prime Ministers of Iraq for the extension of the mandate of the multinational force in Iraq (MNF-I) due to the persistent insurgency in the territory of Iraq. This request kept on till the issuance of UNSCR 1859 dated 22 December 2008. In this resolution; due to the Iraq's signature of "the Agreement between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of their Activities during their Temporary Presence in Iraq", Iraqi people were looking forward to the ending of the mandate of MNF-I at the end of 31 December 2008. [115]

Ipso facto, as Fox argues that "Panama and Grenada are cases of intervention for non-humanitarian reasons that were not followed by transformative occupations, while Iraq and the US/Allied wars against Germany and Japan in World War II are cases where non-humanitarian entry into conflict was followed by transformative occupation."[116]In addition Prof. Roberts acknowledges that 'an element of artificiality marks the proposition that transformative goals may be acceptable, but only as a by-product of military action, not as its real justification."[117] That's why; as Larry Diamond clearly establishes; "Having invaded Iraq without UN Security Council authorization or the support of most other democratic publics in the world, the United States was unable to convince many countries to take a meaningful role in the occupation, something that could have blunted suspicions of the coalition."[118]

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[114] http://unscr.com/en/resolutions/doc/1723 and http://unscr.com/en/resolutions/doc/1790

[115] SC. Res. 1859, Annex p.4, U.N. SCOR, 6059th mtg., U.N. Doc. S/RES/1859 (Dec 22, 2008) http://unscr.com/en/resolutions/doc/1859 (accessed on 10 Jun 2017).

[116] Fox, G.H. (2012) Transformative occupation and the unilateralist impulse. IRRC No.885, 237-266. Access: 22 October 2015, https://www.icrc.org/en/international-review/article/transformative-occupation-and-unilateralist-impulse, doi:10.1017/S1816383112000598

[117] Roberts, A. (2006). Transformative Military Occupation: Applying the Laws of War and Human Rights. A.M.J.INT'L.L., (100), 580-585, 609. Access: 24 August 2015, HeinOnline.

[118] Diamond, L. (2004), What Went Wrong in Iraq?, *Foreign Aff., 83*, 46. Access: 04 November 2015, HeinOnline.

In conclusion, since the 1945 World War II, the transformative occupation of Iraq was like a test case in the international law of military occupation. Unfortunately, Iraq had served as a guinea pig for the mainly US led occupying authorities and for its rapacious counterparts in 21st century international state system. When the legitimization efforts of the occupants are thoroughly analyzed, *prima facie* all the texts of UNSCR were in wording technically expressed quite well; but in essence, there were many contradictions between the contexts of the relevant resolutions and the current traditional law of occupation concept and its basic principles. These contradictions can be clearly understood by the analysis of contraventions of the main principles of law of occupation within the Coalitional Provisional Authority orders, reform tests and practices.

2.2 THE ANALYSIS OF CONTRAVENTIONS OF THE CONSERVATIONIST PRINCIPLE WITHIN THE CONTEXT OF COALITION PROVISONAL AUTHORITY ORDERS AND REFORMS

Right after the invasion of Iraq in March 2003, during the invasion phase there were several statements which had been delivered at minister or presidential levels. "On April 4, National Security Advisor Rice remarked: "We will leave Iraq completely in the hands of Iraqis as quickly as possible. As the President has said, the United States intends to stay in Iraq as long as needed, but not one day longer."[119] On April 28, Bush stated: "As freedom takes hold in Iraq, the Iraqi people will choose their own leaders and their own government. America has no intention of imposing our form of government or our culture. Yet, we will ensue that all Iraqis have a voice in the new government."[120] As it is well known the legitimacy namely the jus ad bellum of the Iraqi occupation had been debated so far. When the background of the Iraqi occupation is thoroughly analyzed; it would be clearly understood that the Bush administration had already been prepared institutionally itself in order to undertake the administrative powers of an occupational authority. As Bejesky contends that "In fact, President Bush anticipated that such adverse conditions would befall because he adopted National Security Presidential Directive 24, two months before the invasion in order to constitute an administrative unit called the Office of Reconstruction and Humanitarian Assistance ("ORHA") in order to execute administrative obligations of an occupation, control funding for humanitarian operations and reconstruction, and collaborate with the U.S Agency for International Development ("USAID") to implement the operations."[121]

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[119] Press Briefing by National Security Advisor Dr. Condoleezza Rice, WHITE HOUSE (Apr.4, 2003), https://georgewbush-whitehouse.archives.gov/news/releases/2003/04/20030404-12.html (last access 25 January 2018).

[120] President Discusses the Future of Iraq, WHITE HOUSE (April 28, 2003), https://georgewbush-whitehouse.archives.gov/news/releases/2003/04/20030428-3.html (last access on 25 January 2018).

[121] Bejesky, Robert (2015) CPA Dictates on Iraq: Not an Update to the Customary International Law of Occupation but the Nucleus of Blowback With the Emergence of ISIS. *Syracuse Journal of International Law and Commerce: 42*, 292. Access: 14 December 2015, HeinOnline.

On May 6, 2003, President Bush named Paul Bremer, a diplomat and former head of the Counter-Terrorism Department at the United States State Department, as *the Administrator of the Coalition Provisional Authority.*[122] This assignment had been occurred even before "the Letter dated 8 May 2003 from the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the President of the Security Council" which declared the creation of the Coalitional Provisional Authority.[123] In Section 1 of the Coalition Provisional Authority Regulation Number 1; it was stated that:

> "1) The CPA shall exercise powers of government temporarily in order to provide for the effective administration of Iraq during the period of transitional administration, to restore conditions of security and stability, to create conditions in which the Iraqi people can freely determine their own political future, including by advancing efforts to restore and establish national and local institutions for representative governance and facilitating economic recovery and sustainable reconstruction and development.
>
> 2) The CPA is vested with all executive, legislative and judicial authority necessary to achieve its objectives, to be exercised under relevant U.N. Security Council resolutions, including Resolution 1483 (2003), and the laws and usages of war. This authority shall be exercised by the CPA Administrator."[124]

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[122] Press Release, Office of the Press Secretary, President Names Envoy to Iraq: Remarks by the President in Photo Opportunity After Meeting with the Secretary of Defense (May 6, 2003), http://www.whitehouse.gov/news/releases/2003/05/iraq/20030506-3.html

[123] the Letter dated 8 May 2003 from the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the President of the Security Council, para.2: " In order to meet these objectives and obligations in the post-conflict period in Iraq, the United States, the United Kingdom and Coalition partners, acting under existing command and control arrangements through the Commander of Coalition Forces, have created the Coalition Provisional Authority, which includes the Office of Reconstruction and Humanitarian Assistance, to exercise powers of government temporarily, and, as necessary, especially to provide security, to allow the delivery of humanitarian aid, and to eliminate weapons of mass destruction." https://digitallibrary.un.org/record/498571/files/S_2003_538-EN.pdf (accessed on 9 Jul 2017).

[124] http://govinfo.library.unt.edu/cpa-iraq/regulations/20030516_CPAREG_1_The_Coalition_Provisional_Authority_.pdfiraq/regulations/20030516_CPAREG_1_The_Coalition_Provisional_Authority_.pdf

2.2.1 CPA Reforms and arrangements related to governance, so-called relief, public property and natural resources

The promulgation of any CPA Regulation or Order would require the approval or the signature of the Administrator. The regulations and orders should be binding and they should take precedence over all other laws and publications to the extent such other laws and publications are inconsistent. Synchronously, in accordance with Section 1 of the Coalition Provisional Authority Order Number 1, titled as De-Baathification of the Iraqi Society "On April 16, 2003 the Coalition Provisional Authority disestablished the Ba`ath Party of Iraq. This order implements the declaration by eliminating the party's structures and removing its leadership from positions of authority and responsibility in Iraqi society. By this means, the Coalition Provisional Authority will ensure that representative government in Iraq is not threatened by Ba`athist elements returning to power and that those in positions of authority in the future are acceptable to the people of Iraq."[125] Full members of the Ba`ath Party holding the ranks of 'Udw Qutriyya (Regional Command Member), 'Udw Far' (Branch Member). 'Udw Shu'bah (Section Member), and 'Udw Firqah (Group Member) (together, "Senior Party Members") are hereby removed from their positions and banned from future employment in the public sector. These Senior Party Members shall be evaluated for criminal conduct or threat to the security of the Coalition.[126] Senior Baath Party members were now removed from their positions and banned from future employment in the public sector. In fact, US authorities would get the legitimacy of their actions later with the issuance of the UNSCR 1483 dated 22 May 2003.[127] As Bejesky argues that "…CPA Order Number 1, which was adopted before the Security Council Resolution 1483 authorized an occupation, legally stripped between fifteen and thirty thousand public-sector employees out of government due to association with the previous regime."[128] According to Geneva Convention IV, Article 54: "The Occupying Power may not alter

[125] http://govinfo.library.unt.edu/cpa-iraq/regulations/20030516_CPAORD_1_De-Ba_athification_of_Iraqi_Society_.pdf
[126] Ibid.
[127] http://unscr.com/en/resolutions/1483 (accessed on 9th July 2017).
[128] Bejesky, Robert (2015) CPA Dictates on Iraq: Not an Update to the Customary International Law of Occupation but the Nucleus of Blowback With the Emergence of ISIS. *Syracuse Journal of International Law and Commerce: 42*, 293. Access: 14 December 2015, HeinOnline.

the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience. This prohibition does not prejudice the application of the second paragraph of Article 51. It does not affect the right of the Occupying Power to remove public officials from their posts."[129] This administrative act of the occupying authority could be justified with taking into consideration the security concerns of the occupying forces namely the Coalition forces. CPA was not contented with the de-Baathification of the Iraqi society. With the issuance of CPA Order No.30, those who lost their position in public service were subsequently denied their pension benefits also.[130]

With the adoption of the UNSCR 1483 dated May 22, 2003; the CPA was strengthened its hand the make more rooted changes in the Iraqi governmental and administrative units. "The Ministry of Defence , The Ministry of Information ,The Ministry of State for Military Affairs, The Iraqi Intelligence Service, The National Security Bureau, The Directorate of National Security (Amn al-'Am), The Special Security Organization; and the military organizations subordinate to it as the Army, Air Force, Navy, the Air Defence Force, and other regular military services, The Republican Guard, Special Republican Guard, The Directorate of Military Intelligence, The Al Quds Force and Emergency Forces (Quwat al Tawari) were dissolved.[131] As other organizations in Iraqi government; The Presidential Diwan, The Presidential Secretariat, The Revolutionary Command Council, The National Assembly, The Youth Organization (al-Futuwah), National Olympic Committee and the Revolutionary, Special and National Security Courts and all organizations subordinate to them were also dissolved.[132]

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[129] https://ihl-databases.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5 (accessed on 15 Aug 2017.)

[130] http://govinfo.library.unt.edu/cpa-iraq/regulations/20030908_CPAORD_30_Reform_of_Salaries_and_Employment_Conditions_of_State_Employees_with_Annex_A.pdf

[131] CPA/ORD/23 May 2003/2; http://govinfo.library.unt.edu/cpa-iraq/regulations/20030823_CPAORD_2_Dissolution_of_Entities_with_Annex_A.pdf

[132] Ibid.

Meanwhile; the Coalition Provisional Authority Regulation Number 2, *the Development Fund for Iraq* dated 10 June 2003 was issued. The purpose of this regulation states that "This Regulation applies to the administration, use, accounting and auditing of the Development Fund for Iraq (the "Fund"). The Regulation is intended and shall be applied to ensure that the Fund is managed in a transparent manner for and on behalf of the Iraqi people, consistent with Resolution 1483, and that all disbursements from the Fund are for purposes benefiting the people of Iraq."[133] According to CPA Reg.Nu.2; "The Fund shall be held on the books of the Central Bank of Iraq, and the corpus of the Fund shall be held in an account entitled "Central Bank of Iraq/Development Fund for Iraq," in the Federal Reserve Bank (and/or other financial institution(s), if the Administrator so directs), for the Central Bank of Iraq. The Fund shall be controlled by the Administrator of the CPA, for and on behalf of the Iraqi people. The Central Bank of Iraq and the Federal Reserve Bank (and/or other financial institution(s), if the Administrator so directs), shall accept instructions, as agreed, concerning the Fund, including instructions to pay sums out of the Fund, only from the Administrator or his authorized delegee(s)."[134] Interestingly, if the Administrator directs that accounts in such institutions like U.S. Federal Reserve Bank of New York (the "Federal Reserve Bank") (and/or the Bank for International Settlements (Switzerland), and/or other financial institutions, such institutions be opened. It was restated in the CPA Reg. Nu.2 that ninety-five percent of the proceeds of all export sales of petroleum, petroleum products, and natural gas from Iraq, as well as funds from other sources, shall be deposited into the Development Fund for Iraq until an internationally recognized, representative government of Iraq is properly constituted, and that five percent of the proceeds referred to in paragraph 20 of Resolution 1483 shall be deposited into the Compensation Fund established in accordance with Resolution 687 (1991). [135] As Skordas contends that Resolution 1483 reflected the UN's indirect, albeit unwilling endorsement of the US intervention policies.[136] The governmental and financial arrangements in Iraqi institutional structure arranged by UNSCR 1483 and the CPA

[133] http://govinfo.library.unt.edu/cpa-iraq/regulations/20030615_CPAREG_2_Development_Fund_for_Iraq.pdf
[134] Ibid.
[135] Ibid.
[136] Skordas, A. (2007).Hegemonic Intervention as Legitimate Use of Force, Minn. J.Int'l. L.16, 407,439. Access: 16 December 2015, HeinOnline.

Reg.Nu.2 were not for the benefit of Iraqi society but for the benefit of occupying authorities via the invisible hand of the United Nations.

With the Regulation Number 6 dated 13 July 2003; "the CPA recognized *the formation of the Governing Council* as the principal body of the Iraqi interim administration, pending the establishment of an *internationally* recognized, representative government by the people of Iraq, consistent with Resolution 1483."[137] For Toone; "The IGC minutes and resolutions provide invaluable insights into the occupation of Iraq during the period between July 13, 2003, when the IGC was officially formed, and June 1, 2004, when the IGC was dissolved and authority transferred by the CPA to the Iraqi Interim Government."[138]

With CPA Regulation Number 9 dated 09 June 2004; "the CPA acknowledges the actions taken by the Governing Council to dissolve itself on June 01, 2004 as part of the ongoing evolution in the structures of the interim Iraqi administration as contemplated by Resolutions 1483 and 1511".[139] With CPA Regulation Number 11 dated 15 June 2004 there were two amendments to CPA Regulations No. 2 (CPA/REG/10 JUNE 2003/02) and No.3 (CPA/REG/18JUNE 2003/03). It was stated that:

> "Noting that the Coalition Provisional Authority will dissolve on June 30, 2004 and that full governance authority of Iraq will transfer to the Iraqi Interim Government on that date,
> Recognizing that on June 30, 2004 the Iraqi Interim Government will assume control over all funds in the Development Fund for Iraq,
> Acknowledging that the Coalitional Provisional Authority has entered into contracts on behalf of the people of Iraq and that many of these contracts require

[137] http://govinfo.library.unt.edu/cpa-iraq/regulations/20030713_CPAREG_6_Governing_Council_of_Iraq_.pdf
[138] Toone, Jordan E., (2012). Occupation Law During and After Iraq: The Expedience of Conservationism Evidenced in the Minutes and Resolutions of the Iraqi Governing Council. Florida Journal of International Law, (24), 474. Access: 08 April 2014, HeinOnline.
[139] http://govinfo.library.unt.edu/cpa-iraq/regulations/20040609_CPAREG_9_Governing_Council_s_Dissolution.pdf

> continued performance and payment from the Development Fund for Iraq after June 30, 2004, (CPA REG 15 June 2004)."[140]

The individuals designated as members of the Iraqi Interim Government was listed in Appendix A of the CPA Regulation Number 10.[141] The President was to be Shaykh Ghazi M. Ajil Al-Yawar and The Prime Minister was to be Dr. Ayad Allawi. The general thinking of Bremer and CPA was that America's transformative occupation in Iraq by creating and working with the IGC, the CPA had legitimized its transformational agenda. Toone argues that "Even if the IGC minutes and resolutions reveal that the desires of the IGC were at times stifled by the CPA and demonstrate that the IGC was often unable to perform the functions reserved for the *de jure* sovereign representative as mandated by the law of occupation."[142] In fact, in all issued UNSCRs, orders, regulations and namely under international law the US was acknowledged the rule of law principle. The US was neglecting in reality that the rule of law principle primarily obliges as the rule maker itself fundamentally.

Additionally; for Bejesky; "…the CPA did whatever it desired while appointing loyalists to the occupation, calling the assemblies of chosen individuals' local representative bodies, ignoring the terms of Resolution 1483, and dictating new laws and reforms without regard to the Iraqi people."[143] As also Fox argues that "Iraq was the only case in the era of Geneva law in which an occupier has legislated for an explicitly transformative purpose."[144] In that vein, Roberts argues that "Jennings, in his authoritative 1946 article 'Government in Commission' argued persuasively that the law of belligerent occupation had been designed to serve two purposes: first, to protect

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[140] http://govinfo.library.unt.edu/cpa-iraq/regulations/20040618_CPAREG_11_Amendment_to_Reg_2_and_Reg_3.pdf

[141] http://govinfo.library.unt.edu/cpa-iraq/regulations/20040609_CPAREG_10_Members_of_Designated_Iraqi_Interim_Government_with_Annex_A.pdf

[142] Toone, Jordan E., (2012). Occupation Law During and After Iraq: The Expedience of Conservationism Evidenced in the Minutes and Resolutions of the Iraqi Governing Council. Florida Journal of International Law, (24), 474. Access: 08 April 2014, HeinOnline.

[143] Bejesky, Robert (2015) CPA Dictates on Iraq: Not an Update to the Customary International Law of Occupation but the Nucleus of Blowback With the Emergence of ISIS. *Syracuse Journal of International Law and Commerce: 42*, 297. Access: 14 December 2015, HeinOnline.

[144] Fox, G.H. (2012) Transformative occupation and the unilateralist impulse. IRRC No.885, 237-266. Access: 22 October 2015, https://www.icrc.org/en/international-review/article/transformative-occupation-and-unilateralist-impulse, doi:10.1017/S1816383112000598.

the sovereign rights of the legitimate government of the occupied territory, and secondly, to protect the inhabitants of the occupied territory from being exploited for the prosecution of the occupant's war."[145] In Iraq, both of these purposes were clearly neglected.

Certainly, In Iraq, it was nothing of the kind. The Development Fund for Iraq was 'so called relief commitment' on behalf of the Iraqi people. That Fund was protected from attachment and other judicial processes by the 'Executive Order' issued by the President Bush.[146] With the CPA Reg 11, dated 15 June 2004 there were contracts which require continued performance and payment from the Development Fund for Iraq after June 30, 2004; the Geneva Convention IV articles 7 and 47 should be recalled.[147] It can be apparently claimed that articles 7 and 47 of the GC IV establish that any special agreements between the authorities of the occupying power and the authorities of the occupied territories may not in a harmful way affect the situation of the protected persons. Pictet comments that "It will be noted that the same clause applies both to cases where the lawful authorities in the occupied territory have concluded a derogatory agreement with the Occupying Power and to cases where that Power has installed and maintained a government in power."[148]

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[145] Roberts, A.(1985). What is a military occupation?. *British Yearbook of International Law, 55*, 267. Access: 14 March 2014, http://bybil.oxfordjournals.org/.

[146] https://www.treasury.gov/resource-center/sanctions/Documents/iraq_eo.pdf (accessed on 15 Aug 2017).

[147] **Geneva Convention IV, relative to the Protection of Civilian Persons in time of war dated 12 August 1949, Art. 7:** In addition to the agreements expressly provided for in Articles 11, 14, 15, 17, 36, 108, 109, 132, 133 and 149, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, not restrict the rights which it confers upon them.
Protected persons shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.
Art. 47: Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

[148] Roberts, A.(1985). What is a military occupation?. *British Yearbook of International Law, 55*, 285. Access: 14 March 2014, http://bybil.oxfordjournals.org/.

CPA Order Number 9 (Revised) on Management and Use of Iraqi Public Property was issued on 8 June 2003 and then revised on 27 June 2004.[149] "This Order applies to the assignment, occupancy, use and management of public property that is assigned to, occupied, used or managed by the CPA, Multinational Forces, Iraqi Ministries, government offices of Coalition members, emerging Iraqi administrative or political organizations; property that is necessary for the administration of social services to the people of Iraq; and public property that is temporarily made available to private individuals or organizations, including commercial or other enterprises that provide services to, or at the request of, the CPA."[150] The property can be allocated as soon as the CPA Facilities Manager issues a letter of authority. Recalling that on 30 June 2004 responsibility for and authority over public property will pass to the Iraqi Government; that issue could not be implemented directly. With the revision of the CPA Order No.9 on 27 June 2004, all letters of authority in force as of 30 June 2004 shall continue in force until such time as a decision on use or occupancy of the subject property has been made by the Iraqi Interim Government, the Iraqi Transitional Government, or the Iraqi government elected under a permanent constitution as set forth in the Law of Administration for the State of Iraq for the Transitional Period. The CPA's approval of an application to occupy and use public property shall not give rise to any obligation or liability on the part of the CPA, or any State participating in the CPA, to any applicant, other than to be left in quiet possession for the duration of the approved tenancy. In fact; Article 55 of the Hague Regulations states that: "The occupying state shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct."[151] As Michael Ottolenghi argues that "because of the usufructuary clause in Article 55, an occupant's power over immovable state property is measured not by his own needs but by the duty to maintain integrity of the corpus."[152] Additionally, as Gasser argues; "Not only should the legal status of the territory remain

[149] CPA/ORD/8 June 2003/9, http://govinfo.library.unt.edu/cpa-iraq/regulations/20040627_CPAORD_9_Management_and_Use_of_Iraqi_Public_Property__Rev_.pdf
[150] Ibid, section 1
[151] https://ihl-databases.icrc.org/ihl/WebART/195-200065 (accessed on 16 July 2017).
[152] Ottolenghi, M. (2004). The Stars and Stripes in Al-Fardos Square: The Implications for the Internatinal Law of Belligerent Occupation. *Fordham L.Rev., 72*, 2186. Access: 12 October 2015, HeinOnline.

unaltered by the occupying power, but its political institutions and public life in general should also be allowed to continue with as little disturbance as possible."[153] In fact, the CPA administrator and his delegates were equipped with full authority. But their rights were extended and consecutively revised by orders and regulations. These were the reflections of the CPA Administrator's abuse of its exercise of power and discretion.

CPA was not only regulating the rights of the real property but also the natural resources of the Iraq muffledly. To reach this goal; CPA Reg. Number 2, para. 3 reiterates that "Recognizing that ninety-five percent of the proceeds of all export sales of petroleum, petroleum products, and natural gas from Iraq, as well as funds from other sources, shall be deposited into the Development Fund for Iraq until an internationally recognized, representative government of Iraq is properly constituted, and that five percent of the proceeds referred to in paragraph 20 of Resolution 1483 shall be deposited into the Compensation Fund established in accordance with Resolution 687 (1991)."[154] In fact these regulations were not purely for the benefit of the Iraqi people. It should be recalled that, article 55 of The Hague regulations is consisting of the usufructuary clause for the occupied state's immovable property. Also, Clagett and Johnson argues that "The extraction of state-owned oil from occupied territory by means of new wells constitutes an impermissible taking of the capital of property by Article 55 whether or not the oil taken is newly discovered."[155] Both the UNSCR 1483 and the Regulation No. 2 which was entered into force with the signature of the CPA Administrator L. Paul Bremer were obviously violating the general rules of the law of armed conflict and essentially the tenets of the traditional law of belligerent occupation.

While as the Iraqi invaluable natural resource namely oil had been exploited by the occupying authorities by the abovementioned regulations, to top it all; with regards to

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[153] Hans-Peter Gasser, Protection of the Civilian Population, in the Handbook of Humanitarian Law in Armed Conflicts pp. 209, 246 (Dieter Fleck ed., 1995).

[154] http://govinfo.library.unt.edu/cpa-iraq/regulations/20030615_CPAREG_2_Development_Fund_for_Iraq.pdf

[155] Clagett, B., & Johnson, O. (1978). May Israel as a Belligerent Occupant Lawfully Exploit Previously Unexploited Oil Resources of the Gulf of Suez? *The American Journal of International Law*, 72(3), 558, 584-585. Access: 25 January 2018, https://www.jstor.org/stable/2200459, doi:10.2307/2200459.

the CPA Order Number 36, dated 10 March 2003[156], with Annex A of this Order "the Regulatory Code for Oil Distribution" was created. The stated aim was to tackle the theft and smuggling of natural resources pending the outcome of a full review of current Iraqi laws, provisions and instructions. This Regulatory Code would be applicable to all vessels, vehicles and persons within the territorial jurisdiction of Iraq. It would be a punishable offense to contravene a regulation in the Regulatory Code created under this Order. So called assertion of inconsistency of the irregularity of the implementation of previous Iraqi laws of distribution of oil; these arrangements had been created. In reality, oil, the most important natural resource of the Iraq was lost Iraqi people's grasp on.

[156] http://govinfo.library.unt.edu/cpa-iraq/regulations/20031219_CPAORD36.pdf

2.2.2 CPA's economic reforms

As it is clearly recalled, the containment policy of the hegemonic states-those states would become the Occupying Authorities in 2003 Occupation of Iraq- was initiated by the economic embargo which was implemented with the adoption of the UNSCR 661 on 6th of August in 1990. Additionally, UNSCR 986 dated 14th April 1995 had strikingly more drastic provisions. Security Council was asked for establishing an escrow account which would be constituted with the sale of the petroleum of the Iraq. Those proceeds of the petroleum sales for each 90 days period should not be less than one billion US dollars. As long as this condition was met; the humanitarian relief items would be provided to Iraqi people by the creation of "Oil for Food Programme". If these proceeds would be less than one billion US dollars, the Secretary General shall diminish the amount of the necessary humanitarian relief materials which are essential for the Iraqi people.

Immediately afterwards of the 2003 occupation of Iraq; the Oil for Food Programme was ended by the decision made by the Secretary-General on 17 March 2003 to withdraw all United Nations and international staff tasked with the implementation of the "Oil-for-Food" Programme established under resolution 986 (1995)[157], and another drastic decision was adopted. Right after, in para.4 of the 'the Letter dated 8 May 2003 from the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the President of the Security Council'; "The United States, the United Kingdom and Coalition partners are facilitating the establishment of representative institutions of government, and providing for the responsible administration of the Iraqi financial sector, for humanitarian relief, for economic reconstruction, for the transparent operation and repair of Iraq's infrastructure and natural resources, and for the progressive transfer of administrative responsibilities to such representative institutions of government, as appropriate."[158]

[157] UNSCR 1473 dated Mar 28, 2003.

[158] Letter dated 8 May 2003 from the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the President of the Security Council.

The UNSCR 1483 dated 22 May 2003, in para.12 "Notes the establishment of a Development Fund for Iraq to be held by the Central Bank of Iraq and to be audited by independent public accountants approved by the International Advisory and Monitoring Board of the Development Fund for Iraq and looks forward to the early meeting of that International Advisory and Monitoring Board, whose members shall include duly qualified representatives of the Secretary-General, of the Managing Director of the International Monetary Fund, of the Director-General of the Arab Fund for Social and Economic Development, and of the President of the World Bank".[159] The disbursements of the Fund should be primarily under the discretion of the CPA Administrator. UNSCR 1483 in para 14 it was stated that "the Development Fund for Iraq shall be used in a transparent manner to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq". Additionally; para. 8 of the UNSCR 1483 "Requests the Secretary-General to appoint a Special Representative for Iraq whose independent responsibilities shall involve reporting regularly to the Council on his activities under this resolution, coordinating activities of the United Nations in post-conflict processes in Iraq, coordinating among United Nations and international agencies engaged in humanitarian assistance and reconstruction activities in Iraq, and, in coordination with the Authority, assisting the people of Iraq through: (e) promoting economic reconstruction and the conditions for sustainable development, including through coordination with national and regional organizations, as appropriate, civil society, donors, and the international financial institutions."[160] It was decided that all export sales of petroleum, petroleum products, and natural gas from Iraq following the date of the adoption of this resolution shall be made consistent with prevailing international market best practices. The process which was triggered by *the economic embargo* to Iraq by the UNSCR 687 dated 3 April 1991 had been devolved into the alleged promotion of *economic reconstruction* in Iraq, with the UNSCR 1483 dated 22 May 2003.

[159] UNSCR 1483 dated May 22, 2003. https://www.iaea.org/sites/default/files/unsc1483.pdf
[160] Ibid.

CPA Order No.12 dated 7 June 2003, was titled as Trade Liberalization Policy and with it, the importance of free market economy for the Iraq's recovery was stressed.[161] According to Section 1 of the CPA Order No.12: "All tariffs, customs duties, import taxes, licensing fees and similar surcharges for goods entering or leaving Iraq, and all other trade restrictions that may apply to such goods, are suspended until December 31, 2003."[162] Strangely, basic foodstuffs such as sugar, tea, beans; some animals and manufactured goods like cars, vehicles and other machinery, even bar soap and detergents were not goods under the cover of the suspension of tariffs and trade restrictions.

CPA Order No. 39 dated 20 Dec 2003 was arranging the foreign investment. Its main purpose was to promote the foreign investment by regulating foreign investors' rights and protection of their property in order to attract more foreign investors. With CPA Administrator's signature only, this Order was radically replacing the all existing Iraqi foreign investment law. All investors either foreign or Iraqi, should be treated equally under this law. These amendments would cause unfair competition advantage to the foreign investors in Iraq, eventually.

CPA Order No.40 dated 19 Sep 2003[163] was aiming a safe, competitive and accessible banking system which was detailed in its Annex A. In fact CPA was manifestly exceeding the power of the Iraqi Governing Council which is determined as the principal body of the CPA as a representative of de jure ousted sovereign in Iraq. Merely, the US was bringing her laws into the occupied territory of Iraq in the economic field as an occupying authority which was a clear contravention of the traditional law of occupation.

Besides, with the CPA Order 43 dated 14 October 2003; the Central Bank of Iraq, under the supervision of the CPA, shall issue New Iraqi dinar banknotes and determine the

[161] CPA/ORD/7 Jun 2003/12, http://govinfo.library.unt.edu/cpa-iraq/regulations/CPAORD12.pdf
[162] Ibid.
[163] CPA/ORD/19 Sep 2003/40;
http://govinfo.library.unt.edu/cpa-iraq/regulations/20030919_CPAORD40_Bank_Law_with_Annex.pdf

denominations, designs, technical specifications, and other characteristics of New Iraqi dinar banknotes.[164] Because previous ones were consisting of Saddam's image.

In brief, all these signals of economic arrangements were compatible with the Occupying Authorities' end state goal with the occupation of Iraq: a democratic, liberal, pluralistic, unitary, free market and federal state of Iraq. On the other hand; all these rooted changes were contravening with the core principles of the traditional law of occupation, in reality.

[164] CPA/ORD/14 Oct 2003/43.

2.2.3. CPA's Legal Reforms

As it can be clearly remembered from the codification process of the international law of occupation the authority of the occupant and its legal boundaries were enacted as concise as the lawmaker could in The Hague Regulations dated 1907. In art.43 of the Hague Regulations: "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

As soon as the occupation phase began, the Occupying Powers initially focused on the legal system in Iraq. CPA issued Order No.7 on 9 June 2003 concerning the penal code. With this order, the occupants put back the penal code of Iraq which was in effect before July 1969 namely the Penal Code of Iraq that was operative before Saddam Hussein period with the amendments done by the CPA. Geneva Convention IV, article 64 provides that;

> "The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.
>
> The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or

> administration, and likewise of the establishments and lines of communication used by them."[165]

Naturally, if the existing penal codes are threatening the security of the Occupying Power, its personnel and facilities the occupier may bring additional penal provisions. But it should be remembered that according to Geneva Convention IV, article 65: "The penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language. The effect of these penal provisions shall not be retroactive." This provision was also violated neglectfully.

Consecutively, the CPA created the Central Criminal Court of Iraq on 18 June 2003. Michael N. Schmit and Charles H.B. Garraway argues that "Due to the unstable security situation, including threats and violence against judges trying cases involving either regime crimes or offenses against the Coalition, as well as Coalition unwillingness to employ military courts." caused the creation of this court.

Due to the persistent insecurity in Iraq, the CPA issued the Order 31, aiming to modify the Penal Code and the Criminal Proceedings Law.[166] Mainly the instances of kidnapping, rape, and forcible vehicle larceny were defined as serious threats to the security and stability of the Iraqi population. For the kidnapping, rape and the damage to public utilities or oil infrastructure offenses, the penalties were modified to maximum punishment of life imprisonment. The penalties for indecent assault offense were modified to the maximum fifteen years imprisonment.

With regard to the Section 2 of the CPA Order No. 32[167]: "The Legal Department of the Office of the Council of Ministers, its personnel and all of its authorities and

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[165] Geneva Convention IV, Art.64; relative to the Protection of Civilians in Tıme of War dated 12 August 1949.https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=6DB876FD94A28530C12563CD0051BEF8

[166] CPA/ORD/10 September 2003/31, Modifications of Penal Code and Criminal Proceedings Law. http://govinfo.library.unt.edu/cpa-iraq/regulations/20030921_CPAORD31.pdf

[167] CPA/ORD/04 September 2003/32, Legal Department of the Ministry of Justice (revised as 9/4/03) http://govinfo.library.unt.edu/cpa-iraq/regulations/20030909_CPAORD32.pdf

responsibilities shall be transferred to the Ministry of Justice. It shall be renamed the Legal Department of the Ministry of Justice and shall be headed by a Director General. Upon completion of the transfer, the Legal Department will begin the task of resuming the management of the international litigation, claims and arbitrations described in this Order."

Additionally, with the CPA Order No.35, the Council of Judges was re-established by the CPA.[168] This Order re-establishes the Council of Judges ("the Council"), which is charged with the supervision of the judicial and prosecutorial systems of Iraq. The Council shall perform its functions independently of the Ministry of Justice.[169]

The most striking event was the issuance of CPA Order No.48 dated 09 Dec 2003 with regard to the 'Delegation of Authority Regarding an Iraqi Special Tribunal'.[170] "Just days before the capture of Saddam Hussein in December 2003, the Iraqi Special Tribunal was established as a domestic court within the national judicial structure. Unlike previous international criminal courts and tribunals, the Iraqi High Tribunal was not established by treaty or United Nations resolution. It was created by a national statute from the Interim Governing Council, which itself was appointed by the Coalition Provisional Authority in Iraq. Following national elections in 2005, it was ratified and renamed as the Iraq High Tribunal by Iraqi Transitional National Assembly."[171]

The Governing Council was authorized to establish an Iraqi Special Tribunal to try Iraqi nationals or residents of Iraq accused of genocide, crimes against humanity, war crimes or violations of certain Iraqi laws, by promulgating a statute, the proposed provisions of which have been discussed extensively between the Governing Council and the CPA. As defining themselves Occupying Authorities and undertaking the duties and responsibilities of an occupant in the sense of traditional law of occupation; mainly the US and the UK should recall the article 66 of the Geneva Conventions. GC IV, article

[168] CPA/ORD/18 September 2003/35, Re-establishment of the Council of Judges. http://govinfo.library.unt.edu/cpa-iraq/regulations/20030921_CPAORD35.pdf
[169] Ibid.
[170] CPA/ORD/09 Dec 2003/48, Delegation of Authority regarding an Iraqi Special Tribunal. http://govinfo.library.unt.edu/cpa-iraq/regulations/20031210_CPAORD_48_IST_and_Appendix_A.pdf
[171] https://www.ibanet.org/Committees/WCC_IHT.aspx (accessed on 16 Aug 2017).

66 states that: “In case of a breach of the penal provisions promulgated by it by virtue of the second paragraph of Article 64, the Occupying Power may hand over the accused to its properly constituted, non-political military courts, on condition that the said courts sit in the occupied country. Courts of appeal shall preferably sit in the occupied country.”

In reality, the occupation forces avoided the choice of establishing military tribunals, like the Guantanamo commissions. As Michael N. Schmitt and Charles H.B. Garraway stunningly contends that “With regard to enforcement of penal laws promulgated by the occupier, offenders may be handed over to the ‘properly constituted, nonpolitical military courts’ of the occupier. Thus the existing military courts of an occupier may assume jurisdiction over occupation penal law. This does not prevent the indigenous courts dealing with such offenses where they are capable of doing so, although they may only apply “those provisions of law which were applicable prior to the offense.”[172] Also Schmitt & Garraway evaluates the offenses over which the Iraqi Special Tribunal exercise jurisdiction are drawn from the ICC Statute which was concluded in 1998. For them: “Iraqi Special Tribunal’s jurisdiction extends back to 1968, the question as to whether the various crimes listed were of a customary international law nature before 1998 (and if so, as of when) remains.”[173]

As one of the core principles of the Hague Regulations dated 1907, article 42 and 43 state that:

> “Art. 42. Territory is considered occupied when it is actually placed under the authority of the hostile army.
>
> The occupation extends only to the territory where such authority has been established and can be exercised.”[174]
>
> Art. 43. “The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and

[172] Schmitt, M.N.& Garraway, H.B. (2005) Occupation Policy in Iraq and International Law. *Int’l Peacekeeping*, 59. Access: 28 August 2015, HeinOnline.
[173] Ibid.
[174] Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907; Article 42. https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=4D47F92DF3966A7EC12563CD002D6788

> ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."[175]

When CPA Order No.48 thoroughly analyzed, it can be clearly understood that it was full of contraventions with The Hague Regulations dated 1907. According to Section 1, para.4 of the CPA Order No. 48; "The Iraqi Governing Council which is defined as the principal body of the CPA, shall be authorized to promulgate elements of crimes, the provisions which shall be coordinated with the CPA".[176]The CPA was designating the IGC as a so called authority to establish a special tribunal. But the CPA Administrator was reserving his authority to alter the statute of the Iraqi Special Tribunal, or any elements of crimes or rules of procedure developed for the Tribunal, if he deems necessary due to security concerns. In fact the establishment of the Iraqi Special Tribunal was occurred in an interim period of Iraqi occupation and the upcoming transfer of authority phases. Because there was still not a present, representative and internationally recognized government of Iraq. Iraqi Governing Council was not executing as the *de jure sovereign representative* of Iraq in accordance with Hague Regulations Art.43. Regrettably, IGC was not capable of taking decisions or enacting laws and enforcing them on its own namely independent of the CPA Administrator.

[175] Convention (IV) respecting the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907; Article 43.
https://ihl-databases.icrc.org/ihl/WebART/195-200053?OpenDocument

[176] CPA ORD/NO/48. http://govinfo.library.unt.edu/cpa-iraq/regulations/20031210_CPAORD_48_IST_and_Appendix_A.pdf

CONCLUSION

With handing over the CPA's authority to the Interim Government of Iraq on 30 June 2004 and then the Transitional Government of Iraq period; in 2005 Iraqi parliamentary elections were done on 30 January 2005. "The first post-invasion general election was held in January 2005, when voters chose a transitional national assembly whose main job was to draft a constitution. The constitution was approved in a national referendum in October 2005 and Iraqis voted for a new parliament in December 2005. In the December 2005 elections, the United Iraqi Alliance, a broad Shia coalition won 58% of the votes and the main Sunni coalition (the Accord Front) came second with 19%. The current Prime Minister Nouri Maliki was able to form a government with the support of the Kurds."[177]

Nevertheless, the Coalition Provisional Authority created so many rooted changes to the Iraqi territory. CPA was letting well enough alone with the related changes; but going too far in legal sense. CPA was doing the golden shot with the CPA Order No.100 titled 'Transition of Law, Regulations, Orders, and Directives Issued by the CPA'.[178] "The following CPA orders are hereby, or have been, rescinded in their entirety and shall have no force and effect whatsoever after the transfer of full governing authority to the Iraqi Interim Government on 30 June 2004: CPA Order Number 4 Management of Property and Assets of the Ba`ath Party, CPA Order Number 5 Establishment of the Iraqi De-Ba'athification Council, CPA Order Number 6 Eviction of Persons Illegally Occupying Public Buildings, CPA Order Number 11 Licensing Telecommunications Service and Equipment, CPA Order Number 12 Trade Liberalization Policy, CPA Order Number 21 Interim Exercise of Baghdad Mayoral Authority, CPA Order Number 42 Creation of Defense Support Agency, CPA Order Number 47 Amendment of CPA Order 38 on Reconstruction Levy, CPA Order Number 61 Amendment to CPA Order Number 45 and the CPA Order Number 62 Disqualification from Public Service."[179]

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[177] http://news.bbc.co.uk/1/hi/world/middle_east/8547906.stm (accessed on 20 August 2017).
[178] CPA/ORD/28 June 2004/100, 'Transition of Laws, Regulations, Orders, and Directives Issued by the CPA; http://govinfo.library.unt.edu/cpa-iraq/regulations/20040628_CPAORD_100_Transition_of_Laws__Regulations__Orders__and_Directives.pdf
[179] Ibid.p.17.

For the rest of the arrangements the revision were done in the context of the relevant documents such as revision of the Iraqi Interim Government, Iraqi Government and the relevant prospected ministries instead of the present terms of references created by the CPA. Jordan E. Toone argues that; "The Constitution of Iraq does not refer explicitly to CPA Orders or Regulations, but Article 130 of the Constitution perpetuates the validity of existing laws, "presumably including CPA Orders that were not rescinded but the Interim and Transitional Governments."[180]

According to Larry Diamond's determinations "the occupation compounded its original errors of analysis with two strategic miscalculations: (1) de-Baathification, (2) The second mistake was made in May 2003, when, as one of his first official acts, Bremer ordered the dissolution of the Iraqi army. For him; United States, however, lacked an effective political strategy for postwar Iraq, as became clear almost immediately after the invasion, when former General Jay Garner's ill-fated Office of Reconstruction and Humanitarian Assistance took charge in Baghdad. Throughout the occupation the coalition lacked the linguistic and area expertise necessary to understand Iraqi politics and society, and the few long-time experts present were excluded from the inner circle of decision-making in the CPA. Too many Iraqis viewed the invasion not as an international effort but as an occupation by Western, Christian, essentially Anglo-American powers, and this evoked powerful memories of previous subjugation and of the nationalist struggles against Iraq's former overlords." [181] Additionally, as Major Matthew R. Hover contends openly; "It is hard to argue that failed planning, training, and inter-agency execution of the occupation did not have a significant role in the development of the insurgency that erupted in late 2004 and caused US involvement in Iraq to continue for seven more years." [182]

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[180] Jordan E. Toone 'Occupation Law During and After Iraq: The Expedience of Conservationism Evidenced In The Minutes And Resolutions Of The Iraqi Governing Council' 24 Fla.J.Int'l L.469 2012. Cited from Florian Amereller et.al. 'Legal Guide To Doing Business ın Iraq 3 (5th ed. 2010).

[181] Diamond, L. (2004), What Went Wrong in Iraq?, Foreign Aff., (83), 34, 36, 37,43,46. Access: 04 November 2015, HeinOnline.https://www.foreignaffairs.com/articles/iraq/2004-09-01/what-went-wrong-iraq

[182] Hover, M.R. (2012). The occupation of Iraq: a military perspective on lessons learned. International Review of the Red Cross, 94 (885), 346. Access: 19 December 2017, https://www.icrc.org/en/download/file/.../irrc-885-hover.pdfDoi: 10.1017/S1816383112000458.

For any reason whatsoever, neither the occupation nor the transformative efforts and acts of the administrative body of the occupying authorities could be justified. In fact, the occupation was not as easy as the US and her counterparts expected. During the CPA Administration, between October-December 2003 Abu Ghraib prison was full of detainees. All the media and the press were reporting the news as 'Torture at Abu Ghraib'.[183] "Defense Department officials have acknowledged that American jailers in Iraq, under pressure to produce better intelligence, adapted some new, more aggressive interrogation techniques that were approved by Secretary of Defense Donald H. Rumsfeld for use at Guantanamo."[184] There were prisoners of war and insurgents inhabiting at Abu Ghraib prison and their exposure to harsh interrogation techniques had been come into light. Media and the public were aware of the things going on in Iraq and full of criticism to the US and her counterparts.[185]

In fact the process which is thoroughly analyzed, the US committed these violations by fair means or fouls with the aid and abet of the United Nations. Because with the process which was started with de-Baathification, dissolution of the entities, so-called funds for accessing the basic humanitarian relief; humiliating and degrading treatment in the detention facilities caused enormous deaths and sufferings of the people of Iraq. As Dennis Halliday puts forward: "By these various means, the UN has itself destroyed the basic human rights of the Iraqi people through the willful neglect of Articles 22–28 of the Universal Declaration of Human Rights. The UN failed to protect and safeguard the children and people before and after the 2003 invasion."[186]

In the continuum of the evolution of the international law of military occupation, achievements to date were painfully acquired. As Nehal Bhuta cites from Broers: "The cooperation and competition of the Great Powers preserved the territorial integrity of

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[183] http://www.newyorker.com/magazine/2004/05/10/torture-at-abu-ghraib (accessed on 20 Aug 2017).

[184] Tim Golden & Don Van Natta Jr., U.S. Said to Overstate Value of Guantanamo Detainees, N.Y. TIMES, June 21, 2004, http://www.nytimes.com/2004/06/21/world/the-reach-of-war-us-said-to-overstate-value-of-guantanamo-detainees.html (last access on 24 January 2018).

[185] https://www.hrw.org/reports/2004/usa0604/usa0604.pdf; http://www.washingtonpost.com/wp-srv/world/iraq/abughraib/timeline.html (accessed on 20 Aug 2017)

[186] Halliday, D. (2006). The UN and its Conduct during the Invasion and Occupation of Iraq. P.78. Empire's Law, The American Imperial Project and the War to Remake the World. Edited by Amy Bartholomew, London: Pluto Press.

the intra-European borders from reimposition of the uniform, internationalist doctrines of the French Revolution. In practice, this meant that existing rulers could not be overthrown by their own subjects or an outside power, and in no circumstances could they be replaced by anything resembling the revolutionary regimes of pre-1814. Within these limits, the states could evolve by their own volition."[187] Namely, in the 21st century international law, the republicanism principle should not be interpreted as it was solely applied amongst the civilized European nations. This principle had been spread through all the international state system with ratifications of the members of the 1945 Charter of the United Nations with their consent. In essence, the core of the traditional law of belligerent occupation has profound and valid norms inside. As it is well known; the term sovereignty, "souveraineté" in French for the first time thrown out for consideration by the French jurist Jean Bodin. For him, the sovereignty was used in order to characterize a state's absolute and continuous power.[188]Right after the French Revolution in 1789, the national sovereignty and modern state emerged. In modern nation state, the nation constitutes the national sovereignty's source of legitimacy. The sovereign power establishes law and it can be the sole legitimate source of the law. The modern sovereign nation state should be committed to law and obtain its authorization from law.

After the Second World War the importance of the state sovereignty was reflected to the Charter of the United Nations and it was based on the principle of the sovereign equality of all its Members.[189] Nevertheless; UN Charter Article 2, para.7 states that: "Nothing contained in the present Charter shall authorize the United Nations 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; but this principle shall not prejudice the application of enforcement measures under Chapter VII." Except certain conditions stated under Chapter VII of the UN Charter, sovereign equality of the members is accepted. With the acknowledgment of the prohibition of use of force principle in accordance with the UN Charter, article 2, para.4; the invasion and

[187] Bhuta, N. (2005). The Antinomies of Transformative Occupation. Eur.J.Int'l L.16(4), 732.Access: 14 March 2015, http://ejil.org/pdfs/16/4/315.pdf, doi: 10.1093/ejil/chi145
[188] https://www.britannica.com/biography/Jean-Bodin (accessed on 16 Dec 2017).
[189] http://www.un.org/en/sections/un-charter/chapter-i/index.html (accessed on 16 Dec 2017).

occupation are inadmissible under modern international law. That's why during the evolution of the international law of occupation, the suspended sovereignty of the occupied state was adopted. Inter alia; Alexandros Yannis argues that "The position in international law in the case of foreign invasion is that, while the legal personality of the state under occupation is not annulled, its sovereign rights are suspended. In this sense, the legal continuity of statehood is qualified. This means that the illegal usurper of power during the period of occupation effectively replaces the legal sovereign in international legal relations, at least with respect to the legal obligations of sovereignty such as state responsibility or other contractual obligations it may assume in connection with its activities as the *de facto* sovereign."[190] In this context, this thesis has determined the violations of the principles of the law of occupation with regard to the protection of sovereignty during the 2003 invasion and consecutively occupation of Iraq.

As of the creation of the Coalition Provisional Authority (CPA) with the letter dated 8 May 2003, till the approval of the constitution in October 2005 national referendum and following voting of Iraqis for a new parliament in December 2005; the US led Coalition had conducted various violations of the international law of occupation. First and foremost despite the formation of the Iraqi Interim Government with the UNSCR 1546 dated 08 June 2004, the Administrator of the CPA was meddling in its operation. There was a so-called interim government which should take care of the people of Iraq's rights and duties as a de *jure* sovereign in the occupied territory of Iraq. Obviously, the sovereignty of Iraq as a participant which had ratified the UN Charter on 21st December 1945 as a sovereign equal member of the international state system. Second main violation of the tenets of the law of occupation by CPA despite having the authorization of the utilizing sovereign rights of Iraqi people as a temporary namely de facto sovereign, its acts and executions were beyond restoring and ensuring public order and safety as it is explicitly provided as an occupant's duty in The Hague Regulations article 43. So called interim government was tasked with preparation of a draft constitution of Iraq but its voice was mostly stifled by the CPA Administrator. In spite of an harshly

[190] Yannis, A. (2002). The Concept of Suspended Sovereignty in International Law and its Implications in International Politics. *EJIL, 13 (5),* 1037-1052. Access: 19 December 2017, http://www.ejil.org/pdfs/13/5/1574.pdf.

oppressed insurgency inside the country, the occupant had not only amended the Iraqi constitution but also the state structure with a regime change that would have long term outcomes for the people of Iraq in virtue of dividing the country with regard to ethnicity and sects. With the dramatic changes in the administrative organization of Iraq, it wouldn'be wrong to say that with the occupant so to say had brought her own laws in the occupied territory of Iraq.

Thirdly; as a greedy occupant it took away the oil revenues of Iraq which is a national property by creating so called Development Fund for Iraq. Also as a natural resource it would have had only usufructuary rights of the oil and other natural resources and the real estate in Iraqi territory. But it had misused its rights and eaten more than his fair share. In fact, the CPA had also violated the rights of the Iraqi people which had been provided by the Geneva Conventions and the Hagee Regulations with regard to international law. CPA had liberated the trade policy and applied international market price rules economically. CPA had also intervened in the financial matters especially the banking system. All tariffs, customs duties, import taxes, licensing fees and similar surcharges for goods entering or leaving Iraq, and all other trade restrictions that may apply to such goods were suspended until December 31, 2003. Only a sovereign power of a state has the power of levy and impose taxes and suspend them. Additionally, CPA had caused unfair competition among foreign investors and the Iraqi investors. Due to the ousted leader Saddam's image it had changed the banknotes of Iraq.

Fourthly, the US occupations which had triggered in Afghanistan and expanded with Iraq; proved that still how important the state sovereignty is. A state's whether internal or external sovereignty may be weak compared to the other counterparts. In Iraq, US led Coalition and the CPA publicly violated the law of occupation norms. Their acts, enacting laws, orders and regulations were not only unlawful but also illegitimate. Because the current international law of occupation provides and protects the sovereign rights of the occupied state's people. Otherwise an occupant may occupy a state's territory without obeying the laws which it had enacted. There would be no limits for the use of power by the occupant that it would assume till its transfer of *de facto* sovereignty to the *de jure* sovereign.

Last but not least, the 2003 Iraqi occupation proved that if there is not sovereignty, there is not law and legal security also. During the occupation phase with the breaking out of insurgency, harsh oppression and interrogation techniques had been executed by the US military officials to prisoners and detainees at Abu Ghraib. Abu Ghraib prison case was a shame of humanity right after the Guantanamo case of US. These were demonstrating that existing norms of international law of armed conflict and occupation are consisting of invaluable legislation in order to protect the people of the occupied territory and their fundamental human rights and due process rights when they are exposed to torture and other cruel, inhuman or degrading treatment in the hands of a relentless and tyrannical occupant. Also; the creation of Iraqi Special Tribunal (IST) and "the process of developing the statute was opaque to the outside world, which at the time allowed some observers to criticize the IST because of the perception (and assumption) that it would function in fact as a "puppet court of the occupying power.""[191] When the IST was established with CPA Order No.48 dated 09 Dec 2003; there was not a fully sovereign authority for the representation of the Iraqi people.

In this thesis; it is contended that starting with the unilateral and latent hegemonic desire of the US efforts with her counterparts and the UN support; alleged transformative type Iraqi occupation was a complete failure without considering the jus ad bellum impulses of the occupants. "On 18 December 2011, the Reuters was announcing that 'Last US troops leaving Iraq, ending war'. The war costed 4500 American and tens of thousands of Iraqi lives and the US left the country with political uncertainty."[192] Despite the leave of the US troops on 18 December 2011, the UN extended the mandate of the United Nations Assistance Mission for Iraq (UNAMI) for a period of twelve months.[193] The striking provision of the paragraph 13 of the UNSCR 2001 date 28 July 2011 was as follows: "*Welcoming the important progress Iraq has made towards regaining the international standing it held prior to the adoption of resolution 661 (1990),* calling on the Government of Iraq to continue ongoing cooperation with the Government of

[191] Newton, Michael A. (2005) "The Iraqi Special Tribunal: A Human Rights Perspective,"Cornell International Law Journal: Vol. 38: Iss. 3, Article 10. Available at:http://scholarship.law.cornell.edu/cilj/vol38/iss3/10

[192] http://www.reuters.com/article/us-iraq-withdrawal-idUSTRE7BH03320111218 (accessed on 20 August 2017).

[193] http://www.un.org/press/en/2011/sc10345.doc.htm (accesed on 20 Aug 2017).

Kuwait to address outstanding issues and to meet its outstanding obligations under the relevant Chapter VII Security Council resolutions pertaining to the situation between Iraq and Kuwait and underscoring the importance of ratification of the Additional Protocol to its Comprehensive Safeguard Agreement".[194] The sad truth, the thesis which is argued of US surveying occupation of Iraq was proved and in essence, a non-Western state Iraq's sovereignty was not equal as the Western sovereign states'; so; Iraq had been whittled down to size with the US led manipulation of the United Nations in the public eyes of the civilized European-Western nations.

That's why; unfortunately the tasks of the UNAMI instigating with the insurgency, internally displaced persons, the increasing refugee crisis were multiplied with combating terrorism and sectarian violence and it is authorized to tackle with a new UNSCR 2061 dated 25 July2012.[195] The mandate of the UNAMI would be extended till 31 July 2018, in the end.[196]

In that sense; with political instability, sectarian violence, economic turmoil and humanitarian crisis, Iraq was like a swamp now. In fact the hegemonic great powers of the 21st century and their rapacious counterparts created a problem growing like topsy. This time; Big Five with the support of UN was issuing the UNSCR 2169 dated 30 July 2014.In para.4 of UNSCR 2169; SC was "expressing grave concern at the current security situation in Iraq as a result of a large-scale offensive carried out by terrorist groups, in particular the Islamic State in Iraq and the Levant (ISIL)". This relatively small Iraq swamp would create boomerang effect supervening on violent extremism to terrorism and the sectarian violence in Iraqi territory. Stunningly, despite reiterating the other member states support to the people and the Government of Iraq in their efforts to build a secure, stable, federal, united and democratic nation, the calls would not be enough. While in previous resolutions UN were triggered by the letters of the Ministry of Foreign Affairs of Iraq for the extension of the UNAMI's mandate; now, with

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[194] http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2001(2011) (accessed on 20 Aug 2017).
[195] http://www.un.org/press/en/2012/sc10726.doc.htm (accesed on 20 Aug 2017).
[196] http://unscr.com/en/resolutions/2367 (accessed on 20 Aug 2017).

UNSCR 2335 dated 30 December 2016 the UN was acting under Chapter VII of the UN Charter.

The last but not least, with UNSCR 2367 dated 14 July 2017, in para.4; UN was alarmed with ISIL, also known as Da'esh, the cumulative displacement of more than 5.3 million Iraqi civilians.[197] Also, UN was welcoming the establishment by Prime Minister of Iraq Haider al-Abadi of a committee to investigate reported violations and abuses.[198]

At the occupation phase of Iraq on 16 October 2003 with UNSCR 1511 para.13: the members of the UN;

> "Determines that the provision of security and stability is essential to the successful completion of the political process as outlined in paragraph 7 above and to the ability of the United Nations to contribute effectively to that process and the implementation of resolution 1483 (2003), and **authorizes a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq,** including for the purpose of ensuring necessary conditions for the implementation of the timetable and programme as well as to contribute to the security of the United Nations Assistance Mission for Iraq, the Governing Council of Iraq and other institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure;"

As it is expounded in this thesis in a clear and concise manner; the classical and the traditional law of belligerent occupation does not require amendments or modifications. As international legal practitioners we are not in need of new codes or provisions. We are still witnessing lack of obedience and negligence of the mainly great powers in current norms in recent conflicts and occupations. The current norms are not obsolete or inefficient. The international law had been violated once with the occupation of Iraq and the violations of the great powers should be questioned wisely before supporting their anachronistic hegemonic desires for invading or occupying the weak or fragile states. The international commentators should not put the blame on the codes and norms but on the implementing agencies. Due to the allowing once the violation of the international law of occupation by the US and the US-led coalition forces, today with growing problematic areas by the virtue of the 2003 occupation of Iraq; and the ISIL; The Global

[197] http://unscr.com/en/resolutions/2367 (accessed on 20 Aug 2017).
[198] Ibid.

Coalition against Daesh was formed in September 2014. Together, the Global Coalition is committed to so-called degrading and ultimately defeating Daesh.

As it is allegedly enounced; "The Coalition's 73 members are committed to tackling Daesh on all fronts, to dismantling its networks and countering its global ambitions. Beyond the military campaign in Iraq and Syria, the Coalition is committed to: tackling Daesh's financing and economic infrastructure; preventing the flow of foreign terrorist fighters across borders; supporting stabilisation and the restoration of essential public services to areas liberated from Daesh; and exposing Daesh's delusional narrative including its claims to statehood, military success and the group's false religious narrative."[199] When the mission areas of the Global Coalition against DAESH had been analyzed Mosul was given a separate importance. That proves that Iraq would not be discarded by the key players in the territory due to its consisting of invaluable reserves of petroleum and natural gas. The three of the 'Big Five' of the UN members whom have the veto powers mainly the US, the UK and France are already taking part in the newly created so called "unwilling" Global Coalition against DAESH. This shows that; as a matter of fact; the great powers and their presiders care nothing about striving against DAESH. The launching of new operations with the lead of hegemonic great powers in various weak powered and fragile states indicate that the fact of imperialism and the violations of the international law will be kept on. Anachronous and allegedly new, transformational international law of occupation solely and exclusively serves for imperialism's purpose. In this respect; the 2003 occupation of Iraq is so crucial in order to comprehend both prevalent and prospective imperialist operations and ascertain the violations of law caused by these operations.

[199] http://theglobalcoalition.org/en/home/ (accessed on 20 August 2017).

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EK-1: TEZ ORJİNALLİK RAPORU

HACETTEPE ÜNİVERSİTESİ
SOSYAL BİLİMLER ENSTİTÜSÜ
YÜKSEK LİSANS/DOKTORA TEZ ÇALIŞMASI ORJİNALLİK RAPORU

HACETTEPE ÜNİVERSİTESİ
SOSYAL BİLİMLER ENSTİTÜSÜ
ULUSLARARASI İLİŞKİLER ANABİLİM DALI BAŞKANLIĞI'NA

Tarih: 05.02.2018

Tez Başlığı / Konusu: Uluslararası İşgal Hukukunun Dönüşümü: Irak Olayı.

Yukarıda başlığı/konusu gösterilen tez çalışmamın a) Kapak sayfası, b) Giriş, c) Ana bölümler ve d) Sonuç kısımlarından oluşan toplam ...86... sayfalık kısmına ilişkin, 05/02/2018 tarihinde ~~şahsım~~/tez danışmanım tarafından Turnitin adlı intihal tespit programından aşağıda belirtilen filtrelemeler uygulanarak alınmış olan orijinallik raporuna göre, tezimin benzerlik oranı % 9 'tür.

Uygulanan filtrelemeler:

1- Kabul/Onay ve Bildirim sayfaları hariç,
2- Kaynakça hariç
3- Alıntılar hariç/dâhil
4- 5 kelimeden daha az örtüşme içeren metin kısımları hariç

Hacettepe Üniversitesi Sosyal Bilimler Enstitüsü Tez Çalışması Orjinallik Raporu Alınması ve Kullanılması Uygulama Esasları'nı inceledim ve bu Uygulama Esasları'nda belirtilen azami benzerlik oranlarına göre tez çalışmamın herhangi bir intihal içermediğini; aksinin tespit edileceği muhtemel durumda doğabilecek her türlü hukuki sorumluluğu kabul ettiğimi ve yukarıda vermiş olduğum bilgilerin doğru olduğunu beyan ederim.

Gereğini saygılarımla arz ederim.

Tarih ve İmza

Hülya KAYA
05.02.2018

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DANIŞMAN ONAYI

UYGUNDUR.

Prof.Dr.Ali Murat Özdemir

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EK-2: ETİK KURUL İZİN MUAFİYET FORMU

HACETTEPE ÜNİVERSİTESİ
SOSYAL BİLİMLER ENSTİTÜSÜ
TEZ ÇALIŞMASI ETİK KURUL İZİN MUAFİYETİ FORMU

HACETTEPE ÜNİVERSİTESİ
SOSYAL BİLİMLER ENSTİTÜSÜ
ULUSLARARASI İLİŞKİLER ANABİLİM DALI BAŞKANLIĞI'NA

Tarih: 05/02/2018

Tez Başlığı / Konusu: Uluslararası İşgal Hukukunun Dönüşümü: Irak Olayı.

Yukarıda başlığı/konusu gösterilen tez çalışmam:

1. İnsan ve hayvan üzerinde deney niteliği taşımamaktadır,
2. Biyolojik materyal (kan, idrar vb. biyolojik sıvılar ve numuneler) kullanılmasını gerektirmemektedir.
3. Beden bütünlüğüne müdahale içermemektedir.
4. Gözlemsel ve betimsel araştırma (anket, ölçek/skala çalışmaları, dosya taramaları, veri kaynakları taraması, sistem-model geliştirme çalışmaları) niteliğinde değildir.

Hacettepe Üniversitesi Etik Kurullar ve Komisyonlarının Yönergelerini inceledim ve bunlara göre tez çalışmamın yürütülebilmesi için herhangi bir Etik Kuruldan izin alınmasına gerek olmadığını; aksi durumda doğabilecek her türlü hukuki sorumluluğu kabul ettiğimi ve yukarıda vermiş olduğum bilgilerin doğru olduğunu beyan ederim.

Gereğini saygılarımla arz ederim.

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