مركز الرافدين للحوار
Al-Rafidain Center For Dialogue
R.C.D

2

The Process of Iraq's Sovereign Debt From Default to Restructuring

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About Al-Rafidain Center for Dialogue

Al-Rafidain Center for Dialogue is one of the qualitative centers in Iraq, which brings together political, economic and academic elites which are active in guiding visions and influences in decision-making and public opinion.

It is an independent think tank, which promotes dialogues in political, cultural and economic affairs among Iraqi elites, with the aim of promoting democratic experience and achieving community peace, and helping state institutions develop themselves, by providing strategic expertise and insights, the center is a salon for dialogue that is objective and neutral which employs its outputs to pressure decision makers and direct public opinion towards building a state of institutions, within the framework of democratic system, the rule of law, and respect for human rights.

The center was established on February 1, 2014 in Najaf city in the form of a virtual group in cyberspace comprising a limited number of politicians, academics and intellectuals, and the idea developed later, to be legalized by registering the center in the NGO department of General Secretariat of the Iraqi Council of Ministers.

Today, the Rafidain Center for Dialogue brings together more than 700 Iraqi members from all political orientations, academic disciplines and religious denominations, as it can be likened to a "mini-Iraq" in which everyone agreed to adopt dialogue as a key pillar for addressing problems and producing strategic solutions, in harmony with the center's vision of building a prosperous nation. The administrative center also has 30 employees from different disciplines.

In a short time, the Center has been able to achieve a range of achievements by harnessing different energies and employing its outputs for the benefit of the Iraqi cause, taking advantage of modern technologies in electronic communication with the elites at the decision-making center and overcoming the barriers of geography, time and security imperatives, which may hinder direct dialogue.

The Centre not only engaged in electronic communication, but also set up a range of activities on the ground, including a number of seminars, conferences, workshops and specialized interactive sessions, including, but not limited to: The development of the banking sector and the stock market, the ripening of national reconciliation projects, the mediation between the Government of the Centre and the government of the region during crises, the improvement of the service sectors, the elimination of administrative bureaucracy and routine, the achievement of water and food security, as well as the extrapolation of many thorny problems, such as the Constitution, petroleum, foreign relations, popular mobilization, border crossing points, investment, social welfare and others.

The Forum for Dialogue is a milestone in the Centre's activities, which is the first of its kind in Iraq, and the most extensive and structured, aimed at enriching dialogue among decision makers on issues of concern to the country, promoting discussions on them and exchanging experiences, experts and academics.

The vision of the center:

The center is the station at which the views of elites and decision makers converge in its entire political, religious and national spectrum, providing a positive interactive environment that improves the creation of common spaces and contributes to the building of a thriving country.

The message of the center:
Promoting and developing substantive and serious dialogues between ethnic elites and decision makers that enhance democratic experience, and achieve community peace and sustainable development in Iraq.

Objectives of the Centre:

The Center seeks to achieve a number of objectives, including:

- Achieving and sustaining social peace by promoting constructive dialogue and intellectual exchange among Iraqi elites within comprehensive national rules and frameworks.
- To promote a sense of national responsibility in society by making a public view towards sustaining democratic experience and maintaining a balanced relationship and mutual trust between elites on one hand and state organs and institutions on the other.
- Assist State institutions and bodies develop solutions to the problems facing their work by providing strategic studies, consultations and insights by specialized researchers.

- Expanding the base of commons between political and social entities by providing a neutral and objective dialogue environment that guides dialogue in the public interest of the nation and the citizen.

Means:

In order to achieve its objectives, the Centre uses the following methods:

- Holding conferences, seminars and specialized meetings in the political, social, economic and cultural fields, providing appropriate media coverage and following up on its outcomes.
- producing composed and translated books, magazines, newspapers, publications and research in Arabic or other languages, and publishing them in paper or electronically.
- Conclusion of agreements and partnerships for cooperation and the signing of memorandums of understanding with local and international institutions, organizations and centers with orientations and objectives similar to the center's.

- Concluding agreements with high-level universities and colleges in Iraq and abroad to hold joint scientific events that contribute to achieving the center's objectives.
- The establishment of scientific, intellectual and cultural research and studies departments, and the formation of specialized permanent or temporary committees, which strengthen the scientific research movement to contribute to achieving the center's objectives in issues concerning Iraq and the Middle East region.
- Holding dialogue and understanding sessions between different people whether they engage in ethnic, racial or political differences, to develop mechanisms for understanding the other as a prelude to discovering national commons and making them the starting point for a creative constructive dialogue for social integration.

The Process of Iraq's Sovereign Debt

From Default to Restructuring

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The Study Summary

In 1979, Iraq was a creditor country on a net basis because of its large oil reserves and the lack of foreign debt. Fifteen years later, the debt-to- GDP ratio reached more than 1000%. When the United States of America invaded Iraq in 2003, it was suffering under a foreign debt of about (130 billion dollars). This debt needed to be restructured, and here the question arises: How can a country incur such a huge debt with such haste? And how can it be disposed of?

This study contributes to answering the previous question through two main things:

1. Restructuring the process of Iraqi debt accumulation in the 1980s and 1990s, using mainly secondary sources. This study is the first of its kind in establishing a debt series dating back to 1979. The high Iraqi indebtedness was the result of geopolitical trends prevalent in the eighties in which political lending overcome fears of default.
2. Using oral history to tell the story of the restructuring of the Iraqi debt, relying on main

sources and interviews with actors involved in this regard, because the story of this debt is one of the largest stories of sovereign debt in history. However, you will not find a clear and detailed historical account of what happened. The restructuring process was imbued with policies that were intended to impose harsh conditions on (Paris Club) at a time when restructuring processes were carried out in a way that does not antagonize the creditors. However, the endeavour to a deal that suit the political purposes made the restructuring process miss the opportunity to embody the principle of (illegal debt) in international law.

1. Introduction

In 1979, Iraq was a creditor country on a net basis because of its large oil reserves and the lack of foreign debt. Fifteen years later, the debt-to- GDP ratio reached more than (1000%), with few financial assets. When the United States of America invaded Iraq in 2003, it was suffering under a foreign debt of about (130 billion dollars), making it the most highly indebted country in the world. Here, the question arises: How can a country go from wealth to poverty in such a short period of time?

The story of the Iraqi debt and default and the subsequent restructuring process is rarely covered by the works that deal with issues of sovereign debt and economic history, as you will not find in it any complete historical addressing of the Iraqi debt. In this study, I will make two contributions in this regard:

1. I will restructure the process of Iraqi debt accumulation in the 1980s and 1990s using

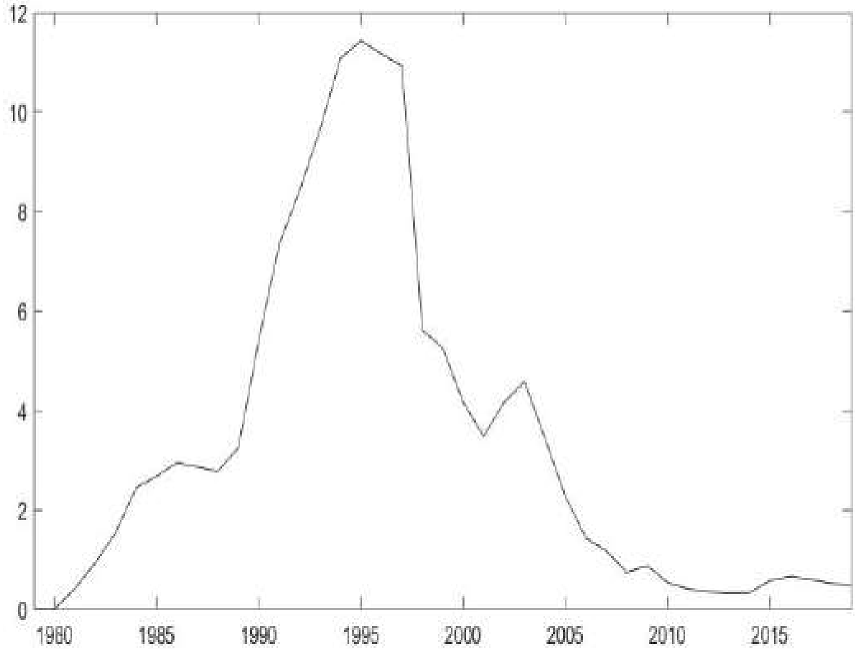
mainly secondary sources. I will determine debt levels through four main time points:
The coming of Saddam Hussein to power in 1979, the end of the Iran-Iraq war in 1988, the end of the first Gulf War in 1991, and on the eve of the US invasion of Iraq in 2003. I will work retrospectively out of the demands made as part of the restructuring efforts in the period 2003-2006 and trace the impact of the loans until I reach the point in time in which they arose.

2. I will use the oral history and debt series to tell the story of the restructuring of the Iraqi debt, default and restructuring process, relying on main sources and interviews with actors involved in this regard, as I conducted interviews with American and British officials who assumed responsibility for restructuring. In addition to legal persons and bankers involved in this regard. Although this restructuring story is one of the largest in history, you will not find a detailed historical account of what happened. The high Iraqi

indebtedness was a result of the prevailing geo-political trends, especially the political and commercial interests of the United States of America in the region, so that political lending overcame fears of default and loans were provided on below-market requirements. The debt restructuring was also a political process. It differed from most of its counterparts in the nineties and the first decade of the twenty-first century, marked as processes that did not antagonize the creditors, as the process of restructuring the Iraqi debt stipulated that the creditors should reduce their debts, contrary to the norm.

Saddam Hussein came to power in 1979 after a decade of solid economic growth. However, the prosperity of the 1970s was followed by an economic collapse in the 1980s, as the Iraq-Iran war broke out in 1980 and continued through the 1980s until 1988, during which Iraqis enjoyed broad global political support. Almost all of the Iraqi debt goes back to the war era during which the West provided a helping hand to Iraq, as the United States of America and Europe did not want the postrevolutionary regime in Iran to win the war, and they were happy to provide money and weapons to Iraq. In the midst of war era, it became apparent that Iraq was in financial distress, but the lending was based on political stimulus, not on market conditions. Iraq defaulted on its sovereign debt for the first time in the late eighties. After the end of the Iran-Iraq war, Iraq invaded Kuwait in 1991 in the so-called the first Gulf War. However, the political winds had shifted at that time, so the United States led an alliance against Iraq and the United Nations placed it under international sanctions and forced it to pay compensation and isolated it from the global economy for most of Nineties decade. The accumulation of debt and the sudden halt of capital flow follows the course of the prevailing geopolitical trends that lining Western interests in the Middle East, and the result was a huge rise and fall in Iraq’s indebtedness (Figure 1). This study is the first to show a continuous series of debt dating back to 1979.

(Figure1): Iraqi government debt- to- GDP Ratio[1]



The high debt-to-GDP ratio between 1979 and1995 is attributed to both the numerator and the denominator, due to a dramatic and rapid increase in the absolute level of debt with the collapse of outputs at the same time, as Iraq separated from the global economy after the imposition of sanctions on it in 1991. Therefore, the rise

[1] Source: Author's estimates as presented in Section 3 of this study

in the mentioned ratio in the early nineties is mainly due to the decrease in outputs. As for the decrease in the ratio starting from 1997 is due to the output reaching twice as much as it used to be., although the starting point was low due to the improvement in the economy out of (oil-for-food) program. On the eve of US-led invasion of Iraq in 2003, the Iraqi economy was in ruins. So, dealing with the debt issue became one of the priorities of the US government’s plans for reconstruction. However, a problem arose in the face of this priority. The prevailing trend in the early stages of restructuring the sovereign debt required offering terms do not antagonize the creditors. It has become easier to impose sovereign debt payments in light of globalization and the rise of interconnected capital markets, as sovereign debt, unlike personal debt, is more difficult to be imposed. In the 1990s, there was an increase in the number of lawsuits brought by reluctant creditors against volatile debtors, and they won such lawsuits by separating the creditor countries from global financial architecture. Iraq has been collecting almost all foreign exchange from oil sales (IMF 2004), making it vulnerable to crises. If the creditors could link their lawsuits to oil-related assets, then the restructuring process will eventually encounter difficulties, according to the best estimates.

Despite the above, the Iraqi debt restructuring process managed to circumvent the aggressive creditors, and political pressure and the international immunity of foreign assets played a role in imposing one of the most complex debt restructuring processes to this day.[2] The United States spent a lot of its political capital and used almost unprecedented tools to force the reluctant creditors to exchange their debt claims, but the its efforts stopped at embodying the principle of illegal debt in international law, despite initial attempts, where political interest was preferred over the establishment of a new system for restructuring the sovereign debt. This study will place the restructuring process in the context of what was prevalent in the early first decade of the twentieth century of settlements of the sovereign debt that do not antagonize the creditors, unlike what was followed in the Iraqi situation. Whoever thinks of the

[2] The Iraqi debt stock includes all types of debt (External bonds, commercial loans, bank deposits, trade credit, export grants, etc.) that Iraq owes to all types of creditors (from governments to all types of commercial creditors).

Iraqi situation as a process of restructuring a sovereign debt in a country that owns assets related to it in foreign countries must take into account that Iraq provides a model for restructuring processes in the future, although such model needs the support of a strong and homogeneous creditor.

2. The relevant works

This study contributes to the works related to the processes of restructuring the sovereign debt, including what Shea and Poast (Shea and Poast 2018) stated that war rarely leads to default, but the Iraqi experience completely refutes their hypothesis. The accumulated Iraqi debt was caused by the war, and then followed by default, and this is not the only case in which Iraqi history deviates from the usual course. There are two important facts that distinguish sovereign default from personal default: (1) it is almost impossible to enforce sovereign debt contracts, and (2) there is no bankruptcy regime to settle defaulted sovereign debt (Gelpern 2016, p. 47).

Sovereign default occurs due to the inability or unwillingness to pay. In the historical record, there are only a few solutions to which the creditors resorted to force the repayment. Instead, they rely on imposing debt contracts depending on the country's prestige, because the creditors want to retain the opportunity to borrow from them in the future. Eaton and Gersovitz (Eaton and Gersovitz 1981) first suggested that the cost of default comes from being unable to borrow more money, whether through external (Na et al. 2018) or domestic (Bocola et al. 2019) debt. The point, there is no international legal structure that can compel countries to comply. For example, US courts can order Argentina to pay its debts, but they have no way to force this sovereign country to comply with its order outside the scope of resorting to military force.

It was common before the twentieth century to resort to sanctions or "barge diplomacy", as cases of default often ended in military siege, sanctions or the country's loss of its lands. The imposition of debt contracts was carried out using pure force, not legal frameworks (Mitchener and Weidenmier 2010). Sovereign immunity slowly began to wane in the 20th century when the United States allowed domestic claimants to sue foreign governments. Through the efforts of the League of Nations at the time (Weidemaier 2014), there were multiple attempts to formalize model litigation clauses in sovereign bonds within the world order that emerged after World War I. However, until the last fifties, the defaulting countries remained actually immune to legal proceedings, and the creditors were able to seize only non-diplomatic assets abroad, of which little was available (Gelpern 2005, p. 396-7). Rather, even in the second half of the last century, the restructuring processes remained voluntary ones that did not go beyond the scope of the situation they were addressing (Sgard 2016).

It was only in the past forty years with the advent of globalization that the situation of imposing sovereign debt really changed. In 2009, New York law and British law governed 95% of all global bonds issued by emerging market countries (Das et al. 2012, p. 41). The rise of a few global financial centers has provided sure tools to aggressive creditors. The best example being the debt restructuring process in Argentina after it defaulted in 2001. In 2005, some reluctant creditors apologized for participating in the process and sued for equitable payments (according to the requirement of equal treatment) for bonds that Argentina defaulted on in conjunction with the restructured bonds.[3] The reluctant creditors then claimed that Argentina would not have been able to pay any money to the owners of the restructured bonds unless it had paid them, i.e. the reluctant creditors, in advance all the money related to the bonds it defaulted to pay. The reluctant creditors won their lawsuit and succeeded in preventing Argentina from paying any money globally unless the money was also paid to the reluctant creditors (Buchheit and Gulati 2017). Argentina is certainly not the only case. Schumacher and his colleagues (Schumacher et al. 2018) show how aggressive creditors have increased the cost of default using a combination of reduced market access and seizure of asset in the judicial system (generally, an Anglo-Saxon system). Reliance on international financial centers and their judicial systems means that countries

[3] The reluctant creditor usually does not participate in the restructuring process, hoping to obtain better terms later. see for example (Gulati et al. 2013).

lose access to global capital markets (particularly the offshore bond market) because almost all financial transactions flow in London and New York. As a result of the concentrated flow of global capital, the ability to impose payment of Sovereign debt increases.

Surely, this game can be played by two parties. However, the sovereign parties have included in the debt contracts the so-called collective action clauses (CAC). These clauses mean that the majority of creditors can force the minority to accept the restructuring process. If the Argentine bonds had contained collective action clauses (CAC) before they defaulted in 2001, investors would not have been reluctant if the majority accepted the restructuring process, because these clauses lead to the restructuring automatically. So far, the approach of market-compatible collective action clauses (CAC) has been traditionally preferred over many destructive measures such as the principle of illegal loans. Initially, the collective action clauses (CAC) were included in single issues of bonds, and this meant that the reluctant debts could buy the position of the majority with one bond, and this allowed stopping the restructuring process. The second generation of collective action clauses (CAC) only became prevalent in the second decade of the twenty-first century, and such generation will force to restructure the entire debt stock if the majority accepts that. The principle of (illegal debt) states that if the debt was concluded without the benefit or approval of the people, the new government should not be responsible for the debts of the former regime, as this debt is considered illegal (Jayachandran and Kremer 2006).[4] Buchheit et al. (Buchheit et al. 2007) show that the definition of the customary use of it has been expanded to include the debts of illegal regimes without being limited to a specific debt. The debt incurred by Iraq under Saddam's regime fits with definitions of illegal debt, but it does not generally enjoy much protection from the debtor. Therefore, the political actors have the responsibility to search for a way to settle the debt, and this is what they did in the Paris Club (an informal group of developed countries often carried out debt restructuring processes. For more details, see section

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[4] It's argued that the principle of illegal debt does exist in international law, but it never came out to the level of practice (see, for example, Howse 2007 ; King 2016). In order to implement the principle of illegal debt, it must be recognized in customary applicable international law. Sometimes, this principle is used, but it needs the support of powerful countries (Choi and Gulati 2016).

2.4). As for Iraq, it has oil assets abroad that creditors can seize and the matter has become a dispute between two parties: creditors with remedial action that require the seizure of assets, and a debtor who enjoys political support from the United States of America. In the end, political pressure was able to force the creditors to accept a deal that included them all.[5] Thus, Iraq deviated from the normal course in which the creditor's authority increases upon debtor default.

3. Debts of Iraq Process (1979-2003)

The process of restructuring the Iraqi debt took place in the period (2003-2006) and included debts totaling about (130 billion dollars), without calculating the compensation amounts for the first Gulf War. Most of the debt can be traced back to the early 1980s, though Iraq had no foreign debts prior to 1979. (Table 1) shows how Iraq borrowed in the year 1979 when its foreign exchange reserves amounted to 65% of the GDP, in addition to a small debt.

[5] Almost all of them, see section (4).

(Table 1): Iraqi Debt in 1979, according to the creditors.[6]

creditor	Outstanding debt (billion-dollar)	Debt-to-GDP Ratio
Paris Club	2	3%
Gulf States	-	-
The Soviet Union and its allies	-	-
Compensation (not debt)	-	-
Commercial debt	1	2%
foreign exchange reserves	-35	-65%
Total	-33	-60%

The following sections of this study will trace the impact of the accumulation of the Iraqi debt in the decades that followed the year 1979, to the restructuring process that took place in the period between 2003 and 2006. The methodology used is to address, wherever possible, the

[6] Source: (Caron 2004, p. 131; Jiyad 2001, p. 19; Alnasrrawi 1994, p. 152). Note: Negative numbers refer to the situation of the Iraqi debt. The negative numbers remained the consistent formula that appeared again in Tables (3, 4, 5, and 7) that followed the process of the Iraqi debt. As for the (Paris Group) is a group of governments that coordinate restructuring processes (See Section 2.4.).

debts that have been restructured and work on them back in time to determine the origin of the debts and rearrange them within a time line. Below, I will try to come up with a best estimate of the Iraqi debt levels in the years 1988, 1991, and 2003, enabling us, for the first time, to construct a continuous time series of the debt-to-GDP ratio going back to 1979. I relied mainly on secondary sources to provide the data for this section, and I also relied on primary sources, but on a smaller scale (governmental reports and investigations).

3.1. The origin of the Iraqi debt: The Iran-Iraq War (1980-1988)

The year 1979 brought with it a decisive change in the Middle East. Saddam Hussein came to power in Iraq and the Iranian revolution overthrew the US-backed Shah and installed Ayatollah Khomeini in his place.[7] The change in Iraq was carried on the back of the thriving economy of the seventies, in which the average output growth reached 12%, a year after the nationalization of

[7] The two countries did not get along, as some groups tried to assassinate a number of Iraqi ministers, and Iraq expelled thousands of Iranians (Kennington et al. 2004, p. 1).

the Iraqi Oil Company and the rise in oil prices, so oil production increased forty times (Alnasrawi 1994, p. 79-80). The Iraqi oil fields were among the largest oil fields in the world, as they were producing (3.5 million barrels per day) in the year 1979, and revenues from the sale of oil reached (26 billion dollars) in 1980 (Mehdi 2018, p. 3; Alnasrawi 1994, p. 93). Two-thirds of the output came from oil activities, and the country relied on fuel exports. The Iraqi economy was under state control, and almost all economic activities were passing through the corridors of state organs, from oil policy to import control and capital allocation (Foote et al. 2004, p. 51; Alnasrawi 1994, p. 79-103). In the year 1979, Saddam ruled Iraq, a state without actual debt, and with (35 billion dollars) of foreign exchange reserves in its treasury. However, the prosperity of seventies followed by the misery of eighties and Iraq fell into the abyss of wars and disasters. Table 2 shows us the annual average of growth in the two decades, where reached more than (10%) in the seventies, then, in the eighties, the Iraqi economy began to reduce by about 5 percent every year.

(Table 2): Growth Rates in Iraq (Annual average)[8]

	(1970-1979)	(1980-1989)
government consumption	13.6	-2.9
private consumption	13.2	-6.1
Investments	27.6	-0.9
Exports	4.4	-5.0
Imports	22.5	-5.6
Domestic Trade	16.8	-4.8
Gross Domestic Production	11.7	-4.9

The reason behind that was the Iran-Iraq war, as Saddam invaded Iran on September 22, 1980 after months of hostilities. The United States of America had frozen all Iranian assets in reaction to the hostage crisis at the American Embassy in Tehran in 1979, and the new Iranian government repudiated all foreign debts

[8] Source: (Alnasrawi 1994, p. 101)

(Christopher and Mosk 2007, p. 167). The United States of America went to the International Court of Justice in The Hague, which ruled in its favor in a short time and ordered Iran to return the embassy and release the hostages. Iran became too far from international support. Then, after Iraq's invasion of Iran, the United States chose Italy as a mediator in the preliminary discussions in order to avoid appearing as a supporter of Iraq (kennington et al. 2004, p. 3), where its neutrality was only an appearance in the media. The Iranian objections to the invasion fell drastically due to its vulnerable position because of the hostage crisis, and there was no point of its petition at the United Nations (Caron 2004, p. 128).[9] The international community stood by Iraq, secretly and publicly, and few countries dared to sell arms to Iran. From an early stage of the war, there were political incentives for Iraq to borrow from the Gulf States and the United States of America, without this debt being based on expectations about repayment.

[9] For a complete timeline of the Iran-Iraq War see (Kennington et al. 2004, p. 3-44), For more information on the economic impact of the war on Iraq, see (Alnasrawi 1994, p. 79-126; 2004, p. 128-33); For a discussion of the geopolitical origin of the war, see (Swearingen 1988).

In 1981, Italy began selling ships to Iraq amounting to 1.8 billion US Dollars, and the Soviet Union supplied it with weapons (initially through its affiliate countries in Eastern Europe), Britain signed a trade treaty with it, and France sent him nuclear energy scientists to help build a nuclear reactor near Baghdad. Perhaps the Iraqi government believed at the time that a quick victory could be achieved, but Iran began repulsing the Iraqi attacks and the Iraqi economy was affected, and oil exports collapsed by 75% due to the exposure of facilities and export points to a devastating bombardment (Mehdi 2018, p. 3). Iraq was dependent on two pipelines to export oil: the first passes through Syria and the second passes through Turkey, and only one of these two pipelines remained after Syria announced its support for Iran and cut off this port. Iraq quickly depleted its foreign exchange reserves and was forced into debt, and the total debts of the Gulf States in 1981 amounted to (16 billion dollars). The support of the Gulf States continued throughout the years of the war, and the total debts reached (40 billion dollars) (Alnasrawi 1994, p. 109). The Gulf States considered the funds provided as debts, but Iraq considered them as grants, and this dispute still exists (as well as most of the debts), but the US Treasury pressed (in vain) to include them in the restructuring process in the period 2003-2006.

In 1982, the United States de-listed Iraq from the list of state sponsors of terrorism, making it easier for it to conduct commercial activities (Kennington et al. 2004, p. 11). Arms sales to Iraq increased, whether directly from the United States or through proxies. In June 1982, US President Reagan issued a secret directive to ensure that Iraq would not lose the war, and assigned the Central Intelligence Agency (CIA) the task of supplying weapons to Iraq (Hersh 1992). This decision came after the US (CIA) warned that its military estimates indicate that Iraq has practically lost the war (CIA 1982).[10] Fighting raged throughout 1983 and the United Nations was unable to negotiate a ceasefire. Iraq continued to obtain an easy port to provide weapons and debts, and Jordan joined the creditors by providing funds totaling $125 million (Kennington et al. 2004, p. 19). The total debt amounted to (1.3 billion dollars). In 1984, US support became public even after Iraq began using chemical weapons and the

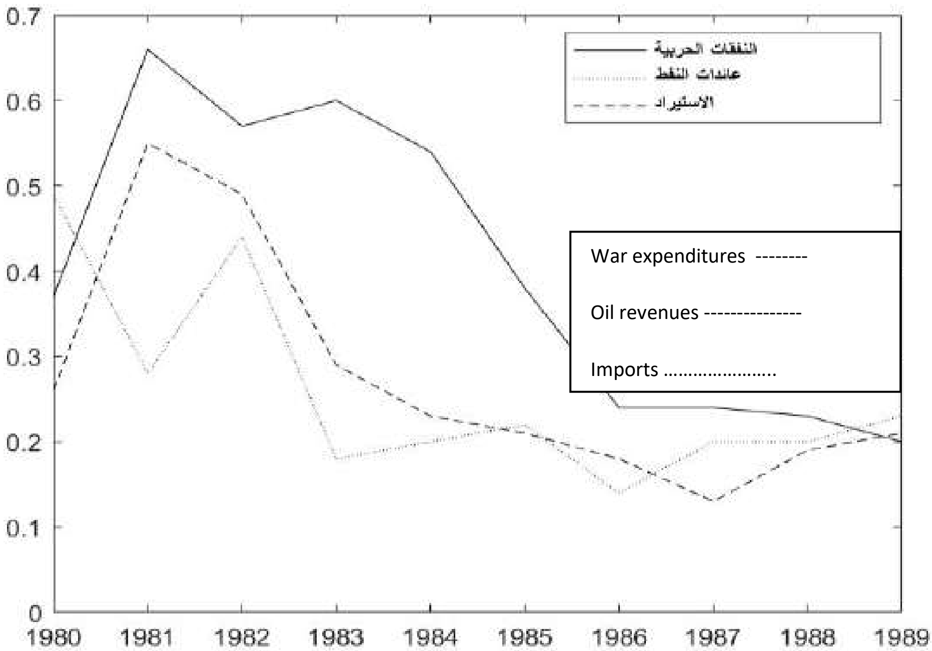
[10] This warning came in a special assessment intelligence report issued by (CIA) and was declassified in 2007.

CIA escalate its war effort (Kennington et al. 2004, p. 24). France provided $500 million in new loans and refinanced $1.4 billion of outstanding loans (Kennington et al. 2004, p. 21). In 1985, the international community exerted pressure to end the conflict through bilateral negotiations supervised by the United States of America, the Soviet Union, and the United Nations, but to no avail. Iraq continued its attacks in early 1986 through airstrikes, at the secret instigation of President Reagan's administration, but with little effect.[11] The war began to going on Iraqi soil at that time, despite the utmost efforts made by Iraq, and its military situation began to deteriorate. Oil prices fell by half in 1986 and the Iraqi economy, dependent on oil, continued to plunge into a deep downward spiral (Tabaqchali 2018, p. 17). The economy of Iraq in the past eighties was a military one, as military expenditures and imports related to the war effort constituted a large part of the national economy. This coincided with the decline in oil revenues, so Iraq resorted to debt in order to perpetuate the war. (Figure

[11] The American desire for Iraq's victory in the war resulted in a contradiction between the official negotiating position of the United States and its covert operations, which it later admitted.

2) shows the percentages of military expenditures, oil revenues, and imports of total output.

(Figure 2): Iraq's expenditures and revenues.. Percentages of war expenditures, oil revenues, and imports of GDP.[12]



[12] Source: Data from (Alnasrawi 1994, p. 93-6).

In 1987, the United Nations issued a number of resolutions calling for an end to the conflict, and when an agreement was not reached, the West increased its pressure to force the two parties to negotiate a peace. Arms sales to Iraq continued indifferently, paralleled with efforts to contain Iran through sanctions and embargoes. In early 1988, the Soviet Union and China agreed to UN sanctions, forcing Iran to sit at the negotiating table and a ceasefire agreement was signed on August 20, 1988. As for Iran, it received little international support at that time, and it was unable to purchase weapons at the beginning of the war except from Libya, while Iraq, as we mentioned above, received a lot of support from all over the world and obtained loans in the form of grants, transfers, commercial loans and secret arms deals . For example, In the period 1980-1993, Iraq received two billion dollars in loans from the US Department of Agriculture (Weiss 2011, p. 2).[13] Behind this lending, there was a strong geopolitical desire that Iraq not lose its war against Iran.

[13] A CIA report suggested that Iraq had spent $22 billion on armaments until the middle of the war, while Iran had spent $5 billion (CIA 1984). Schmidt (Schmidt 1991, p. 12) suggests that the total value of Iraq's arms imports during the war amounted to 63 billion dollars, according to the value of the dollar in 1990.

We can find an example of Iraqi interdependence with the countries of the world when we look at the largest commercial claims in the restructuring process in the period 2003-2006. This example shows us how Iraq was able to maintain its access to capital markets until the end of the eighties. In 1985-1990, a small branch in the American city of Atlanta of an Italian state-owned bank, the Bank of National Labor, provided loans amounting to 4 billion dollars to individuals and entities from Iraq. This amount included $1.6 billion in loans guaranteed by the US Department of Agriculture's Commodity Credit Corporation (SSCI 1993, p. 8-9). These loans were officially allocated for agricultural import, but the money was used to buy weapons illegally. The US Department of Justice sued the aforementioned Atlanta branch, arguing that it did so without the consent of the main bank in Rome. However, Marvin Schop, one of the regional judges in the USA, wrote an opinion in which he favored the CIA's knowledge of the illegal financing of armaments, and also indicated that the main bank in Rome was not Victim and he was aware of the loans (Stich 2005, p. 94-5). The CIA intervened and refrained from providing some information, which sparked an investigation in the Senate. We must not forget here what was mentioned earlier that President Reagan secretly assigned the CIA the task of arming Iraq.[14] The case was as follows: The Italian state-owned Bank of National Labor received loan guarantees from the US Department of Agriculture and provided $4 billion in loans from a small branch in Atlanta. The CIA was one of the parties involved in the case. Therefore, there are two governments implicitly involved in this case, albeit not officially judged.[15] Eventually, the loans defaulted and were restructured as commercial claims (see section 4.4. of this study). However, this minor incident sheds light on how Iraq obtained financing in the 1980s, when these loans were made to pay for the costs of a war supported by most Western countries.

Iraq emerged from the Iran-Iraq war suffering from a crisis. After ten years of conflict, the Iraqi foreign debt has reached a huge number (86 billion dollars). In less than ten years, Iraq moved from the rank of net creditor to net debtor, and the ratio of debt to GDP reached

[14] The Senate Intelligence Committee has cleared the CIA of any direct knowledge of the illegal matters relating to the case (SSCI 1993).

[15] Even if the Ministry of Agriculture did not do this in bad faith, it caused the provision of guarantees for loans used for armament.

278%. In 1989, Iraqi debt service amounted to more than half of the oil revenues (Alnasrawi 1994, p. 93-109). The following table shows the distribution of the Iraqi debt at the end of 1988.

(Table 3): Iraqi Debt in 1988 according to the creditors.[16]

Creditor	Outstanding Debt (Billion Dollar)	Debt to GDP Ratio
Paris Club	29	95%
Gulf States	40	129%
The Soviet Union and its allies	11	36%
Compensation (not a debt)	-	-
Commercial debt	6	19%
foreign exchange reserves	-	-
Total	86	278%

[16] Source: (Alnasrawi 1994, p. 109, 159; Metz 1990, p. 126).

To this day, there is still a dispute about whether the Gulf States' loans are actually grants. Iraq considered them grants, but Saddam also tried to cancel them, and the two are not compatible (Jiyad 2001, p. 43). In any case, the attempt to restructure included all debts. Therefore, in this study, I will handle the loans of the Gulf States as debts. The total value of Gulf loans is unclear, and their timelines do not converge, as they range between 30 and 60 billion dollars in the works that I dealt with (Jiyad 2001, p. 42-3). If we include in our accounts the known levels of Gulf loans three years later (i.e. in 1991), the approximate value of the loans in the following years, and the credibility of the sources that dealt with these figures, the best estimate of Gulf loans is $40 billion. Neither current nor old sources were able to determine the times and conditions of lending due to the lack of contracts in this regard (Momani and Garrib 2010, p. 168).[17] Most of the Gulf financing took place in the early part of the war, but setting specific years for these loans depends only on estimates. Iraq's

[17] There are no documents for handshake deals or covert operations, while some records are likely to be lost in the interval between the emergence of these loans in the 1980s and their restructuring after a decade of sanctions in the 1990s.

commercial debt is estimated at 6 billion dollars, but it hides behind it the role of the United States, and it may be better to consider it semi-bilateral loans, although this consideration affects only the distribution of the creditors (see section 4.4.).

The mid-1980s witnessed the first "soft" default (Caron 2004, p. 131-2; Chung and Fidler 2006). The initial default can be traced to the non-payment of the amounts of contracts for goods and services during the war and the postponement of payment to periods of up to forty months. Iraq also rescheduled multiple loans, but maintained the position of other loans (previous source). The default affected a small amount of hard currency bonds and bank loans, but Iraq continued to pay the service of most of the Iraqi debt that was provided during the Iraq-Iran war, until the end of the decade.[18] The total interest on loans paid by Iraq during the war amounted to more than 24 billion dollars (Jiyad 2001, p. 20), and this allowed Iraq to continue to obtain new loans with the blessing of the political leadership of the creditor countries. Anyone could have known that

[18] According to the sovereign default data of the Bank of Canada Credit Rating Assessment Group.

Iraq was suffering from insolvency, but if everyone pretended that the Iraqi debt was destined to be exempted or postponed, Iraq would continue to borrow to repay debts that were due to be paid. Problems began to appear when the winds of politics and money changed their direction.

3.2. The first Gulf War and the issue of compensation (1988-1991)

The cost of the war may reach high levels, and this is what happened in Iraq, as the estimates of the costs of the reconstruction of Iraq after the Iran-Iraq war reached high levels, amounting to 230 billion dollars (Alazemi 2013, p. 98). However, the revenues of the oil sector did not exceed 15 billion dollars in 1989, decreasing of 55% lower than it was in 1980. Iraq's net debt rose to about 120 billion dollars during the war (Alnasrawi 1994, p. 106). In 1990, inflation reached 40%, and cash reserves were only enough for three months of imports (Alexander and Rowat 2003, p. 33). Despite the economic issues, Saddam was popular in both Iraq and the region, and Iraq did not reduce its military expenditures (Alazemi 2013, p. 97-8). Saddam saw in himself the strong man who defeated Iran on behalf of all the Gulf States and wanted to use the Iraqi forces to bully the neighboring countries, first Kuwait and then Saudi Arabia, and to consolidate his rule (Parasiliti 2003). Iraq owed Kuwait with loans totaling 14 billion dollars, and Kuwait refused to cancel the debt, which strained relations between the two countries in 1989. The price of oil declined in the early 1990s, and the situation of the Iraqi economy worsened. Saddam blamed Kuwait for the drop in the oil price and accused the neighboring country of trying to drill in Iraqi oil fields. This accusation was a pretext for war. In August 1990, Iraqi forces invaded Kuwait, and soon Iraq took control of the region and annexed Kuwait on August 28.[19]

Iraq did not have the support of the international community this time, unlike in the war with Iran. The United States of America rushed to send military support to avoid Iraq’s invasion of Saudi Arabia, and the United Nations Security Council issued Resolution No. 661 in August 1990, which imposed financial and economic

[19] For a complete timeline of the invasion of Kuwait see (Warbrick 1991a, 1991b), and for the geopolitical and local causes of the war see (Gause 2002; Parasiliti 2003).

sanctions on Iraq (Warbrick 1991a, p. 482-4). The decision contained only a few exceptions (humanitarian aid) and prohibited any financial transaction from Iraq, including the payment of financial payments in the contracts in force (Deeb 2007, p. 3). Iraq was isolated from the global economy and it became illegal to make any new foreign loan. Now that sanctions did not deter Saddam, a military coalition led by the United States and with legal cover from the United Nations began Operation Desert Storm in January 1991. Soon the coalition won, and Iraq signed a permanent ceasefire agreement in April, but Kuwait suffered extensive damage, so the Security Council established the Compensation Commission (UNCC) to oversee the payment of compensation amounts. It became possible to provide compensation to individuals, investments, or governments for the damages they sustained as a result of the illegal invasion of Kuwait, provided that the annual claims value does not exceed 30% of Iraqi oil export revenues (Resolution 705 of 1991). This percentage was reduced to 5% after the US-led invasion in 2003.[20]

[20] In accordance with Security Council Resolution 1483 issued in May 2003.

(War reparations) are compensation paid for violations of international law and come mainly in the form of financial compensation that represents a just and broader solution for the victims (Sandoval and Puttick 2017, p. 7-16). According to the Paris Club definition, compensations are liabilities but not technically debts (for more details see Section 4).[21] The Compensation Fund would automatically receive revenues from the export of Iraqi oil to finance the amounts it provided. The total number of claims amounted to 2.7 million, with a total amount of $353 billion in July 2019. It was authorized to pay $52 billion, of which $48 billion was paid to 1.5 million claimants, with the remaining amounts expected to be paid in the future.[22] Estimates of Iraqi liabilities in the early 1990s were even higher, amounting to about $100 billion at exchange rates in the 1990s (Morrison 1992, p. 393). The United Nations oversees the process of enforcing the payment of compensation and has a legal framework to ensure payment, unlike in the case of unsecured

[21] The Paris Club is a group of (mostly) developed countries that negotiate debt restructurings collectively. For a history of the Paris Club, see (Cheng et al. 2018).

[22] See the Compensation Commission website (https://uncc.ch/home) (accessed July 16, 2019).

government debt.[23] Compensation added a heavy burden on the Iraqi debt. It must be included in any fair summary of Iraq's foreign commitments, but it is sometimes excluded from that because it did not fall within the Paris Club definition of debt. The compensation amounts include all actual payments made by the Compensation Commission on behalf of Iraq up to 2019, although initial estimates were higher. (Table 4) shows the distribution of the Iraqi debt according to the creditors in 1991 compared to the total output, which collapsed to 12.3 billion dollars after it reached before the war to more than 50 billion dollars (Alnasrawi 1994, p. 159).[24]

[23] One of the issues that the Compensation Committee did not address is that if a claim is submitted and the claimant receives a portion of it, should the claimant give up the remaining amount? By resorting of the Compensation Committee to elect the claimant as to the type of compensation, it was preventing his ability to sue. This caused a headache for the legalists later on (Buchheit 2019).

[24] Alnasrawi cites some sources that estimate the decline in output after the invasion by up to 50%.

(Table 4): The distribution of the Iraqi debt according to the creditors in 1991[25]

Creditor	Outstanding Debt (Billion Dollar)	Debt to GDP Ratio
Paris Club	18	143%
Gulf States	53	431%
The Soviet Union and its allies	11	89%
Compensation (not a debt)	52	423%
Commercial debt	9	71%
foreign exchange reserves	-	-
Total debt (without compensation)	86	278%
Total liabilities	142	1156%

Reference should be made to a methodological note before proceeding with this study. After the issuance of

[25] Sources (Paris Club; Chung and Fidler 2006; UNCC; Alnasrawi 1994, p. 109). Note: All the mentioned debts (except for the debts of the Gulf States) are nominal values that were restructured in the year 2003, that is, without calculating the accumulated interest. The mentioned compensation is the total of what was granted until July 2019. It is not possible to reconcile between (Table 3) and (Table 4) because each of them represents the best estimate at the time according to the available sources.

Security Council Resolution 661 on 6 August 1990, it became impossible for Iraq to obtain external loans. I adopted the nominal values in accordance with the Paris Club, the International Monetary Fund and the Compensation Commission (details in Section 4) starting with the restructuring process back in time. This means the possibility of inconsistency between (Table 3) and (Table 4), although each of them represents the best estimate in the year concerned according to the available sources. For example, the debt of the Gulf States is $53 billion derived from the source (Chung and Fidler 2006), a value that was floated by the Iraqi debt restructuring team in 2006. However, the remaining bilateral debts (i.e., the Paris Club countries and the Soviet Union in 1991) contain only the values that have been restructured, as they do not contain the loans that were secretly canceled in the period 1991-2003. Similarly, commercial loans due in 1991 are the main value claimed in the restructuring process. Based on the foregoing, the change in the level of the Iraqi debt in the period 1988-1991 is difficult to trace, due to the lack of historical sources. Jiyad (Jiyad 2001, p. 19-22) suggests that Iraq's debt declined prior to the war, but the values of the decline are marginal compared to the overall levels of debt.[26] Reconciling the two tables becomes difficult due to the political nature of the incentives behind debt and the blurring of the dividing line between bilateral and commercial lending. Nevertheless, (Table 4) provides a reasonably true picture of the Iraqi debt when sanctions were imposed and Iraq withdrew from the global economy.

3.3. Sanctions (1991-2003)

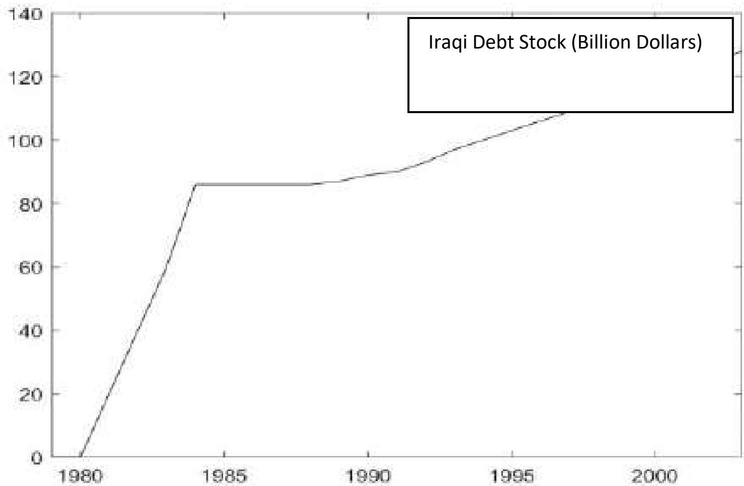
Iraq was subject to international sanctions after the end of the first Gulf War in 1991, under Security Council Resolution 678 of 1991. Iraq lived a difficult time in terms of the standard of living, as outputs collapsed, society was uprooted and the level of personal freedoms declined (Sluglett 2010, p. 13-15). Previously, oil production had been destroyed during the war, and the drop in oil prices in the 1990s hit what was left of the limited sales of oil.[27] No bank, investor or government

[26] There was a decrease of 300 million dollars in debt (according to the approved definition of debt), but the mentioned total debt is much less than the real debt, and some skepticism must be taken into account in dealing with the available figures.

[27] At first, Iraq was not allowed to sell oil at all, but it got approval to sell oil later (Brown 1999, p. 56-104).

dared touch anything that came from Iraq because failure to comply with the sanctions was leading to exclusion from global financial markets. The sanctions were intended to be short-lived and to force the government to leave, but they did not prevent Saddam from tightening his grip on Iraq, especially in the south (Dodge 2010; Brown 1999, p. 56-104), and northern Iraq became a de facto independent state (King 2004, p. 12). After the sanctions aimed at destabilizing the government, it led to an increase in the state’s authority in all areas of daily life, especially in the area of food rations (Mazaheri 2010). Saddam wanted to abolish the sanctions, but he had to accept the settlement (the oil-for-food program), which was approved in 1996 and allowed the sale of some oil and the import of food (Sluglett 2010, p. 20-22). As a result, the gross domestic product (GDP) rose after continuing its decline for fifteen years, and in 2003 it was three times what it was in 1996, but it did not increase to the levels of 1988 except slightly (see figure 3).

(Figure 3) the Gross Domestic Product (GDP) and Debt Stock[28]



At the time, there were a number of loans and credit facilities at the local level, but without any external loan. The era of sanctions devastated Iraq as the crime rate rose (which might be surprising because of Saddam's tight grip on the country) and the economy turned into

[28] Source: The data for the period 1979-1993 from (Alnasrawi 1994, p/ 152) and the data for the period 1993-2003 from (CIA 2004, p. 208) and the data of the debt stock are derived from sources previously mentioned in the tables and text of the study.
Note: Iraq was living in isolation and there was not much information entering or leaving it, and a reasonable amount of skepticism must be taken into account when dealing with the available figures, especially in the post-sanctions phase.

ruins (Sluglett 2010, p. 13-15). This meant that the nominal value of Iraq's external debt, which was mostly in hard currencies, primarily the US dollar (see Section 4), was not eroded by inflation and was not diminished by the growth of a local economy. (Table 5) shows the distribution of the Iraqi debt in 2003. It contains all the loans that were restructured by the Paris Club, the old loans to the Gulf States at their nominal values, the bilateral loans from outside the Paris Club, which were restructured to some extent, the commercial debt and compensation (the values mentioned above prior to any restructuring process).

(Table 5): The distribution of the Iraqi debt according to the Creditors (2003).[29]

Creditor	Outstanding Debt (Billion Dollar)	Debt to GDP Ratio
Paris Club	39	139%
Gulf States	53	189%
The Soviet Union and its allies	17	60%
Compensation (not a debt)	32	114%
Commercial debt	20	70%
foreign exchange reserves	-	-
Total debt (without compensation)	128	458%
Total liabilities	160	573%

[29] Source: (Paris Club, International Monetary Fund, Compensation Commission).
Note: The values of the Paris Club loans and the bilateral and commercial loans are the values after the restructuring process. As for the loans due outside the Paris Club, they represent the International Monetary Fund loans with the exclusion of the loans of the Gulf States (the IMF loans are not distributed according to the creditor countries). The said compensations are the remainder of them in the year 2003 and when the restructuring process was carried out in the period 2003-2006, the loan of the Soviet Union was included in the Paris Club loans, and a separate classification appeared that collects the loans of countries that do not belong to the Paris Club or the Gulf countries.

In 2003, the United States of America and its partners in the coalition invaded Iraq.[30] According to the Iraqi perspective, the sanctions era alone is a long war that began with the first Gulf War in 1990 and ended with the invasion in 2003 (McCutcheon 2006). From the American perspective, the attack of September 11, 2001 threatened the invasion of Afghanistan and Iraq, as the administration of US President George W. Bush saw in this an opportunity to change the regime, something that the Republicans had desired since the first Gulf War ended with Saddam remaining in power (Gompert et al. 2014).[31] The victory in the war/invasion was swift from a military point of view, and the discussion moved to reconstruction, as there was an urgent need to rebuild Iraq in the post-Saddam era, in light of many volatile influencing factors. The International Monetary Fund's

[30] The invasion was carried out by a multinational force led by the United States of America, the United Kingdom, Australia, Spain and Poland.

[31] There are those who argue that the process of restructuring the Iraqi debt was only one of two successful policies among all the policies implemented in Iraq after the invasion (the other being the exchange rate). We must not forget here that what happened in Iraq after 2003 and subsequent is almost entirely catastrophic. Review, for example, (Kramer et al. 2005) about how the war threatened the rule of international law or (Brands and Feaver 2017) about how the invasion led to the rise of ISIS, but the list of failures is longer than what was mentioned in these two examples.

modus operandi required that the process should include finding a solution to the debt, but the Paris Club (i.e., Iraq's creditors from the developed countries) stipulated an analysis of Iraq's ability to continue to bear the debt before reaching a deal in this regard. The United States government saw the relief of the Iraqi debt as crucial. President Bush personally worked to push for a speedy write-off of the debt, and he appointed a special envoy to deal with this issue in December 2003, after he called for the write-off of the Iraqi debt within one year at the Forum of the Group of Seven industrialized countries in September of that year (Weiss 2011, p. 5). Thus began the process of restructuring the Iraqi debt, which was a huge and diversified debt (as we saw in Section 3).

It was not known in 2003 the total level of the Iraqi debt (as we will see in section 4 of this study) for the following reasons:

(1) It was illegal to lend to Iraq in the sanctions era.
(2) Most of the loans go back to before 1990.

(3) Loan records are often not available.
(4) Massive bombardment against Iraq destroyed many loan records.

This debt level includes all the claims made during the restructuring process. Therefore, (Table 5) represents the level of Iraqi debt on the eve of the invasion and it was the largest debt in the world in that year.[32]

4. Debt restructuring

No one has preceded this study in your hands in presenting the story of the Iraqi debt.[33] I mentioned in this section of the study the interviews I conducted in this regard, and when I refer to what was mentioned in these interviews, I use the standard method in attributing and citing sources. The interviews included

[32] International Monetary Fund data indicate that Liberia was the country with the largest debt at the global level, as the ratio of debt to GDP reached 515%. However, the International Monetary Fund does not include Iraq in its data for that year. By referring to Table 5, we find that Iraq's total liabilities amount to 573% Which makes it the country with the largest debt on earth.

[33] To the best of the knowledge of the author of this study when it was written in December 2019, there was no comprehensive account of the process of restructuring the Iraqi debt that highlights all its aspects.

the two Iraq lawyers Lee Buchheit (Buchheit 2019), and Jeremiah Pam (Pam 2019), Nazareth Festekjian, a commercial restructuring advisor and a banker at Citigroup (Festekjian 2019), and US government officials: Anthony Marcus (Marcus 2019), Kelly Lowery (Lowery 2019), Olin Wethington (Wethington 2019) and Andrew Kilpatrick, the British negotiator for the Paris Club (Kilpatrick 2019).[34] I also relied on a number of other primary sources, including documents from the restructuring process, press releases, annual reports, as well as secondary works.

The process of restructuring generally takes place in a similar way. Buchheit et al. (Buchheit et al 2018) presented its main lines. The debtor country has three main tools that it uses to reduce its indebtedness:[35]

(1) Extend the due date of the debt to gain time and reduce the net present value of the debt.

[34] The study author maintains recording files of the interviews.

[35] There are secondary efforts that can be made, such as debt buybacks in the secondary markets if the trade in it is less than the parity value, but they remain secondary efforts.

(2) Reducing the principal debt, i.e. making a deduction in the nominal value of the debt.
(3) Amendment using vouchers to reduce the interest paid.

The debtor country usually knows the amount of its debt and it is not necessary to know its creditors, because this depends on the nature of the debt. Foreign bonds are traded at the level of the general public and are available to anyone. As for bilateral loans from sovereign countries, they are easier to define.[36] The process of restructuring generally includes a kind of one of the creditor parties, such as: members of the Paris Club, countries that do not belong to such club and the parties providing commercial loans, but Iraq's creditors were of all kinds. Rather, in the Iraqi case, there is a diversity of parties providing commercial debt from contracting and supplying by other governments to hedge funds, asset management entities, banks, merchants and state-owned entities. After the imposition of sanctions in 1990, Iraq stopped

[36] Between the (unknown) external bonds and the (known) sovereign bilateral loans, there are other loans, including: commercial loans, syndicated loans, supplier loans, and so forth, in which the creditor is known to varying degrees.

determining the creditor parties and the amount of debts, and records were scattered due to defaults, which made the restructuring process an endeavor that involved enormous complications.

The obligors (the debtors) in Iraq constituted a similarly diverse group, due to the blurring of the dividing line between the government and commercial enterprises in Iraq. They were not limited to the government alone, but also included ministries, state-owned enterprises, and semi-governmental institutions such as banks (particularly the Rafidain and Al-Rasheed banks).[37] Coordination between the various creditors in Iraq was more complex than was the norm in the normal process of restructuring because the entire Iraqi public sector was included as a creditor (Deeb 2007, p.5).[38] The Central Bank of Iraq officially possessed the Iraqi assets (both domestic and external) related to the loans, when Iraq defaulted and became subject to prosecution. Security Council Resolution (No. 1438 of 2003) came to

[37] Definitions of the term “obligor” can be obtained by referring to the website (http://www.eyidro.com) (The site was accessed on July 22, 2019). Generally, the Ministry of Finance represents the government in this regard.

[38] Most of the establishments were located outside the Green Zone, which enjoys relative safety, which added the security risk factor to the process.

fortify Iraq's foreign assets, including those held by the Development Fund for Iraq and the Central Bank (Buchheit and Gulati 2019, p.5). The Coalition Provisional Authority, which was to govern Iraq temporarily, established the Development Fund for Iraq to hold Iraqi assets and oil revenues and was administered by the Federal Reserve Bank of New York. This fund paid salaries, pensions and cash expenditures (paragraph 12 of Resolution 1483, Wethington 2019).[39] The cash necessary for the work of the government was withdrawn from the fund and transferred to Iraq, and each shipment consisted of hundreds of millions of dollars (Wethington 2019).

Soon the sanctions were lifted from the restructuring process, and that was for international political reasons, especially as the US Treasury Department collected some preliminary numbers, but it was looking for reasons not to include compensation (Lowery 2019). Compensation has been arranged by various United Nations resolutions

[39] This procedure was implemented in accordance with Executive Order No. 13303 on May 22, 2003, and was renewed during the Bush and Obama eras. It expired in 2014. This executive order was demonized due to the controversies around it, as some saw it as impunity for American oil companies (for example: Kelly 2004).

to be paid directly from oil revenues. Therefore, a new decision was necessary to change the legal arrangements, and it was easy to impose compensation in contrast to the sovereign debt because Security Council resolutions were prepared to take money directly from Iraqi oil revenues. The original decision stipulated that 30% of Iraqi oil revenues would go to the payment of compensation. Then came the decision of 2000 to reduce the percentage to 25%, then to 5% according to Resolution 1483 of 2003. Merely changing the legal status of compensation would require a political battle in the United Nations and may be subject to veto by any of the permanent members of the Security Council. Even if the legal status was changed, this would not obviate the need for the Security Council to collect Iraq's money to be paid as compensation, as it is not classified by The Paris Club under debt's item and there has been no international forum other than the Security Council that could intervene in this matter.[40] This caused compensation to be quickly removed from the restructuring process.

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[40] See (http://www.clubdeparis.org/en/communications/page/definition-of-debt-treated) (The site was accessed on November 30, 2019).

4.1. First Steps: Fortifying Iraqi Assets, and Debt Workout.

Security Council Resolution 1483 of 2003 removed sanctions imposed on Iraq, ended the oil-for-food program, established a post-invasion government, called for the restructuring of the Iraqi debt, and granted Iraqi oil sales immunity against seizure by creditors. Thus, fortification Iraqi assets abroad from "any form of seizure, reservation or execution" is the most important thing in the decision because it prevents the creditors from acquiring Iraqi assets.[41] The resolution was surrounded by heated debates as the international community was divided between the United States of America and its allies and the countries that opposed the Iraq war. The United States and the United Kingdom circulated drafts of the resolution that were, in essence, legalizing the invasion. Iraq's oil fortification was even included in the first drafts, although there is not much

41 Buchheit and Gulati 2019 show that the creditors have maintained their rights through the restructuring process but have lost any power to enforce seizure of Iraqi assets. All UN members are required to provide cover for protection through a domestic law because it is established under Chapter VII of the UN Charter, making it legally binding on member states.

evidence that this was controversial.[42] There is no doubt that this would have protected Iraqi assets, but it would also have enabled international oil companies, especially the American and British, to get involved without being exposed to the risk of creditor assessments. I did not find any evidence of including the fortification clause, but the Security Council resolution was not vetoed by any of the five permanent members. The US government's view at the time was that the restructuring process depends on getting rid of the over-indebtedness (Lowery 2019), and on October 16, 2003 Congress urged the creditors of the Paris Club to meet to alleviate the burden of the Iraqi debt (US House of Representatives Resolution 198 of 2003).[43] There was also political arguments about such alleviation as well, as the White House and the US Treasury were unable to go to Congress and request credits without guaranteeing that the money would not go to other creditors whose loans were overdue, such as Saudi Arabia or China (Lowery 2019).

[42] See paragraphs 12-21 of the draft resolution published in The New York Times 2003. These paragraphs govern the Development Fund for Iraq, which was called the Iraq Aid Fund in the first drafts.
[43] See also (Paris Club 2003a, 2003b).

In October 2003, the US Treasury appointed Olin Wethington to oversee the economic management of the Coalition Provisional Authority (CPA), which governed Iraq temporarily.[44] The Coalition Provisional Authority began exploring the possibility of the desired restructuring process, but decided not to start formal restructuring until sovereignty was formally returned to Iraq (Pam 2019). The Trade Bank of Iraq (TBI) was established to facilitate import and export and had immunity from seizure, but its scope of work was limited and the CPA viewed it as a temporary measure until the restructuring process was completed (Wethington 2019). The CPA believed at the time that only limited immunity could not be defended and that the Iraqi debt issue needed a swift resolution to facilitate participation in international trade. I mentioned in Section 3 of this study how the creditors in Iraq consisted of three groups: the Paris Club countries, countries that are not members of this club (including the Gulf States) and the commercial creditors, and each of these groups has substantial claims (See table 5).

[44] His actual role was to be the interim governor of the Central Bank of Iraq but with the title of Director of Economic Policy and was under the authority of Paul Bremer (Wethington 2019).

In January 2003, Jim Baker was appointed as a special envoy to pressure Iraq's creditors in an effort to alleviate the Iraqi debt through political efforts and lay the foundations for the restructuring process. He targeted the major creditors who had to engage with them later. In late 2003, three influential players in the US government came together to deal with this issue: the Treasury (to deal with financial matters), the State Department (to deal with diplomatic matters), and the National Security Council (to represent the executive branch).[45] Baker headed a group that included the Iraqi Minister of Finance and the Governor of the Central Bank, and the group roamed the world in order to agree on the restructuring process (Lowery 2019, Wethington 2109), while the US Treasury was supervising the initial inventory of the Iraqi debt because no one knew at the time its amount (ibid).[46]

[45] In addition, the American negotiators in the negotiations with the Paris Club belonged jointly to the Ministries of Finance and State (Pam 2019, Lowery 2019).

[46] The inventory process was difficult, as I will explain later. It began to look at the records of the ministries and the Central Bank and direct inquiries to other countries about the amount of debt they think Iraq owes them.

In early 2004, the process of soliciting bids for the employment of separate legal advisors for Iraq began and Cleary Cotlib Co. was appointed for this purpose in June 2004 (Deeb 2007, p.4). The role of Lee Buchheit, who ran the company's team, was to manage the Iraqi debt restructuring process and to organize the work of other financial advisors (Buchheit 2019). In the first meeting between the White House, the US Treasury, the International Monetary Fund and Cleary Cotlib Co., the main topic of discussion was whether it was possible to declare that the Iraqi debt was (illegitimate), a declaration that implied the de-legitimization of the debt and might lead to cancel it totally. There was talk at the highest levels of the White House about declaring the Iraqi debt as (illegitimate), and it even came to the US Minister of Finance John Snow to suggest that in public (Momani and Garrib 2010, p. 158-9. This desire generated a lot of support and controversy in the world of research centers (for example: Adams 2004) and academia, as demonstrated by a series of articles that appeared in the following years (for example: Jayachandran and Kremer 2006; Damle 2007; Gelpern

2007; Buchheit et al. 2007).[47] Although the United States publicly seemed to support the idea of declaring the (illegitimacy) of the Iraqi debt, the two institutions directly concerned with this matter (the US Treasury and the International Monetary Fund) did not discuss it much in their closed meetings. Rather, the International Monetary Fund publicly rejected the idea (Rajan 2004) and saw it is more efficient to resort to the normative process of debt reduction (Wethington 2019).

The legal advisors' advice was against the principle of "illegitimate debt" and the International Monetary Fund and the US Treasury strongly stood in favor of replacing it with a normative process of debt restructuring (Marcus 2019). This opposition was not based on the absence of justifications of (non-legitimacy) of the debt, section (3) of this study shows that Iraq is one of the strong cases in this regard, as much as it was the result of the desire to avoid what may lead to unnecessary complications of the restructuring process (Buchheit 2019). Many countries all

[47] The references mentioned refer to published articles. Those who wish to see the current controversy can refer, for example, to the Journal of Finance and Development (June 2005 issue, 42/2), where the (Letter to the Editor-in-Chief) section contained discussions between a number of the writers I mentioned.

over the world sell goods and weapons on credit to tyrants, and Buchheit believed that most members of the Paris Club would leave the negotiations in the event that the Iraqi debt (illegitimacy) was declared. In addition, this principle lacks a legal basis (Buchheit et al. 2007), and would be like entering a “mine field of definitions” (Buchheit 2019), because of the need at the time to prove the existence of legal precedents for the illegal parts of the Iraqi debt stock. Accordingly, a decision was made to adopt a normative process of restructuring, and this discussion was never transferred to the National Security Council in the White House (Buchheit 2019).[48]

There was another reason against the principle of (illegitimate debt), which was that there was actually no need for this principle to write off large sums of debt, given the occurring political consensus (among the members of the coalition at least). In October 2003, the United States organized a conference to mobilize financial support for restructuring the Iraqi debt. (Table 6) shows a summary of the pledges made regarding shares of the outstanding debt.

[48] There are somewhat varying accounts of how much support the idea has received.

(Table 6) the pledges made at the International Donors' Conference for Iraq (October 2003).[49]

creditor	Total Pledges (billion-dollar)	Outstanding Debt (billion-dollar)	Percentage of pledged aid from debt
Paris Club	25	39	65%
Gulf States	1	53	3%
Other countries (not a member of the Paris Club)	0	17	1%
International Monetary Fund	3	-	
The World Bank	4	-	
Commercial debt	-	20	
Total	34	128	27%

On June 28, 2004, power was officially transferred to the Iraqis again, and it was decided that the Paris Club

[49] Source: (Momani and garrib 2010, p. 160; U.N)
Note: The International Monetary Fund and the World Bank provided a range of aid totaling $1 billion each and the table contains the average aid.

was the best place to start restructuring negotiations.[50] The restructuring process was proceeding without planning, as it proceeded from the places where a deal was being reached. The tactical reason for this situation was that each of the Paris Club deals contained a clause guaranteeing equal treatment.[51] That is, the deal is considered a "ceiling" that cannot be exceeded by any other deal with other creditors, and this means that others are likely to follow the same path Wethington 2019; Buchheit 2019). All members of the Paris Club had debts on Iraq, and the geopolitical alliances of the Alliance were well represented after Jim Tucker's first diplomatic rounds (Pam 2109). Naturally, there are not many friends of countries that are conducting processes to restructure their debts, as they owe them all money. But the Iraqi case was different from others, as the Paris

[50] Eighteen member countries of the Paris Club participated in the process of restructuring the Paris Club loans: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Italy, Japan, South Korea, the Netherlands, Russia, Spain, Sweden, Switzerland and the United Kingdom. The United States, Norway, and the World Bank Trade and Development, the European Commission, the International Monetary Fund and the Organization for Economic Co-operation and Development, Attended as observers.

[51] See (http://www.clubdeparis.org/en/communications/page/the-six-principles) (The site was accessed on July 26 2019).

Club negotiations opened with the willingness of the United States to stand by Iraq, with the desire of some in the National Security Council (which represented the White House) to reduce the debt owed by Iraq, and perhaps even wished to write it off completely (Buchheit 2019). The United States was eager to reach a unanimous conclusion, and the Paris Club was the best place to achieve such result (Wethington 2019).

4.2. Paris club Negotiations

The Paris Club is considered a suitable tool for the process of restructuring the sovereign debt, as it has conducted 433 deals with 90 countries since its establishment in 1956.[52] Iraq required two types of debt relief measures: the treatment of the flow and the reduction of the debt stock. It was relatively easy to do the first of them because Iraq was not paying its current debt. However, it was customary in the Paris Club to treat the flow before reducing the debt, and the Iraqi situation was abnormal because it required reducing the

[52] See (http://www. Clubdeparis.org/en) (The site was accessed on July 12, 2012). The headquarters of the Paris Club is located in the French Ministry of Finance in Paris. To view the history of this club, you can refer to (Cheng et al. 2018).

debt stock first (Lowery 2019; Marcus 2019). Iraq was dealt with according to Evian's approach, and it was offered the "comprehensive treatment of debt", that is, reducing the debt without standard terms (ibid).[53] The approach did not receive approval until October 2003, and replaced the economic indicators with the debt sustainability analysis (DSA) adopted in the case of heavily indebted countries (Weiss 2011, p. 5-6). This required the International Monetary Fund to provide a (DSA) analysis, so the International Monetary Fund was sought in early 2003 for two things: (1) preparing a (DSA) analysis of the restructuring process, and (2) preparing Iraq to be a party to a credit standby arrangement (Wethington 2109; IMF 2004).[54]

Therefore, Iraq's solvency is based on an (DSA), an analysis that was based largely on assumptions related to oil prices and production. The Iraqi government got all its revenues from oil sales, and in the period 2005-2007,

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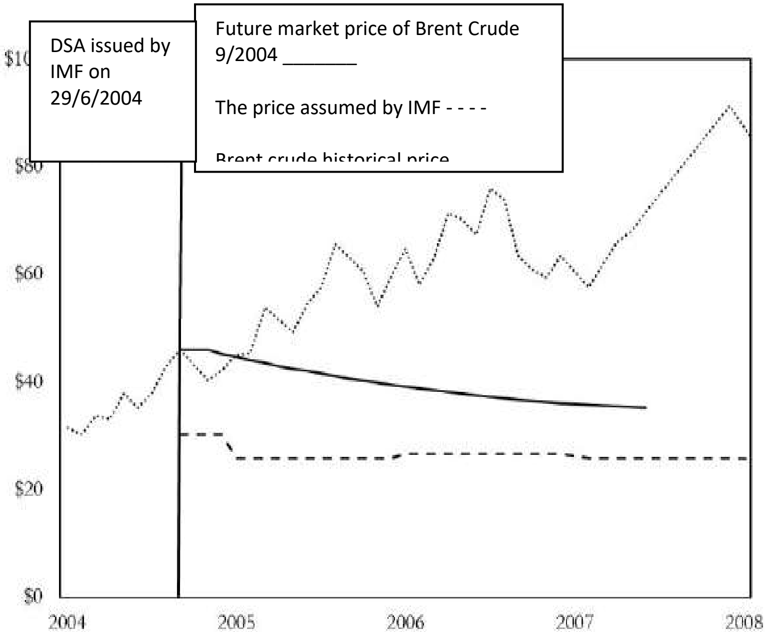
[53] See also (http://www.clubdeparis.org/en/communications/page/evian-approach) (The site was accessed on July 23 2019).

[54] The meetings between the IMF and the Coalition Provisional Authority took place during the spring of 2004 in Oman, Beirut, Abu Dhabi, and London (Wethington 2109).

94% of the revenues came from sales of crude oil (totaling reached 96 billion dollars) (GAO 2008, p. 2). Therefore, the accuracy of the assumptions was necessary to debt sustainability analysis. The American desire to reduce the burdens of the owed debt was a reason for the negotiating team to exercise political pressure in order to reduce Iraq's ability to pay the debt service. The International Monetary Fund (IMF 2004) has assumed a price of a barrel of oil that has reached 26 dollar permanently. (Figure 4) shows the future market for Brent crude as well as the price of oil during the negotiations. The price of a barrel of oil was $46 when an (DSA) was issued, then it rose during the years 2005 and 2006, but the assumed price did not change during the negotiations, despite the fact that the price of a barrel of oil exceeded $60.

(Figure 4): The price assumed by the International Monetary Fund for a barrel of oil against the realistic structure of the terms.



In July 2004, the first meetings of the Paris Club staff regarding the Iraqi debt began, and bilateral meetings took place in the fall of the same year. Traditionally, the Paris Club negotiations are to complete within one day and not to exceed forty-eight hours(Buchheit 2019; Marcus 2019). However, the negotiations on the Iraqi debt took more than a week and required a few months of preparation.

Among the issues discussed in the negotiations was the fundamental difference between the coalition (which is led by the United States of America and the United Kingdom and other countries that are not members of the coalition (mainly European countries and Russia). The Europeans considered the (DSA) presented by the International Monetary Fund fictitious, due to the vast difference between oil price assumptions and reality (Buchheit 2019). Iraq did not have enough cash to make a deal of the type (cash for debt), so the expected deal should be of the type (debt for debt). The "bid offer" to reduce the debt as a guarantee for repayment during the negotiations was 95% of the American and British loans and 50% of the European and Russian loans.[55] However, the 80% reduction was the likely result from the beginning, as the US delegation and the President of the Paris Club had agreed in advance on the figure as a realistic settlement (Wethington 2019). The US delegation was ready to negotiate with any party that wanted the complete write-off, especially the Iraqis and some sections of the US government (ibid). The General Secretariat of the Paris Club was trying to get the Europeans and Russians to increase the percentage to more than 50%, while the American delegation was negotiating with the rest to reach the 80% (wethington 2019; Weiss 2011, p. 6).[56]

The atmosphere in the negotiations was tense, Russia was the last reluctant creditor, and there was always a general feeling at the time that a reasonable settlement could be reached through diplomacy (Buchheit 2019). At the Asia-Pacific Cooperation Summit

[55] Paul Wolfiez pushed first to write off the debt entirely, then reduced the opening offer to 95 percent in agreement with the United Kingdom (Buchheit 2019; momani and Garrib 2010, p. 162), and the White House waived the final decision to the Treasury.

[56] The US delegation worked to "bring" some reluctant creditors as well (Wethington 2019).

(Gili, November 2004), US President George W. Bush was personally involved in the process of reaching a deal with Russian President Vladimir Putin. It required three bilateral meetings on the sidelines of the summit before President Putin agreed to reduce the nominal value by 80% (Pam 2019; Khalaf 2004).[57] In fact, the last reluctant in the Paris Club was Iraq, as it tried to achieve the write-off of the entire debt (Wethington 2019). All the creditors met on Sunday, November 21, 2004 in Paris, expecting to sign the agreement, but Iraq was reluctant and did not agree until a few hours before the expiry of the deadline (ibid).[58] A deal was made in accordance with the following conditions as indicated in the minutes of the agreement (Paris Club 2004):

- Reducing the Iraqi debt by 80% in three segments:
  1. Write off 30% of the debt immediately, starting from January 1, 2005.
  2. Rescheduling an additional 30% of the debt over 23 years with a grace period of 6 years,

[57] The Russian Finance Minister did not answering the calls until the completion of the deal for unknown reasons.

[58] The Iraqi negotiating delegation consisted of the Minister of Finance (Adel Abdul-Mahdi), the Governor of the Central Bank (Sinan Al-Shabibi) and the legal advisors from Cleary Cotlib (represented by: Lee Buchheit).

conditional on the approval of a normative program of the International Monetary Fund.

3. Rescheduling 20% of the initial debt stock after three years, on similar terms, conditional on reviewing the IMF program (but without measuring financial capacity).

- A grace period of 6 years for main payments and a grace period of 3 years for interest rate payments (full and partial).
- An interest rate of 6%.
- Voluntary (debt-for-debt) exchanges.
- Equal treatment with other external creditors.
- Reducing the net present value ratio of the debt by a cut of 89.75%.

The deal was harsher on creditors compared to other debt restructuring processes that took place in the same period. Sturzenegger and Zettelmeyer (Sturzenegger and Zettelmeyer 2008) Shows that reductions on debt restructured in the period 1998-2005 varied from 13% in the case of Uruguay in 2003 to 73% in the case of Argentina in 2005. Debt reduction was done in a distributed way and did not happen in advance, mostly for reasons related to accounting and budgeting. Each country has its different rules in accounting. Therefore, debt reduction affects each country differently (Lowery 2019). The distribution of the reduction allows accounting to be carried out in such a way that the losses are spread over several years (Festekjian 2019). There are a number of countries, most notably Germany, which did not reduce their loans because any reduction would affect the budget in the first year if it was fully implemented from the beginning (kelleners 2012; Lowery 2019).[59]

Lazard Freer Corporation was hired as a financial advisor to carry out the transaction. In December 2004, the United States of America relinquished all of its debt claim ($4.1 billion) (Weiss 2011, p. 6). While all other member countries of the Paris Club have restructured their debts according to the initial conditions.[60] The next step was to focus on the remaining creditors. After Iraq obtained a reduction of 90% of the net present value of the debt in the Paris Club, it had set the conditions that it would present to other creditors.

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[59] Debt reduction is being treated as a blow to revenues even if loans have been on the books for many years and have become clearly worthless.
[60] In 2011, Iraq reached a settlement with some American citizens regarding the damages they suffered in the first Gulf War. (State Department 2011).

4.3. Bilateral debt negotiations (outside the Paris Club).

The bilateral loan group included two categories: the Gulf countries and the non-Paris Club countries (such as China). The Gulf countries had the largest total stock of debt (53 billion dollars). Iraq hired Houlihan Loki Howard & Zukin as a financial advisor in these negotiations. It oversaw informing the Gulf countries of the requirements of the transaction with the Paris Club (Pam 2019). A (DSA) by the International Fund has assumed equal treatment of all other creditors. All other countries were members of the fund, which helped to reach preliminary agreements with countries with bilateral loans. This meant that even if these countries did not restructure their loans, they would not stand in the way of the progress of the Iraqi debt restructuring process (ibid). The main point in this field was the “Evidence of indebtedness” paragraph, which means that every new loan replaces any old contract (Deeb 2007, p. 7), and thus the old debt is removed and Iraq has a stock of known external debt.

Most of the small creditors reached a settlement during the next few years. Thus, the terms of the Paris Club were accepted by: the Czech Republic, Hungary, Indonesia, Malaysia, Romania and South Africa. While there were settlements on terms similar to those of the Paris Club that were accepted by: Bulgaria, Bosnia, Serbia and Slovenia, with regard to the debt owed by Iraq to the former Yugoslav Republic.[61] As for Slovakia, Cyprus and Malta, they wrote off their loans completely (SIGIR 2008, p. 138). Other countries took longer time to settle their loans. In 2010, China restructured its claims amounting to 8.5 billion dollars, after it had pledged to do so long ago, back in 2007 (AP 2010). The UAE wrote off its $4.2 billion in loans in 2012 (Dajani 2012). It was difficult to reach a settlement with Egypt, so the matter was delayed until 2015, but it did so only in exchange for shares of oil (Aman 2015). The intractable problem was the stalemate in the negotiations due to the dispute over the remittances of Egyptian workers in Iraq, as the remittances were delivered to Iraqi banks, but they were robbed before being sent to Egypt (Marcus 2019). It was

[61] The two settlements were essentially the same, but some countries agreed to a further reduction in return for obtaining some cash in advance.

not clear if remittances could be defined as a debt, so negotiations stopped and countries with similar intractable problems took a long time to reach settlements.

The largest creditors in the Gulf countries were Saudi Arabia ($39 billion), Kuwait ($8 billion), Qatar ($1.5 billion), and Jordan ($1.3 billion). None of them has restructured its debts so far. The Gulf states opposed relieving the Iraqi debt burden in late 2003 because they were the affected party in Saddam's wars (momani and Garrib 2010, p. 167). Some light pledges were issued to restructure their debts in accordance with the terms of the Paris Club when the restructuring talks reached their climax in late 2004, but these pledges did not yield any results. Indeed, Iraq and Saudi Arabia were not even able to agree on the amount of the debt owed (ibid, p 168). Saudi Arabia, at the time of preparing this study (2019), still believed that it had a debt on Iraq, as Adel Al-Jubeir, the Saudi Foreign Minister, denied writing off anything (Memo 2107). As for Kuwait, which is the second largest creditor, refused to budge from its position as well, as did Qatar. Iraq has incurred a large part of the debt to Kuwait because of its war against it, and Kuwait has linked the issue of debt to the recognition of its national independence. There is no evidence to indicate that Kuwait or Qatar has formally restructured the Iraqi debt, despite the great international pressure exerted previously. Jordan has great claims because of its long-term trade partnership with Iraq (Marcus 2019), but it has not submitted any document in this regard. These countries are still claiming the outstanding debts, and it is assumed that there is a reason why they were prevented from submitting offers to address this issue, and the reason may be related to the lack of capacity.[62] By 2008, the last stage of the Paris Club debt reduction was completed. By 2019, 65 sovereign creditors out of 73 had their debts restructured, leaving only debts consisting mainly of Gulf debt that has yet to be repaid.[63] At the end of 2008, the accumulation of Iraqi debt was no longer a priority, by reaching a tacit understanding that the Gulf States would not press for the payment of their debts (lowery 2019; Marcus 2019). By 2019, the

[62] Perhaps because the loans violate the sanctions of the United Nations.

[63] The Paris Club press release on December 22, 2008 stated: "The Paris Club is completing the third phase of the Iraqi debt reduction." I could not find evidence for the restructuring of the Iraqi debt by the following creditor countries: Brazil, Greece, Jordan, Kuwait, Pakistan, Poland, Qatar, Saudi Arabia and Turkey.

Iraqi oil immunity expired, and it is rare for countries to pursue each other to repay debts.

4.4. Commercial Claims

Dealing with the Paris Club and other governments was a kind of high political practice, while the process of restructuring the commercial debt was of a more procedural nature (wethington 2019). The formula for settlement offers was put forward in 2005 and was fixed in accordance with the terms of the Paris Club, with the use of (JP Morgan) and (Citi) banks as financial advisors to deal with the so-called (London Club), which includes the large commercial creditors.[64] It was the Iraqi government that determined the structure of the deal, following the advice of JP Morgan, Citi, and Cleary Cotlib (Pam 2019). The determining factors for the structure of the deal were:

(1) Previously owed debt service (that is, how much interest each debt is claiming).

[64] The situation of Iraq is not identical with that of most of the settlements made by the Paris Club, where the creditor leaves and wishes to get rid of the equal treatment clause, as this clause was used to force the commercial creditor to accept the deal (Buchheit 2019).

(2) Find out if there is a possibility to exchange the debt for a cash or debt.

(3) How to reach consensus on claims.

It was decided that each claim would receive 10.25% of its owed value, provided that the debt is considered owed at a fixed interest rate from the date of default (Libor rate + 75 basis points) according to the consensus methodology developed by the financial advisors.[65] It was not important whether the debt had a contract containing the interest owed in the past, since the obligation of equal treatment was made for all claims. French banks exerted great efforts to ensure compliance with contracts in calculating the difference over the LIBOR rate, as banks and large claimants benefit from this obligation at the expense of smaller claimants, but these efforts did not succeed against the principle of equal treatment (Buchheit 2019). Most of the small commercial claims were commercial exchange loans and there was no mention of the interest rate in their contracts (Festekjian 2019). As for the larger creditors,

[65] See: See Compatibility Methodology, Document C on the website (http://www.eyidro.com/recon-method.dpf) (The site was accessed on July 23, 2019).

mostly European banks, they had letters of credit or direct loans, which made the accrued interest rate a good deal for all commercial debt claims.[66]

Iraq did not have enough cash to pay all the claims, so the approved deal became (debt-for-debt exchange) (previous source). Bonds were issued in exchange for the debts that were restructured, provided that the matter was limited to major creditors. Everyone who owed Iraq more than 35 million dollars was initially offered a deal (debt for debt), while smaller creditors who are not permitted by law to hold external bonds received cash. JP Morgan and Citi, whose foreign bonds trade is a part of their revenue, were preferring to issue bonds, but they did not get support except from some Iraqis, at least at the official level (Chung and Fidler 2006). Legal advisors advised against following the method (debt-for-debt exchange), because all bond subscription prospectuses contained a disclosure of risk assessment, and this disclosure was not in line with the promotional propaganda launched by the White House in 2005. For

[66] The claims were divided into different currencies, primarily the US dollar, the Japanese yen and European currencies. A formula was reached to convert the old currencies into the euro because the claims date back to a date preceding the adoption of the euro (Festekjian 2019).

political reasons, Cleary Cotlib suggested that all bids be in cash, on terms close to those of the Paris Club (Buchheit 2019). The legal advisors also wanted to include the Collective Action Clause, CAC, although at that time there was only one bond that was exchanged for a coupon bond of 5.8% due in 2028. The reason behind this was to make it easier for Iraq to reopen the issuance of bonds or issue more of them in the future when needed. The matter ended in a settlement, as JPMorgan and Citi would only accept a single issuance of (CAC) conditions, which was the standard procedure in the market at the time, instead of issuing a second generation of these conditions (previous source).[67] The legal advisors did not consider the first generation of the (CAC) Clauses as a breach of the deal at the time, and they did not exert pressure to change it (ibid).

The main issue in settling commercial claims was to reach consensus on the outstanding debt.[68] Ernst & Ynic

[67] It is also called the first generation of (CAC) clauses, in which work is carried out within a single issue of bonds instead of an entire range of them (refer to section 2 of this study).

[68] Cleary Kottlep was aware of the existence of multiple precedents about how (not) to do this. In 1975, Nigeria requested 16 million tons of cement, to arrive within one year in order to close a crisis in this material. The required quantity greatly exceeded the port's capacity, and the result was a significant

(E&Y) was appointed as the manager of the process of reaching consensus. It operated from Jordan. The debt had to meet one of the following conditions in order to be eligible.[69]

(1) Evidence of a written agreement.
(2) To be recorded before the date of the sanctions (August 6, 1990).[70]
(3) To be compatible with the definition of a loan.
(4) To be a foreign debt (defined as a debt in all currencies except the Iraqi dinar).

Any claim could have been settled, unless it had been sold and (E&Y) company had reconciled it with the

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increase in the commercial debt within a short period of time whivh had to be settled. So, the government published an advertisement in the newspapers, in which it requested that everyone it owes money to contact it, and it was natural for many creditors to contact it. It sank into claims and witnessed a nightmare of interlocking problem to consensus on debts and it couldn't achieve a settlement except for a third of the claims (Buchheit 2019).

[69] These terms were adopted based on the Iraqi Ministry of Finance's memorandum entitled (Memorandum to Potential Claimants) dated January 30, 2008.

[70] Here is a paradox to some extent. The legal period of claims according to the laws of New York and Britain is six years, which means that the claims have lost their validity, but these claims were based on many different legal criteria and therefore the settlement offer document specified that sending the claim means the claimant agrees to give up the right of prosecution.

documents available. Since the debts were very diverse, there were a commitment to equal treatment with all of them in terms of eligibility, regardless of the currency and the governing laws. Despite the foregoing, it was not possible to reach consensus on 817 claims out of 11,776. A special arbitral tribunal convened to deal with this matter, and the ruling of this tribunal took the final form from the moment the claim was sent, so nearly half of the claims were accepted (Buchheit 2019). Traditionally, in normal restructurings, it is usual for the claimant to have numbers from Euroclear Bond Clearing or Deposit Trust and Clearing Company (DTCC) to certify their claim, which are external bonds most of the time. However, in the Iraqi case, the creditors came to Dubai and Jordan loaded with boxes of papers (Festekjian 2019), so that one of the claimants from India attended a meeting of creditors in Dubai carrying an old fax carrying a claim he wanted to be paid, so he was kindly asked to send his claim to (E&Y) company. Another man came he had delivered a shipment of frozen chicken worth $10,000 to the port of Basra on the morning of the sanctions' entry into force (Buchheit 2019) and did not receive its price. It is worth noting that the sovereign debt restructuring processes do not include such unusual claims.

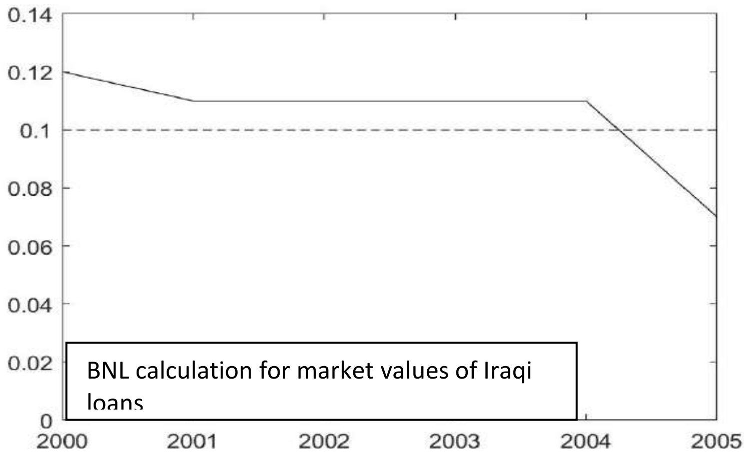
Once the standard terms were completed, Iraq published the commercial debt offer on July 25, 2005, and JPMorgan and Citi organized meetings with each of the creditors in Dubai to market the settlement. The offer followed the method (full acceptance or total rejection) without any negotiation with a creditors committee. However, five creditors committees were established, and none of them represented all the creditors. The largest of these committees, the London Club's Coordinating Group, represented the banks of Europe and the Middle East. The other committees were the Washington Club, the Iraq Creditors Club, the Korean Creditors Coordinating Committee, and the North African Commercial Creditors Committee (Buchheit 2009, p. 211). The advisers believed that individual negotiation would lead to disastrous consequences because it might contradict the Paris Club deal when improving the terms of settlements. In the year 2005, the Governor of the Central Bank of Iraq sent a letter to one of the creditors' committees in which he presented the principle of equal treatment. The problem that the governor highlighted in his letter was not the incapacity of the arguments of the creditors' committees, but rather that (all) their arguments were capable, which makes it impossible to meet the wishes of a group without another.[71]

All creditors considered the Iraqi offer fair. If we want to evaluate this offer, we can compare it with what the major creditors considered loans in their records. It was stated in section 3.1. of this study that Iraq's largest commercial creditor was the Italian Bank (BNL), and its total debts amounted to $3.4 billion (calculating the default and accrued interest) on Iraq and its state-owned banks. These debts were classified as non-performing loans. The loans were part of the annual reports of BNL Bank starting in the year 2000, calculated according to their fair value.[72] They were stated explicitly at their accrued value, and are directly comparable with the settlement offer. In the period 2000-2004, BNL Bank assessed these loans at 10% and 12% of their accrued value. When the exchange took place in 2005, the bank received bonds for the year 2028 worth 683 million dollars and valued them at 239 million dollars in its

[71] The full text of the letter is available in (Appendix A) of this study.
[72] As it's supposed.

annual report, and the loans moved from being “non-performing” loans to be "performing" loans (BNL 2005, p. 64). (Figure 5) shows the presentation of the restructuring and the BNL calculation for market values in the years leading up to the restructuring. From the bank's accounting evaluation, we conclude that the offer (10.25 %) of the accrued value was a fair offer.

(Figure 5): BNL calculation for market values of Iraqi loans (A percentage of the notional and accrued interest).[73]



This is not to say that the commercial creditors did not complain of being subjected to coercion, as they did complain (Chung 2005), but they accepted the offer as well. The commercial debt settlement offer was made on 26 July 2005. By December of the same year, all major creditors had accepted the offer (a total of 14 billion

[73] Source: Annual reports of BNL Bank for the years 2000-2005.

dollars), which launched the start of the second phase of the Paris Club debt settlement, and the International Monetary Fund's stand-by agreement in January 2006, and the reduction of the Iraqi debt by an additional 30% (Chung and Balls 2005). The deadline for sending the claims of the major commercial creditors was fixed. The creditors who had announced earlier that they would not participate attended at that time and were loaded with boxes of documents proving claims (festekjian 2019). A year later, on July 18, 2006, the process of restructuring the Iraqi debt was fundamentally completed.[74] In total, settlements were presented to 11,776 individual Saddam-era claims (817 of which were subject to arbitration). Out of the 491 commercial claims, 96% of the eligible claims accepted the offer (according to E&Y company assessments) and totaled $19.7 billion, according to the Ministry of Finance.

[74] Press releases announcing settlements and participation rates can be found on the website of the government's Iraqi debt conciliation office, operated by (Ernst & Young) Company on the website (http://www.eyidro.com) (The site was accessed on July 12, 2019). Also on the Paris Club website (http://www.clubdeparis.org/en/traitements/iraq-21-11-2004/en), (The site was accessed on July 15, 2019).

There are two realities that made restructuring commercial debt much easier than restructuring Paris Club debt:

(1) The immunity of Iraq's oil assets helped market the commercial debt settlement offer (ibid). This immunity meant that reluctant creditors had to wait a long time to get their money back, while they could get an immediate down payment on bad debts. It has also withdrawn the legal options that any (vulture fund) may benefit from. Thus, no similar fund has been generally involved in this process (Buchheit 2019).

(2) Unlike Paris Club governments, commercial creditors were required to record bad debts. It was stated previously that the offer was related to fair value or better and was not related to the profit and loss statement for any creditor.

4.5. Lessons for Future and lost opportunities

The restructuring process has achieved success, to the extent it has reached in removing the debt burden and allowing Iraq's output to grow in a way that exceeds the debt stock.[75] In 2019, the debt-to-GDP ratio reached 50%. Most of the credit for this is due to the growth of output rather than the direct decline of debt. The structure of the debt stock has also changed, as the external debt has fallen to 34% of the GDP, and much of it were debts owed to Gulf countries actually canceled. Iraq has increased the stock of its domestic debt (in dinars) since the restructuring process, but it has also increased its foreign exchange reserves. (Table 7) shows the due Iraqi debt:

[75] This success is related to the restructuring process only, as Iraq cannot be considered successful on the economic and security fronts.

(Table 7): Iraqi Debt according to Creditors (2019)[76]

Creditor	Outstanding Debt (Billion Dollar)	Debt to GDP Ratio
Paris Club	6	3%
Gulf States	49	22%
Countries that are not members of the Paris Club	18	8%
Compensation (not a debt)	4	2%
Commercial debt	-	-
US dollar foreign bonds	5	2%
Domestic debt	36	16%
foreign exchange reserves	-65	-29%
The total value of the debt (without calculating compensation)	113	50%
Net gross liability value	53	23%

The blowing up of the Iraqi debt was remarkable in terms of scale, if we compare it to any other country or

[76] Source: Total Debt Mass and Gross Domestic Product from International Monetary Fund data. The Paris Club figures are outstanding term loans, according to Bloomberg. The figures of the Gulf countries from section (4.3.) of this study. The debt figures of countries that are not members of the Paris Club are the remaining debts and include loans from the International Monetary Fund and the World Bank. The compensations due, starting from December 2019, are for the damages that occurred on the Kuwaiti oil assets. The commercial debt has been restructured, making it written off. The external and domestic debt is the total amounts owed according to the data of the Central Bank of Iraq. The foreign exchange reserves were included in the negative value because they are Iraqi assets, in compliance with the consistency in the table data (as previously mentioned in Table 1).

era in history. There are only a few historical precedents at the crossroads that states reach in the post-conflict reconstruction phase, debt reduction, and international political pressure.[77] The process of restructuring countries' debts has changed during the twenty years preceding the Iraqi case, but it is strange that this case is somewhat inconsistent with the natural course of events. Debt reductions were much greater than other cases, and there was political pressure, and laws were changed to meet political ends. Evian's approach, which largely separated heavily indebted poor countries' (HIPC) relief from other countries' relief, demonstrated the flexibility the Paris Club could provide, a key factor in reaching a final settlement. Providing immunity to Iraq's foreign assets was unprecedented and remains so to a large degree (Buchheit and Gulati 2019).

[77] There are only a few of the precedents mentioned by the participants in the restructuring process, and perhaps the most close to the Iraqi case is the process of reducing the German debt in 1953, when the London Debt Agreement removed half of the German debt, which contributed to the successful reconstruction of Germany after World War II (Galofre-Vila et al. 2019). Another precedent is the process of reducing the Polish debt in the early 1990s, when Poland obtained a deal from the Paris Club by which it got rid of half of its debt and received aid from the International Monetary Fund during the period 1990-1995 and made a change in the course of things when it re-entered the Western world (Boughton 2012, p. 438-42).

On this basis, the process of restructuring the Iraqi debt holds important lessons for the future. If oil-rich countries with many external assets need to restructure their debt, this requires external political will (Venezuela is a clear example of this, as Buchheit and Gulati noted {Buchheit and Gulati 2018}). Iraq provides a model for forcing creditors to restructure their debts at a time when they can prevent countries from entering the financial markets (because most transactions flow through London or New York). However, this matter requires political will. Any process of debt restructuring may clash head-on with the issues of the term of equal treatment and subject to be prosecuted by the creditors. We can never give politics its due in the roles it played in all aspects of the process to circumvent legal issues.

Accordingly, the process of restructuring the Iraqi debt was also a model for lost opportunities. The accumulation of the Iraqi debt in the eighties, as documented in Section 3 of this study, shows that the entire debt was a political, warlike debt. It arose from the support of the United States of America and its allies for the Iraqi war effort in the eighties, and it was not a debt to the Iraqi people, but a debt to geo-political considerations, which made Iraqis suffer under the burden of debt and a repressive regime that achieved personal wealth (Blau 2003).[78] If the principle of (illegitimate debt) has a place in international law, one of the appropriate sites for its beginning is the BNL loan to Iraq, which we discussed in the two sections (3.1.) and (4.4.). There is no doubt that going to the Paris Club instead of declaring the Iraqi debt an illegitimate one was politically appropriate, but it neglected to identify the parties responsible for the existence of such debt.[79] Creditors were allowed to settle their loans without providing answers to embarrassing questions about how the loans were originally provided. Instead, the Paris Club deal and the consequent restructuring of commercial debt shrugged off the debate about the meaning of paying the loans in the first place.

[78] Estimates of Saddam's personal net worth range from $2-40 billion (Blau 2003).

[79] The United States of America also preferred to go to the Paris Club instead of following the sovereign debt restructuring mechanism (SDRM) proposed by the International Monetary Fund in 2003 (IMF 2003), which is an organized framework for restructuring the sovereign debt.

5. Conclusion

This study showed that the entire Iraqi debt stock was a result of the geo-political considerations of the Iraqi-Iranian war, during which Iraq benefited from American, European and Gulf support. At that time, the United States of America, the Soviet Union and European countries showed their willingness to disregard any considerations of the ability to repay loans and granted Iraq loans on non-market terms. In less than fifteen years, Iraq transformed, due to the war, from a creditor country on a net basis in 1979 to a country whose debt is more than ten times the gross domestic product. The economy and institutions collapsed, and despite the military victory of Iraq, it emerged from the war with Iran as a failed state. When the tide of geopolitical considerations reversed against Iraq after its invasion of Kuwait in 1990, it was defeated and isolated by international sanctions. It owed money to everyone from the Gulf States to the developed world, from banks to individuals, and when the United States invaded Iraq in 2003, the impact of the accumulated debt was devastating, making debt restructuring a priority.

One of the problems facing sovereign debt restructuring operations is that it is increasingly inclined to the side of the creditors. The creditor can sue if treated harshly, which closes the doors of the global economy on Defaulting States. Perhaps it can be argued that this is due to the fact that money flows through very few accumulated financial centers and that most of the external debt is governed by New York law or British law. The process of restructuring the Iraqi debt came amid these changes, but it avoided the obstacles it faced. One of the unique features of this process is that the international community has immunized Iraq's oil assets, leaving the creditors with little settlement solutions. I see that the restructuring process does not resemble most of its counterparts that took place at the same time, as the creditor countries were subjected to enormous political pressure from the United States to abandon their debts, and the Paris Club deal ended with Iraq's creditors incurring to write off a large part of their debts. Nevertheless, the process of restructuring the Iraqi debt was a lost opportunity to establish an important precedent by declaring the Iraqi debt as (illegitimate), as Iraq enjoyed broad political support from the American power. Although the deal succeeded in writing off the Iraqi debt in the end, it failed in reforming how to restructure the sovereign debt.

(Appendix A): Letter to the Creditors Committees.[80]

Sender: Shanan Al-Shabibi, Governor of the Central Bank of Iraq, in the year 2005.

Recipient: The Coordinating Group of the London Club, the Washington Club, the Iraq Creditors Club, the Coordinating Committee of Korean Creditors, and the North African Commercial Creditors Committee.

Over the past year, Iraq has consulted many creditors, individuals and groups, and in these discussions we have heard a common theme. The claimants of each class (bilateral debt holders, banks, contractors, suppliers, individuals, etc.) put forth apparently reasonable arguments in proposing that their class should receive preferential treatment over other classes of claimants, regardless of what the final formula of the settlement to be presented by Iraq would be. Here is a brief overview of these arguments:

- Bilateral debt holders say that they lent Iraq at below-market interest rates, while commercial loan holders lent their loans at the full rate of

80 Source: (Buchheit 2009, p. 211).

market interest, and borne the risk of the entire loan.

- Commercial debt holders say that bilateral debt holders were providing loans to serve their geo-political goals or to develop exports. Therefore, they should be of lower importance compared to natural commercial debt holders.
- Commercial banks say that obtaining their support is necessary in the process of rebuilding Iraq, and therefore it is necessary to gently deal with them only in the process of restructuring the Iraqi debt.
- Commercial providers say that lessons from previous sovereign debt restructurings confirm that commercial providers should be excluded or treated more leniently in any sovereign debt-restructuring programme.
- Businesses say that they are not the same as other claimants for investing in lending or assessing (or taking on) the risk of sovereign debt.
- Construction companies indicate that they have worked to establish facilities that still provide basic services to the Iraqi people during this difficult period.

- Individual creditors say they should be treated as individuals.

The problem is not in the incapacity of these arguments, but in that they (all) contain what makes them eligible. However, the Iraqi government, when faced with these broad and contradictory sets of situations, concluded that the only equitable and practical way was to provide equal treatment to all those who claim the country's claims dating back to the era of Saddam.

The Process of Iraq's Sovereign Debt From Default to Restructuring

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