Abstract

This study seeks to ascertain the causal link between the inflow of Foreign Direct Investment (FDI) and compliance with international law standards. Given that there is no clear theoretical framework or steadfast legal theory of compliance, it is held to refer to the awareness and observance of rules of international law by States. The analysis is then premised on the assumptions that States are rational entities that act to further their self-interests, and appreciate the implications of international law in this regard. The reasons why various Iraqi governments since 1958 have been very reluctant to open the economy to FDI are then examined in order to determine whether the modification of the investment laws governing the oil and gas sector by the Iraqi Governing Council or interim government under the guidance of the coalition forces was motivated by the desire to comply with international standards and attract FDI. It concludes that FDI is not essential for the economic development of periphery countries where it is held to entail foreign investors from core countries exploiting non-renewable resources in periphery countries. Thus, the investment laws of 2003 and 2006 were not enacted by the Iraqi government to attract FDI but because it was compelled to do so by the Coalition Provincial Authority (CPA).

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Chapter 1: Introduction

1.1 Introduction

Although States generally carry out cost/benefit analyses of compliance in order to choose a particular course of conduct, there is still much uncertainty as regards the standards and norms that must be observed by States with to the treatment of foreign investors. This is compounded by the fact that there is a myriad of reasons why States would allow non-State actors such as foreign investors certain protections and not others. In some sectors they may be granted national treatment, while their participation in other sectors may simply be prohibited. Arbitral or judicial bodies that are tasked with interpreting constitutive documents or international treaties seldom provide the requisite clarity as regards the obligations of the State parties, and often the scope of the adjudication is limited to the terms of the relevant international treaty. States therefore prioritise the demands of domestic constituencies and seek to achieve a balance between the standards of international investment law and the needs of the local industry. It is in this light that this study seeks to determine whether the inflow of foreign direct investment (FDI) is a determinant of a State's compliance with standards of international investment law. It focuses on the Republic of Iraq and assesses the motivation of the overhaul of the country's investment law in the past decade.

1.2 Research Aim and Objectives

As will be shown in Chapters 2 and 3, the different governments of Iraq have held contrasting views about the importance of FDI. While some have opposed the idea of opening the economy to FDI, others have modified investment laws to comply with international standards in order to attract FDI. As such, it is uncertain whether FDI is essential for the economic development of 'periphery' countries with abundant natural resources such as Iraq. This is because although FDI may provide the required capital to finance reconstruction, they may also act as agents of 'core' countries that simply exploit non-renewable resources in periphery countries and repatriate the profits. Thus, where international law governing the exploitation or trade in natural resources (especially non-renewable resources such as oil) is deemed to reflect the liberal international economic order that perpetuates historically built injustices, it is unlikely that a periphery State would amend its domestic laws to comply with the rules of international law and attract FDI. In this light, the aim of this study is to determine whether the Iraqi Governing Council or interim government under the guidance of the coalition forces modified the investment laws governing the oil and gas sector because it sought to comply with international standards and attract FDI. Compliance in this context refers to compliance with international law developed by the institutionalist tradition of international relations and draws upon neorealism and institutionalism which emphasise the autonomy of the State and the incentive of self-interest.

The research objectives to include

- Ascertain whether there is a causal link between the enforcement of international law standards and the level of foreign investment in the Iraqi oil and gas sector.

- Determine whether the increase in FDI inflows in Iraq motivated the enactment of investment laws that reflect the conventional liberalism of international trade

- Determine how the Iraqi investment laws may be modified in order to attract more FDI in the future

1.3 Research Methodology

In order to achieve the research aim and objectives outlined above, the researcher employed separate methodologies, namely the legal doctrinal analysis or the traditional form of legal scholarship and axiology. Both methodologies enabled the researcher to examine the theoretical link between FDI and legal compliance, as well as the motivation of the overhaul of Iraqi investment laws governing the oil and gas sector. The legal doctrinal analysis is the conventional legal approach to the study of legal precepts.[1] It may be referred to as the currency of the law. It generally involves the analysis of the provisions of statutes, the precedent or opinions of judges.[2] These represent the legal doctrine that is analysed in order to ascertain the relevant rules and standards that govern actions. The analysis in turn determines whether these rules and standards were effectively reasoned, as well as whether they are effective.[3] They are also assessed as a normative matter. However, the doctrinal analysis is based on a descriptive premise that logical arguments supported by doctrinal premises may explain statutory provisions and judicial decisions.[4] Given the difficulty of accessing the dicta of Iraqi courts, emphasis here is placed on the provisions of investment laws. The decisions of some arbitral tribunals are also assessed in order to ascertain the motivation of States to enact or amend investment laws.

Thus, in order to analyse the provisions of laws governing foreign investment in general and in the oil and gas sector in particular, the researcher focuses on the following primary sources of law: orders or decrees of the governing bodies. The latter may be the Iraqi Governing Council or interim government or coalition authority tasked with enacting laws during the occupation of Iraq by the coalition forces. The analysis of these sources is evaluative and critical in order to determine whether they are legitimate and appropriately reasoned. In the event where they are not, the researcher proposes an alternative process of legislation and course of legal reasoning. This is particularly important here because Iraq was an occupied territory for the most part of last decade and the investment laws were enacted either by the coalition authority occupying Iraq or by an interim body that was greatly influenced by the latter. In some instances, the applicable laws at the time were disregarded. It is shown in Chapter 4 that this may lead to a successful challenge of the legitimacy of the laws enacted during the occupation or the refusal of future elected Iraqi governments to implement the laws.

Apart from the legal doctrinal analysis, the researcher also uses axiology to assess subjective convictions or opinions about values. This method has often been used to assess the values

[1] Tiller EH and Cross FB ‘What is Legal Doctrine?’ (2006) 100 *Northwestern University Law Review* 517, 517-518.
[2] Ibid.
[3] Shapiro DL ‘In Defense of Judicial Candor’ (1987) 100 *Harvard Law Review* 731, 737.
[4] Tiller and Cross, note 1, 518.

that guide human conduct.[5] However, here it is used to assess the values and principles that guide the behaviour of States. In other words, the researcher seeks to determine what motivates States to comply with international norms. This is particularly important here because although States are bound by customary international law norms that govern foreign investment, the norms do not provide foreign investors with a private right of action against the host State. As such, it is incumbent on the latter to enact laws that will ensure that the assets of foreign investors are not expropriated or profits seized. Axiologists generally assess two types of values, ethics and aesthetics.[6] Emphasis here is on ethics. This is because, as shown in Chapter 2, two behavioural logics describe how the behaviour of States may be influenced: the logic of consequences, and the logic of appropriateness. While the logic of consequences is concerned with the consequential incentives that influence the behaviour of States; the logic of appropriateness on the other hand is related to the normative and ethical model. They determine how States elect to participate in the international legal system or to withdraw from the system.

1.4 Outline of Chapters

The table below provides a brief outline of the constitutive chapters of this study. In order to enhance clarity and for the purposes of orderly presentation, the chapters are divided into sections and subsections.

Chapter	**Outline**
1 – Introduction	• Discusses the research aim and objectives. • Discusses the research methodology and provides an outline of the constitutive chapters.
2- FDI and Legal Compliance	• Examines the theoretical link between legal compliance and foreign investment in order to understand why international law standards are enforced in a State, and

[5] See Heron J and Reason P 'A Participatory Inquiry Paradigm' (1997) 3 *Qualitative Inquiry* 274, 280.
[6] Ibid.

	whether there is a causal link between such enforcement and the level of foreign investment
3 – FDI in the Iraqi Oil and Gas Company	• Examines the link between the increase in FDI inflows in Iraq and its compliance with international norms. • Determines whether the increase in FDI inflows motivated the enactment of investment laws that reflect the conventional liberalism of international trade
4 – The Link between FDI and Legal Compliance in Iraq	• Determines whether there is a link between FDI and legal compliance of the host State as shown in Chapter 2 or whether in the case of Iraq, the impact of FDI is simply overstated as shown in Chapter 3. • Determines whether future Iraqi governments would be obliged to abide by the provisions of these investment laws
5 – Conclusion	• Draws conclusions from the appraisal of the investment laws enacted in Iraq in 2002 and 2006 in order to attract FDI. • Shows the contributions of each chapter of the study towards achieving the research aim and objectives

Chapter 2: FDI and Legal Compliance

2.1 Introduction

This Chapter examines the theoretical link between legal compliance and foreign investment. The objective is to understand why international law standards are enforced in a State and whether there is a causal link between the enforcement of these standards and the level of foreign investment. It begins with an attempt at ascertaining the meaning of compliance within the context of international investment law. Different theories of legal compliance are examined, as well as the logic explaining the behaviour of States. It then concludes with an analysis of the motivations of States to comply with international investment law.

2.2 Theory of Compliance

Compliance may generally be defined as the awareness and observance of laws, rules, policies, regulations, standards, and the adherence to all legal requirements.[7] However, this definition is used to refer to compliance from an organisational perspective whereby an organisation is required to ensure that all its agents know the rules and regulations and always follow them.[8] This is different from compliance within the context of international law. Thus, compliance is a conceptual variable that describes the 'status of an action, policy or stated belief relative to a normative ideal.'[9] It follows from here that the substance of compliance may not be derived from a common or objective quality but from interpretation. It must be noted that there is no clear constructive theoretical framework or steadfast legal theory of compliance.[10] In light of the above, the description of compliance in this section is based on the model of compliance with international law developed by the institutionalist tradition of

[7] Wulf K, *Ethics and Compliance Programs in Multinational Organizations* (Springer, Berlin, 2012) 9.
[8] Ibid.
[9] Rajkovic NM, *The Politics of International Law and Compliance* (Routledge, Oxon, 2012) 15.
[10] Raustiala K and Slaughter A 'International Law, International Relations and Compliance' in Carlsnaes W, Risse T and Simmon BA, *The Handbook of International Relations* (SAGE, London, 2002) 28; Slaughter A 'International Law and International Relations' (2000) 9 *Recueil des Courts* 285.

international relations. The model draws upon neorealism and institutionalism which emphasise the autonomy of the State and guided by self-interest but demonstrates that the behaviour of States may be influenced by international law.[11]

It may therefore be said that legal compliance refers to the awareness and observance of rules of international law by States. The compliance by non-State actors is not discussed here because the focus of this study is the enforcement of international law standards in the oil and gas industry of Iraq; and the Iraqi government is charged with ensuring that these standards are enforced within its jurisdiction in order to attract foreign investors. The discussion here is however premised on a number of assumptions about States: first, although they are rational entities, they act only to further their self-interests, and appreciate the implications of international law in this regard. Secondly, States that are party to international agreements are both better off if they comply with the provisions of the agreements.

The first assumption is referred to as the rational-actor of State behaviour. The State is conceived of as a global actor whose members see themselves as part of an institutionalised and hierarchical group that pursues shared ends.[12] This implies that States are strongly invested in determining what actions are in their best interests and make explicit and instrumental calculations of how the benefits and shortcomings of their actions; and compare the consequences of performing alternative actions. Thus, they have clear and well-established objectives that are set on the basis of 'what is best for me.'[13] It has been noted that two behavioural logics describe how the behaviour of States may be influenced: the logic of consequences, and the logic of appropriateness.[14] The logic of consequences is related to the theory of the rational actor. It is adopted by the State actor whose actions are driven by its expectations of consequences.[15] Rational and egoistic actors negotiate with each other pursuing their own selfish interests or personal goals and making predictions about the

[11] See Berglund S, *Putting Politics into Perspective: A Study of the Implementation of EU Public Utilities Directives* (Eburon, Delft, 2009) 39.
[12] Nijmann JE 'Non-state Actors and the International Rule of Law' in Noortman M and Ryngaert C (eds), *Non-state Actor Dynamics in International Law: From Law-takers to Law-makers* (Ashgate, Farnham, 2010) 118.
[13] Mitchell RB 'Compliance Theory: Compliance, Effectiveness, and Behaviour Change in International Environmental Law' in Brunee J, Bodanksy D and Hey E (eds), *Oxford Handbook of International Environmental Law* (Oxford University Press, Oxford, 2007) 901-902.
[14] See Hathaway OA 'Do Human Rights Treaties Make a Difference?' (2002) 111 *Yale Law Journal* 1935; March J and Olsen J 'The Institutional Dynamics of International Practice Orders' (1998) 52 *International Organisations* 943.
[15] Honkonen T, *The Common but Differentiated Responsibility Principle in Multilateral Environmental Agreements* (Kluwer Law International, 2009) 27-28.

consequences of others' behaviours. Thus, the logic of consequences is a collection of agreements negotiated by States with conflicting interests and varying resources. This means that consequential incentives can be used to influence the behaviour of States.[16]

The logic of appropriateness on the other hand is related to the normative and ethical model. It is rule-based.[17] State actors are concerned with selection of rules and their identities rather than rational expectations. Both logics provide different perspectives of why States adopt or reject international standards. As such, prescriptions and proscriptions in international agreements, as well as customary international law transform undifferentiated types of behaviour into distinct categories of compliance and violation; and the placement of a certain type of behaviour in one category may significantly influence some State actors. The most important thing to note here is that States may subsequently internalise the norms embedded in the legal prescriptions and proscriptions. A State may therefore refrain from violating international environmental standards because it wants to be perceived by other States and influential non-State actors (such as foreign investors) as 'green' and 'law-abiding.'[18] The desire to be perceived as a good environmental citizen is directly linked to the benefits that may accrue due to the fact that other States and influential non-State actors are more likely to invest in the former. The international system from this perspective comprises of autonomous and egoistic actors that seek to maximise their self-interests and are likely to comply with international environmental standards if that would increase foreign investment.

It follows from above that States that are party to international agreements are both better off if they comply with the provisions of the agreements. This is referred to as treaty-induced compliance.[19] This is based on the contention that rules have a causal relationship with compliance and actors may be forced to comply with the rules irrespective of the economic costs involved or the absence of economic benefits. A good example is the requirement for tankers to install segregated ballast tanks (SBTs) in line with the schedule delineated in the International Convention for the Prevention of Pollution from Ships 1973 (MARPOL). Tanker owners installed the SBT despite hefty costs and the absence of economic benefits; while tankers exempt from the requirement did not install the SBT, affirming that the requirement represented treaty-induced compliance or the coerced compliance model of

[16] Ibid.
[17] Ibid.
[18] Mitchell, note 13, 903.
[19] Mitchell RB, *International Oil Pollution at Sea* (MIT, Boston, 1994) 299.

regulation.[20] This type of compliance may be distinguished from the compliance discussed above, which is coincidental. That is compliance simply represents the varied responses of States to international pressure.[21] Nonetheless, if it is agreed that States often negotiate international agreements 'for the promotion of their national interests, and to evade legal obligations that might be harmful to them,'[22] then it may be important in this regard to develop a mechanism through which States that violate an agreement are sanctioned. It must be noted that the term 'sanction' in this context implies more than just direct punishments for the failure to fulfil international obligations. It includes all the costs that are associated with such a failure such as reputational costs that may impact on the ability of the sanctioned State to make commitments in the future, the right of retaliation by other States, and of course direct punishment. The latter may be through formal dispute-settlement mechanisms such as that of the World Trade Organisation (WTO), whereby awards may be granted by the arbitration tribunal against the State that has violated customary international law or a provision in an agreement.

However, high compliance with an international agreement does not necessarily imply that the agreement has influenced the compliance by the State parties. It has been argued that when international agreements reflect the lowest common denominator negotiations, most of the States and non-State actors that took part in the negotiations are already in compliance.[23] This means that the change of behaviour of certain States often reflect pressures by other States and influential non-State actors such as multinational corporations (MNCs) rather than the proscriptions or prescriptions of an international agreement that they have ratified. Many governments are forced to meet international environmental standards in order to attract foreign investment. The Protocol to the Convention on Long-Range Transboundary Air Pollution of 1985 for example required signatory States to reduce sulphur dioxide emissions by 30 per cent by 1993. However, most of the signatory States had already met this standard even before the agreement was signed due to the pressure exerted by influential States and MNCs on the less influential States. It may therefore be stated that compliance is a reflection of self-interested behaviour governed by clear objectives that the States seeks to achieve. This explains why some States comply with international standards even when they have weak

[20] Ibid, 300.
[21] Cardenas S, *Conflict and Compliance* (University of Pennsylvania Press, Philadelphia, 2007) 1.
[22] Morgenthau HJ, *Politics among Nations: The Struggle for Power and Peace* (McGraw-Hill, New York, 1993) 259.
[23] Mitchell, note 13, 904.

enforcement mechanisms and also why some States may sometimes choose to violate international agreements. In both instances, it is a question of a cost/benefit analysis over time and across contexts. During good times, when a State is enjoying high levels of foreign investment and it is expected to increase in future years, expropriation would be an unattractive policy. The State would instead implement measures that encourage more foreign investment in order to reap more benefits in the form of employment, tax revenues and the transfer of technology. This is because these benefits exceed those which would be reaped by expropriation. Where the State's compliance with international law attracts foreign investment, it is likely to implement policies in this regard. Also, it is likely to violate rules of international law where compliance would be adversely impact on foreign investment.

2.3 Why States Comply with International Law

From the above, it may be said that States may elect to participate in the international legal system or to withdraw from the system, depending on their which option furthers their interests. Although States are bound by customary international law norms that govern foreign investment, the norms do not provide investors such as MNCs a private right of action against the host State. In other words, an MNC does not readily have a private right of action against a host State that expropriates its assets. They may bring an action against the State under international investment laws in forums such as the International Centre for the Settlement of Investment Disputes (ICSID), but then again, the State has to allow the MNC the right to submit disputes under their agreement to the ICSID or it may even refuse to pay the award granted by the arbitrator. A good example is *CMS Gas Transmission Co v Argentina*,[24] whereby CMS Gas Transmission Company, an investor in Argentina obtained a ruling against the government of the country in an arbitral tribunal. Argentina however refused to pay the award of $133.2 million, and CMS was forced to transfer its award to a subsidiary of Bank of America that specialises in collecting distressed debt. The problem of making and enforcing such awards against States is that the liability attendant to international investment law has the potential of being ruinous to States that are required to pay the awards. In two important cases involving the government of Indonesia: *Himpuma Cal Energy*

[24] ICSID Case No ARB/01/8 (Award of May 12, 2005).

Ltd v PT (Persero) Perusahaan Listruik Negara (Berm, Indonesia);[25] and *Patuha Power Ltd v PT (Persero) Perusahaan Listruik Negara (Berm, Indonesia)*,[26] two foreign investors entered into agreements with the government of Indonesia to construct power plants and sell the power to the government. Indonesia provided the investors the right to submit investment disputes to international arbitration, and when a dispute arose, the government refused to purchase power generated by the plants as agreed by the parties. The investors submitted the dispute to arbitration seeking billions of dollars in damages. Although the tribunal determined that Indonesia had breached the terms of the agreement, it awarded only 10 per cent of the damages claimed by the investors on the grounds that the award of the full amount would be an 'abuse of right.'[27] The argument was that the claimants' damages had to be curtailed in order 'to prevent the claimant's undoubtedly legitimate rights from being extended beyond tolerable norms.'[28] The tribunal further noted that the failure to curtail the damages would impose on Indonesia 'ever-increasing loses' or ruin.[29] However, in domestic systems, where the defendant is unable to pay or the damages are inadequate the court considers alternative remedies and does not simply reduce the damages because it would ruin the defendant.[30]

Nonetheless, it is often important to clearly outline the State's obligation under international investment treaties so as to ensure that where it ratifies the treaties it would uphold common standards. Investment treaties for example often stipulate that governments ought to treat foreign investors 'fairly and equitably,' as well as give them 'full protection and security.'[31] The use of broad terms such as 'fair' and 'equitable' is good because it allows for greater flexibility implying that the State is still entitled to choose which international norms and standards to comply with. In *LG&E Energy Corp v Argentina*,[32] it was held that governments were required at the beginning of last century to treat foreign investors fairly and equitably given that many States tended to be bellicose when it came to promoting their interests. However, the tribunal noted that these standards were 'initially articulated in the 1920s and

[25] (Final Reward of May 4, 1999) 25 YB Com Arb 13.
[26] 14 Mealey's International Arb. Rep B-1 (December 1999).
[27] *Himpuma*, para 435.
[28] Ibid, para 93.
[29] Ibid. For an analysis of both cases, see Petrova I 'Stepping on the Shoulders of a Drowning Man' The Doctrine of Abuse of Right as a Tool for Reducing Damages for Lost Profits: Troubling Lessons from the Patuha and Himpuma Arbitrations' (2004) 35 *Geo J Int'l L* 455, 463-469.
[30] See for example, Lord Selbourne in *Wilson v Northampton and Banbury Junction Rly Co* (1874) 9 Ch App 279, 284.
[31] Draguiev D 'Bad Faith Conduct of States in Violation of the Fair and Equitable Treatment Standard in International Investment Law and Arbitration' (2014) 5 *Journal of International Dispute Settlement* 273.
[32] ICSID Case No ARB/02/I (October 3, 2006) 21 ICSID Review, Foreign Investment Law Journal, 123 (2006).

required that 'State conduct be deemed outrageous, wrongful, open injustice, an atrocity, bad faith or voluntary negligence of duty for a violation to be found.'[33] It then concluded that what was considered an atrocity in 1926 may not be considered so today and also what was considered violent at the time may not be defined as such today.

What the above case shows is that there is still much uncertainty as regards the standards and norms that must be observed by States and non-State actors. Arbitral or judicial bodies that are tasked with interpreting constitutive documents or treaties are expected to provide the requisite clarity as regards the obligations of the parties. However, this has proved to be very challenging. Several arbitrations were brought against Argentina in 2000 and 2001 following the enactment of several laws nationalising certain companies or disregarding previous obligations under investment contracts. Argentina's defence in most of these cases was that the measures were introduced as a matter of 'necessity' under international law given the dire economic crisis it confronted at the time. Under customary international law, an obligation that is granted under a bilateral investment treaty (BIT) may be suspended under the doctrine of necessity. In *Continental Casualty Company v Argentine Republic*,[34] it was held that the doctrine of necessity operates as an exception from illegality and/or responsibility; and a State may invoked the doctrine where it has not contributed to the state of necessity, and the actions taken by the State were the only way of safeguarding an essential interest from impending danger.

Some tribunals rejected Argentina's defence of necessity and held that it was liable,[35] while other tribunals ruled that Argentina had not directly contributed to the state of necessity and should be excused from liability during the peak months of the economic crisis.[36] The disparity between the approaches adopted by the tribunals reflects the uncertainty in the enforcement of international law rules against States. The uncertainty may be said to be as a result of the absence of *stare decisis* or precedent in international arbitration affecting both States and investors.[37] Each arbitral tribunal is granted power only to adjudicate within the bounds of the BIT concerned. This makes it difficult for investors to ascertain their rights and

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[33] Ibid.
[34] ICSID Case No ARB/03/09.
[35] See *BG Group Plc v Argentina*, UNCITRAL Case No 08-0485 (final award of December 24, 2007). See also CMS Gas Transmission Co v Argentina.
[36] *LG&E Energy Corp v Argentina*, 267-268.
[37] Schreuer C and Weiniger M 'A Doctrine of Precedent?' in Muchlinski P, Ortino F and Schreuer C (eds), *The Oxford Handbook of International Investment Law* (Oxford University Press, Oxford, 2008) 1189.

for governments to know which regulatory measures are acceptable under international investment law. To minimise the risk in uncertainty, some States have decided to limit their consent to international arbitration and require non-State contractual parties to rely on domestic courts that are competent to entertain the disputes. Japan and Philippines for example refused to include a provision in their Economic Partnership Agreement of 2003 allowing investors to submit investment disputes to arbitration.[38] Equally, although the bilateral investment agreement between Russian and Venezuela of September 2009 allows the parties to submit disputes to arbitration, it limits their choice of forum. The agreement omitted ICSID as a forum and requires investors to submit disputes to the domestic courts in each host State or an arbitrator pursuant to the rules of the Stockholm Chamber of Commerce.[39]

Also, the United States uses a model BIT that limits the substantive protections accorded to investors under the agreement.[40] The objective is to enhance consistency, certainty and predictability in how arbitrators and domestic courts should interpret and enforce BITs, as well as other free trade agreements signed by the United States. However, this implies that the United States imposes terms on foreign investors rather than rely on the common norms and standards of international investment law. This is a reflection of the point made above that compliance is a reflection of self-interested behaviour governed by clear objectives that the States seeks to achieve. What is therefore important is that the United States, as well as Japan and Russia in the previous examples, can show that foreign investors will be treated fairly and equitably under the model BIT. Given the ambiguity of the terms 'fair' and 'equitable' it is only logical that many other States and non-State actors will object to the imposition of terms on them via a model BIT, where the implementation of the terms would be detrimental to their interests. This is what happened when Norway equally proposed a model BIT in 2008 with the requirements that all local remedies must be exhausted before submitting the dispute to arbitration; and the term 'investor' as defined in the model treaty did not include mailbox or shell companies. These are companies that serve as a vehicle for business transactions without themselves having any important assets or operations.[41] The

[38] Ryan CM 'Discerning the Compliance Calculus: Why States Comply with International Investment Law' (2009) 38 *Georgia Journal of International and Comparative Law* 63, 87.
[39] Ibid.
[40] See Murphy SD 'Proposed New US "Model" Bilateral Investment Treaty' (2004) *American Journal of International Law* 836.
[41] Welter F and Smallbone D 'Institutional Perspectives on Entrepreneurial Behaviour in Challenging Environments' (2011) 49 *Journal of Small Business Management* 107, 109.

Norwegian model BIT also placed emphasis on corporate social responsibility (CSR), sustainable development and human rights. However, many business groups and non-governmental organisations challenged the terms of this model BIT on the grounds that they failed to provide sufficient substantive protections to investors and restrained the ability of the government to regulate investors in order to promote public welfare. The Norwegian government abandoned the plan to use the model BIT in 2009 noting that the treaty did not achieve the required balance between the promotion of public interest and the fair and equitable treatment of investors.[42] Other States have implemented more radical measures such as the Bolivarian Alliance that specifically rejects regional treaties, as well as BITs. Two members of the Alliance, Bolivia and Ecuador, have actually withdrawn from the ICSID Convention.[43]

The theories above therefore show that States generally balance factors such as their self-interest, reputational and collateral impacts of the violation of international norms. Thus, States carry out a cost/benefit analysis of compliance in order to choose the particular course of conduct. Where a State benefits from foreign investment it may for example ensure that it has the appropriate legal, administrative and regulatory framework that will attract more foreign investors. As such, States generally consider the investment-level reputation in order to attract potential investors. This implies that the greater a State's reputation for compliance, the greater the likelihood that foreign investors would be willing to invest in that State.[44] Where a State violates international commitments or indulges in expropriation, foreign investors are likely to take into account the risk of investing in such a State.[45] They may therefore seek greater incentives or guaranteed returns on their investment or focus on other countries that provide a more favourable investment environment.

It may therefore be submitted that the direct impact of FDI is generally positive as regards the legal compliance of the host State. Nonetheless, this is more likely to be the case with States where domestic participation in the industry or sector is low and local firms, employment and supply chains are not adversely affected by the incentives given to foreign investors. It has however been argued that FDI may not motivate compliance by the host State where

[42] Ryan, note 38, 88.
[43] Ibid, 89.
[44] Guzman AT 'The Design of International Agreements' (2005) 16 *European Journal of International Law* 579, 596.
[45] Ibid.

policymakers are compelled to ignore pollution regulation or money laundering checks in order to reduce the cost of compliance with domestic laws.

The question of certainty remains unanswered. This is further compounded by the need to address the demands of domestic constituencies and achieving a balance between the requisite standards of international investment law and the needs of the local industry. International investment law often creates a two-tiered system of protections that favours foreign investors over domestic investors. Foreign investors are given higher property rights protection and are sometimes exempt from some taxes. This sometimes causes resent by domestic traders. However, the disparity is not relevant where foreign investors operate in a sector where there is little or no domestic competition. This is especially the case in sectors such as the oil and gas sector that is dominated by foreign investment.

2.4 Conclusion

This Chapter has attempted to establish the theoretical relationship between legal compliance and foreign investment. It has demonstrated that the direct impact of foreign investment is generally positive as regards the legal compliance (with international investment law) of the host State. Nonetheless, this is more likely to be the case with States where domestic participation in the industry or sector is low, and local firms, employment and supply chains are not adversely affected by the incentives given to foreign investors. It was also noted that there is no clear constructive theoretical framework or steadfast legal theory of compliance, and from the viewpoint of the traditional neorealist and institutionalist theories, compliance may generally be said to refer to the awareness and observance of rules of international law by States. However, it was shown that although States are rational entities, they act only to further their self-interests, and appreciate the implications of rules of international law in this regard. Equally, States that are party to international agreements often realise that they are better off if they comply with the provisions of the agreements. Two behavioural logics that describe how the behaviour of States may be influenced were discussed. These include the logic of consequences, and the logic of appropriateness. The logic of consequences was said to be related to the theory of the rational actor and is adopted by the State actor whose actions are driven by its expectations of consequences; while the logic of appropriateness on the other hand was said to be related to the normative and ethical model.

States may therefore elect to participate in the international legal system or to withdraw from the system, depending on their which option furthers their interests. They therefore generally balance factors such as their self-interest, reputational and collateral impacts of the violation of international norms. Thus, States carry out a cost/benefit analysis of compliance in order to choose the particular course of conduct. However, there is still much uncertainty as regards the standards and norms that must be observed by States and non-State actors. Arbitral or judicial bodies that are tasked with interpreting constitutive documents or treaties are expected to provide the requisite clarity as regards the obligations of the parties but the scope of the adjudication is limited to the terms of the BIT concerned. The uncertainty is further compounded by the need to address the demands of domestic constituencies and achieving a balance between the standards of international investment law and the needs of the local industry. It was however noted that this is not relevant where foreign investors operate in a sector such as the oil and gas sector where there is little competition.

Chapter 3: FDI in the Iraqi Oil and Gas Industry

3.1 Introduction

Over the past decades, investors around the globe have shown keen interest in countries with a vast array of natural resources that may be extracted and developed.[46] There have been specific interests in highly marketable natural resources such as oil and gas. Host countries have equally been keen on receiving FDI which they perceive as a means of achieving economic growth. However, many of these countries are marred by internal conflicts which are sometimes related to the exploitation of the natural resources. One of such countries is Iraq. This Chapter examines the link between the increase in FDI inflows in the country and its compliance with international norms. In other words, it seeks to determine whether the increase in FDI inflows motivated the enactment of investment laws that reflect the conventional liberalism of international trade. It begins with an analysis the reasons why various Iraqi governments since 1958 have been very reluctant to open the economy to FDI. This is followed by the assessment of the laws enacted during the US-led occupation. Emphasis is placed on three main investment laws, namely Order 39, the national investment law of 2006, and the Kurdistan investment law of 2006. It then seeks to ascertain whether these laws demonstrate the impact of FDI or there were other influences.

3.2 The Iraqi Oil and Gas Industry

Oil revenues are very crucial to the Iraqi's economy given that they contributed 92.3% of government's revenues in 2012 and 93.11% in 2013.[47] It is also the largest industrial consumer of electricity.[48] However, between 1975 and 2003, the contribution made by the Iraqi oil and gas industry was comparatively very low because of the dependence on the

[46] Denisa V 'Foreign Direct Investment Theories: An Overview of the Main FDI Theories' (2010) 3 *European Journal of Interdisciplinary Studies* 53, 53-54.
[47] Hanna et al 'Foreign Direct Investment in Post-Conflict Countries: The Case of Iraq's Oil and Electricity Sectors' (2014) 4 *International Journal of Energy Economics and Policy* 137, 138.
[48] Ibid.

revenue from the industry, the lack of investment due to lack of funding, poor management by political authorities, and 13 years of international sanction that caused isolation from the largest markets.[49] The war with Iran, the Gulf War of 1991 and the US-led invasion of 2003 also severely damaged the economic infrastructure. Given that the bulk of the national revenue is generated by exporting oil, it is only logical that it would experience an economic downturn. Although the economic performance has since improved, business and economic activity are still comparatively low.[50] The country ranked in the bottom 5 of 185 countries as regards the easiness for local entrepreneurs to open and run small and medium-sized businesses in accordance with relevant legislation. It also ranked 171 out of the 177 countries surveyed by Transparency International in 2013.[51] Despite the dire economic situation, there has been a sustained increase in the flow of FDI since 2003.[52] As such, it is uncertain whether the increase in FDI has benefited the economy. From a legal standpoint, there has been an upheaval of investment laws and a desperate attempt to comply with international norms. Nonetheless, the link between the State's compliance with international norms and the increase in FDI cannot be assumed. This is because the concept of FDI was not necessarily popular even during the occupation by the US-led coalition.[53] In fact, the various Iraqi governments since 1958 have been very reluctant to open the economy to FDI. This has been invariably attributed to the dependency theory and nationalism.

3.2.1 The Dependency Theory

This theory is based on the notion that the 'periphery' or poor and underdeveloped countries are impoverished because their natural resources and cheap labour flow to and enrich the 'core' or wealthy countries.[54] The latter countries then actively perpetuate the state of dependence through the use of media, culture, politics or other means.[55] This is closely related to the world-system theory on inter-regional and transnational division of labour that divides the world into periphery countries, semi-periphery countries and core countries. The

[49] Blanchard CM, *Iraq: Oil and Gas Legislation, Revenue Sharing and US Policy* (Congressional Research Service, Washington DC, 2009) 11.
[50] Wehrey F et al, *The Iraq Effect: The Middle East after the Iraq War* (Rand, Santa Monica, 2010) 143-155.
[51] Hanna et al, note 47, 138-139.
[52] Gunter FR, *The Political Economy of Iraq: Restoring Balance in a Post-Conflict Society* (Edward Elgar, Cheltenham, 2013) 260-262.
[53] Dobbins et al, *Occupying Iraq: A History of the Coalition Provisional Authority* (Rand, Santa Monica, 2009) 212-214.
[54] Vernengo M 'Technology, Finance and Dependency: Latin American Radical Political Economy in Retrospect' (2006) 38 *Review of Radical Political Economics* 551, 552.
[55] Ibid.

latter focus on capital-intensive production and higher skill while the periphery countries focus on labour-intensive production, low-skill and the extraction of raw materials. Thus, the state of affairs reinforces the dominance of the core countries.[56] As such, the concentration of activities in export oriented agriculture or extraction of minerals leads to unequal exchange between the different categories of countries, as well as international specialization. The sine qua non of the dependency relationship is the difference in the economic performance and financial strength between the peripheral and core countries.[57]

Where the peripheral countries are oil producing countries such as Iraq, the relationship is reinforced by the fact that dependency on oil export revenue has proven to be a 'curse' rather than a blessing for development for the countries. Thus, the countries with abundant reserves, specifically of non-renewable resources such as fuels tend to perform worse than countries with fewer natural resources.[58] This has invariably been referred to as the 'Dutch disease' whereby the large revenue generated from one sector of the economy raises the exchange rate, reduces the competitiveness of other sectors of the economy and compromises efforts at diversification.[59] The dependency on a single non-renewable commodity such as oil is therefore unsustainable given that the terms of trade are likely to decline in future. As such, it has been posited that the dependency theory and the Dutch disease or the 'paradox of plenty' are crucial in understanding the relationship between conflict and oil.[60] This is because the natural resources are largely exploited by foreign investors who repatriate the profits to their home countries that are core countries. The periphery countries with the abundance of the resources are then left to deal with the damages caused to the environment by the extraction, as well as civil strife and chaos that are related to public expressions of displeasure.

It must nonetheless be noted that this is a Marxist-inspired approach to international relations that helps to provide a substantive explanation of the structural injustices of the international status quo.[61] Thus, dependency theorists have sought to show that the economic neoliberal policies that govern actions in the international arena only serve to consolidate rather than

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[56] Moore JW 'The Modern World-System as Environmental History? Ecology and the Rise of Capitalism' (2003) 32 *Theory & Society* 307, 308.
[57] Ibid.
[58] Ross M 'A Closer Look at Oil, Diamonds, and Civil War' (2006) 9 *Annual Review of Political Science* 265, 266,
[59] Ebrahim-Zadeh C 'Dutch Disease: Too Much Wealth Managed Unwisely' (2003) 40 *Finance and Development* 50, 50-51.
[60] See Roberts P, *The End of Oil: On the Edge of a Perilous New World* (Houghton Mifflin, 2004) 44-65.
[61] Vernengo, note 54, 552.

dismantle the domination of 'core' Western countries and the oppression of 'peripheral' developing countries. In this light, Hinnebusch noted that economies in the Middle East such as Iraq are largely dependent on the core (Western countries that provide the finance) and exhibit many of the classic features of dependency such as the dependence on a few basic resources, principally oil; and the failure to process the extracted resources into finished high-value products.[62] He also argued that this failure reinforced the link between oppression and dependency and detaches the elites in these countries from the local populations.[63] This explains why the struggle between local forms of resistance has generally characterized the history of the Middle East. It also explains why nationalist anti-Western and anti-imperialist ideology and policies have gained traction in the region over the past decades. The hegemony of neoliberalism is interpreted as the hegemony of the core countries. Thus, the same anti-Western ideology that inspired the independence movements in periphery countries in the middle of last century also motivated the rise of resource nationalism and attempts at establishing mineral cartels such as OPEC in order to prevent the dependence on natural resources, as well as on the finances of core countries of the West.[64]

It is rather ironical that these policies aimed at minimizing dependency were formulated on the basis of the Marxist-inspired dependency theory, were revived at the end of last century and beginning of this century to defend authoritarian capitalism imposed by Middle Eastern governments rather than Marxist socialism. This has seriously compromised the observance of international standards in this region given that the policies orientate multinational corporations that extract natural resources such as oil towards pursuing selfish interests rather than the national developmental goals of the host States. This indirectly furthers the interests of the core countries or the homes states of the corporations. It is in this light that the governments of Iraq between 1958 and 2003 fiercely opposed the idea of opening the economy to FDI.

The argument here is that FDI is not essential for the economic development of periphery countries because it entails foreign investors from core countries exploiting non-renewable resources in periphery countries and repatriating the profits. This stance as noted above is

[62] Hinnebusch R, *The International Politics of the Middle East* (Manchester University Press, Manchester, 2003) 92-93.
[63] See also Hertog S '*The International Politics of the Middle East* by Raymond Hinnebusch' (2005) 32 *British Journal of Middle Eastern Studies* 111.
[64] Vernengo, note 54, 552-553.

supported by the contention that international law governing the exploitation and trade in natural resources (especially the non-renewable resources such as oil) is deemed in to reflect the liberal international economic order that perpetuates the historically built injustices. A variety of theories have been developed in this light. Examples include the Foulcauldian analysis and postcuturalism, global production network analysis, and the action-network theory.[65] It must be noted that these theories are far more complex than the dependency, Dutch disease and world systems theories discussed above. They are also more nuanced than the political ideology of anti-imperialism that inspired the rise of resource nationalism and the creation of mineral cartels in resource rich countries. However, they generally provide support to the latter by questioning the link between dependency theory or Dutch disease and civil conflicts in periphery countries that have abundant natural resources. They do not deny outright that some of the conflicts in these countries are resource-related but note that the dependency and world systems theories fail to consider the larger complexities and nuances in the relationship between natural resources and the shifting dynamics of global capitalism.[66] Thus, conventional liberalism tends to be too deterministic in demonstrating the link between oil and conflict, which can be interepreted to the extent that that the political economy of oil in the periphery country is inextricably linked to security concerns and the hegemonic penetration of the core country into the former. That is why core countries favour FDI in periphery countries.

Equally, it has been pointed out the dependency and world systems theories place too much emphasis on the causal determinism of oil. Ross for example argues that oil hampers democracy and undermines gender equality.[67] This argument seems to further the simplistic notion that the very possession of oil distorts the normal course of development despite the historical, geographic, religious, and political factors that may motivate a resource-related conflict. No regard is also given to the desire of the political leaders to seek to benefit from the wealth generated by the exploitation or exportation of the resource. Ross recognizes the fact that many commentators have pointed to the influence of Islam on the political and social structure of many Muslim oil producing countries, but insists on the causal linkages between

[65] Dannreuther R 'Geopolitics and Intenrational Relation of Resources' in Dannreuther R and Ostrowski J (eds), *Global Resources: Conflict and Solution* (Palgrave Macmillan, New York, 2013) 93.
[66] Ibid.
[67] Ross M, *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations* (Princeton University Press, Woodstock, 2012) 231.

oil and the abuse of certain fundamental rights.[68] Thus, the idea that the struggle over oil is the cause of conflicts in Middle Eastern countries such as Iraq is at best shallow. The periphery States are presented as passive actors with no control over the exploitation of their natural resources. However, a detailed analysis of resource-related conflict by Bridge and Le Billon reveals that there are multiple actors involved the 'hydrocarbon commodity chain' from the extraction to refining and distribution of the resources.[69] Also, there are actors involved in the consumption and capture of carbon who play a very important role in a resource-conflict, as well as its resolution.[70] Thus, the oil network extends all the way from the extractor to the consumer and all the actors along the chain are involved in complex bargaining. Bridge and Le Billon identified four oil firms in this regard, namely the vertically integrated oil companies; oil-field service companies; independent transporters, refiners and distributors; and independent producers. These are the principal actors in the complex bargaining and negotiations with each other and with the government and local communities.[71] They are sometimes responsible for actions or omissions that may result in conflict. As such, it is not simply a question of foreign investors from core countries exploiting resources in periphery countries and repatriating the profits. The nature of the foreign investor, whether as a vertically integrated oil company or an independent producer or distributor, determines the role it plays in a resource-related conflict. Sometimes, the role may be insignificant as regards the cause and resolution of the conflict.

The dependency and world systems theories therefore marginalize the role of the firms set up by foreign investors, as well the local communities. Dependency theorists often place too emphasis on the existence of territorial enclaves of resource extraction in peripheral States; even where these enclaves are small and unique to the hinterlands. The enclaves may be protected by private militia and security firms within a context of failed States and generalized civil war. The theorists hold that the existence and operation of these enclaves provide a salient illustration of the relationship between the natural resources and civil conflict in peripheral States.[72] Dunning and Wirpsa in this light argue that the entry of US oil companies in Columbia in the 1980s inspired guerrilla attacks on their installations, which in turn led the US government to provide counterinsurgency support to the Columbian

[68] Ibid.
[69] Bridge G and Le Billon P, *Oil* (Polity Press, Cambridge, 2013) 28.
[70] Ibid.
[71] Ibid.
[72] Dannreuther, note 65, 94.

government.[73] As such, in order to protect its energy supplies, the US government instead exacerbated the civil conflict. The argument here which may find support in the different viewpoints discussed above is simply that natural resources such as oil and gas mould democracy or lack of democracy in many developing peripheral States that have an abundance of these resources.

It is therefore in the above context that the US-led coalition expected foreign investors to provide the requisite finance for the extraction, production and distribution of oil and gas in Iraq. This is contrary to the policies of previous governments, which as noted above, has been reluctant to open the economy to FDI. However, despite the dissenting views of some members, the Iraqi Governing Council that governed the country under occupation actively sought to facilitate the flow of FDI into the oil and gas sector. In this light, it was forced to comply with certain international standards or enact laws that are appealing to foreign investors. The next section critically analyses the important investment laws that have been enacted in this regard.

3.3 FDI-Inspired Investment Laws

The Arab Investment Law No 62 was passed in 2002 with the objective of opening the Iraqi economy to investors from the Arab world. The reasons for the enactment of the law are stated in the Official Gazette, viz. to advance the process of economic development, to bring important technical and operational expertise; and to support the process of establishing investment projects.[74] In order to attract FDI, the 2002 law provided substantial tax incentives for investment by foreign companies. It also guaranteed against nationalization and expropriation, and allowed foreign companies to repatriate profits and capital, and import and export goods freely. However, the law was titled the 'Arab Investment Law' and this implied that the benefits provided by the law were limited to Arab investors. This is in accordance with the Agreement on Investment and Free Movement of Arab Capital among Arab Countries of 1970, the Unified Agreement for the Investment of Arab Capital in the Arab States of 1980, and the Agreement on Promotion, Protection and Guarantee of Investments

[73] Dunning T and Wirpsa L 'Oil and the Political Economy of Conflict in Colombia and Beyond: A Linkages Approach' (2004) 9 *Geopolitics* 81, 81-91.
[74] Shubber S, *The Law of Investment in Iraq* (Martinus Nijhoff, Leiden, 2009) 190.

among Member States of the Organisation of the Islamic Conference of 1981. Thus, although the Iraqi government believed FDI was important for economic development, the belief was limited to FDI from other Arab States.

The Iraqi Constitution at the time equally prohibited private ownership of natural resources, foreign ownership of real property and the ownership of basic means of production. Also, Iraqi company law generally prohibited the establishment of companies in Iraq by foreigners who were not resident in an Arab State. As such, the 2002 law sought to attract more FDI but specifically from Arab investors or investors who were resident in Arab States. This follows from the Iraqi government's reluctance to open the economy to foreign influence due to the anti-imperialist ideology and anti-neoliberal approach adopted over the previous decade. As noted above, FDI from core Western States was interpreted as the hegemony of the latter.

3.3.1 Order 39

Following the US-led invasion, the 2002 investment law was suspended as the Coalition Provisional Authority (CPA) issued Order 39 governing foreign investment in the country. The Order was issued within the context of a bitterly divided State that had imploded under foreign occupation and was in desperate need of capital for rebuilding the nation. Thus, it sought to attract FDI beyond Arab investors as the 2002 law. However, this was based on the CPA's conviction and not necessarily that of Iraqi political actors. Order 39 provided for national treatment of foreign investors except in the banking and insurance sectors, as well as the oil and gas industry. Foreign investors were allowed to own real property and could engage in retail sales, although they had to first of all deposit $100,000 in a non-interest-bearing Iraqi bank account. The Order also allowed foreign investors to transfer capital associated with an investment and they could invest directly in Iraq or through a subsidiary. The Order extended to all foreign investors, not only Arab investors or foreign investors resident in Arab countries. It was superseded and replaced by the Iraqi National Investment Law No 13 of 2006. The latter law further opened the Iraqi economy to foreign investors, although it does not apply to all areas of investment given that it excludes investments in extraction and production in the oil and gas industry.

3.3.2 The National Investment Law of 2006

The 2006 national law is the main instrument governing investment in Iraq today. It follows Order 39 in providing for a limited form of national treatment to all foreign investors, not just Arab investors or investors resident in Arab countries. Article 10 of the 2006 national law states that 'The investor irrespective of his/her nationality shall enjoy all privileges, facilitations and guarantees and shall be subject to the obligations stated in this law.' The law also provides a broad definition of the concept of foreign investor. It is said to also include companies incorporated in Iraq but whose members are foreign companies or nationals. These companies are allowed to transfer capital or profits from Iraq. They can also buy and sell shares and bonds in the Iraqi Stock Exchange, insure investment projects and open bank accounts. As such, a foreign company may invest directly in Iraq via a local company that it incorporates or acquires. Although such a company cannot own land in Iraq, Article 11 of the law recognizes the right of foreign investors to lease real estate for up to fifty years, which may then be renewed with the approval of the National Investment Commission.

Article 22 of the law notes that if Iraq enters into international agreements, foreign investors will obtain benefits such as investor protections that are enshrined in the international agreements. Nonetheless, Article 29 excludes benefits related to oil and gas extraction and production, as well as banking and insurance. Thus, there is no guarantee of national treatment for FDI in these sectors irrespective of the benefits provided under an international agreement ratified by the government of Iraq. This also means that foreign companies and Iraqi companies will not be treated equally in the oil and gas sector; and locally produced products and imported products will not be treated equally as well. Some of the main international conventions and agreements that have been ratified so far include the United Nations Convention on Contracts for the International Sale of Goods and the Global System of Trade Preferences. Iraq is also a party to the International Monetary Fund (IMF), International Standards Organisation (ISO), World Customs Organisation (WCO), and World Intellectual Property Organisation (WIPO).

3.3.3 Kurdistan Investment Law

The 2006 national law however applies only to mainland Iraq. In the autonomous region of Kurdistan, the Iraqi Kurdistan Investment Law (Law No. 4 of 2006) applies. Article 3 of this law states that ‘The foreign investor and capital shall be treated as the national investor and capital. The foreign investor shall have the right to own the entire capital of any project that he establishes in the region under this law.’ It may therefore be contended that the Kurdistan law provides for national treatment and foreign and local investors ought to be treated equally. Also, imported and local products ought to be treated equally. However, Article 19 of this law prohibits the owning of land containing oil, gas or any precious or heavy mineral resources. This must be read together with Article 4 which states that foreign investors may own land in Kurdistan outside of the oil sector. Also, foreign investors may own banks or insurance companies. This therefore conflicts with the less liberal 2006 national investment law, which does not recognize the right of foreign investors to acquire real estate in Iraq. However, Article 111 of the Iraqi Constitution states that in the event of conflict, it is the regional law that prevails. As such, foreign investors may purchase real estate in Kurdistan but not in mainland Iraq. However, it is uncertain whether national treatment extends to foreign investors in the oil and gas industry (extraction and production) in Kurdistan. The fact that the 2006 national investment law specifically states that foreign investors will not be granted the privilege of equal treatment in the industry and the Kurdistan law does not specifically states otherwise, may be interpreted as implying that foreign and local investors will not be treated equally in Kurdistan. The Kurdistan law enumerates the areas where investment is possible in Article 2. Extraction and production in the oil and gas sector is not included in this list. However, Article 29 makes reference to ‘all sectors of investment’ and Article 2, paragraph 11, allows foreign investment in ‘any project in any other sector that [Supreme Investment] Council decides to include under the provisions of this Law.’ Nonetheless, it has been argued that foreign investment is not allowed in extraction and production in the oil and gas industry because the drafters of the Kurdish law did not include it in the list in Article 2.[75]

Notwithstanding, the discrepancy between both investment laws has been the source of conflict between the Governing Council or central government in Baghdad and the Kurdistan Regional Government. It must be noted that the 2006 national law is intended to apply throughout Iraq and despite the Constitutional provision (Article 115) to the effect that

[75] Ibid, 24.

priority should be given to the laws of the region or governorate, the 2006 national law expressly provides for its supremacy. Article 33 states that 'any provision of a law which contradicts the provisions of this Law shall not be valid.' Thus, foreign investment in extraction and production in the oil and gas sector is prohibited despite the fact that the Kurdish investment law empowers the Supreme Investment Council to approve of any project in any sector not listed in Article 2 of the Kurdistan law. Also, Article 110, paragraph 7, of the Iraqi Constitution provides that 'the federal authorities shall exclusive jurisdiction in the … preparation of the general and investment budget.' There seems to be a conflict between Articles 115 and 110 of the Constitution, as well as the 2006 national law and Kurdistan law. It may be posited that the Supreme Investment Council is empowered to approve of foreign investments in the extraction and production sectors of the oil and gas industry but this project should not in any way be related to the federal investment budget.

The uncertainty about the boundaries of the Kurdistan investment law, as well as the 2006 national law is still quite high. This is equally the case with regard to the powers of the central government and Kurdistan Regional Government. In fact, the latter has taken steps to simply enact its own Petroleum Law after it failed to secure a national hydrocarbon law. It seems the argument about dependency and the hegemony of the core Western States applies only to Iraq and not Kurdistan. The latter has often been referred to by some foreign investors as 'the other Iraq' and these investors are said to be attracted by its relative peace, more liberal economic policies and business friendly environment.[76]

3.4 Impact of FDI

In order to attract more FDI following the economic ruin and destruction of infrastructure caused by the 2003 war and the subsequent occupation of Iraq, the investment law was modified to comply with international standards. Thus, the laws discussed above may be said to demonstrate the impact of FDI on legal compliance. The expropriation standards in these laws as well as the Iraqi Constitution for example may be said to reflect the standard that governs the international investment agreements of most capital-exporting countries. Article 23 of the Iraqi Constitution provides that 'Expropriation is not permissible except for the

[76] See Nikolova L 'The Impact of Business and Investment on the Turkey – Kurdistan Relationship: A Case Study of Duhok' in Hill T and Hagerty T (eds), *Finding Peace in Iraq* (Thomas Hill, New York, 2013) 20-22.

purposes of public benefit in return for just compensation, and this shall be regulated by law.' Also, Article 12 of the 2006 national investment law provides that investment projects that are set up in accordance with the law will not be seized or nationalized, unless in accordance with a final court judgment. The Kurdistan investment law is silent on this issue. However, as noted above, the 2006 national law is intended to be applied throughout Iraq. Thus, it should apply where the Kurdistan law is silent.

In July 2004, Iraq applied for membership in the WTO. It submitted its 'Memorandum on the Foreign Trade Regime' in 2005, and further submitted written answers to detailed questions from WTO members in 2006 and 2008.[77] There has since been no major issues as regards the fairness of Iraq's investment law on foreign investors during the working parties. This is largely because it has sought to comply with international standards in order to attract FDI. Also, it must be pointed out that as part of its accession duties, Iraq committed to observe the principles of national treatment, transparency and non-discrimination. Hence, the 2006 national investment law is compliant with the WTO Agreement on Trade Related Investment Measures (TRIMs) given that it provides for national treatment and the non-discrimination of foreign investors and imported products. However, the insistence on a more liberal trade policy at entry in the WTO may only be attractive to a country like Iraq because similar policies are held to have attracted FDI in other countries. As such, despite the weak institutional capacity to implement the liberal policy[78] the CPA, and subsequently the Iraqi Governing Council and central government enacted the policy because of the established link between trade liberalism and increased FDI. This is subject to debate as shown above given that some commentators believe that liberalism masks the hegemony of core or developed countries and guarantees the continuous exploitation of periphery or developing countries.

In order attract FDI, the Iraqi government has also refrained from imposing or enforcing laws against the free transfer of capital. Thus, there are no restrictions on current and capital transactions involving currency exchange as long as they are supported by valid documentation. Article 11 of the 2006 national investment law recognizes the right of foreign investors take capital ought of Iraq in accordance with the provisions of the law and instructions of the Central Bank of Iraq.

[77] See OECD, *Private Sector Development in the Middle East and North Africa: Supporting Investment Policy and Governance Reforms in Iraq* (OECD, 2010) 59-60.

[78] Michalopoulos C, *Emerging Powers in the WTO: Developing Countries and Trade in the 21st Century* (Palgrave Macmillan, Basingstoke, 2014) 65-66.

Notwithstanding the above changes made to the investment law in Iraq, it has attracted relatively little foreign investment in oil and gas processing projects which are not covered by the 2006 national investment law.[79] The law only prohibits FDI in extraction and production in the sector. FDI in the oil and electricity sectors accounted for 21.27% of the government budgetary spending in 2013. Although, FDI has more than doubled since 2003, it is still more than three times less than the inflow in another major oil producing developing country such as Nigeria.[80] Also, the inflow in Iraq's neighbor, Kuwait, increased from minus 6 in 2008 to 1,851 million US Dollars in 2012, while in Iraq it increased from 1,856 million US Dollars in 2008 to 2,549 million US Dollars in 2012.[81] As such, Kuwait has experienced a bigger increase in FDI inflows over the past five years despite the fact that its laws are not as liberal as that of Iraq. This may be attributed to many reasons, including the political and security conditions in the countries, as well as the business environment, including the application of international standards. The enhancement of the regulatory environment in order to make it conducive for operating businesses is a natural reaction of a government that seeks to recover from economic ruin caused by major conflict.[82] However, this is markedly different from the enhancement of the regulatory environment in order to make it conducive for foreign businesses.

It must be noted that in the case of Iraq, the war was longer and more violent and pervasive than in Kuwait and Nigeria, and it disrupted essential public services and caused the destruction of property on a wide scale. The CPA and then the Governing Council and new government was therefore forced to borrow heavily in order to rebuild what had been destroyed and transition from war economy to market economy. In this regard, FDI was deemed to be crucial; and attracting FDI entailed resuming relations with the international community. However, the country seems to have placed more reliance on debts rather than FDI and this why the budgets of the respective governments since 2003 have been burdened with large debts accumulated from borrowing from friendly States.[83] The situation was made even worse by the continuous sporadic attacks by armed militia or bombing of crowded areas, which required supplementary and sustained spending on security. The very high risk of violence in the country was related to the risk of political divisions and poor economic

[79] Hanna et al, note 47, 138.
[80] Ibid, 140.
[81] Ibid.
[82] Bolnick B, Greenbaum A, James M and Hendry K, *Iraq: Economic Recovery Assessment* (USAID, 2009) 9.
[83] Brahimi L 'State Building in Crisis and Post-Conflict Countries' (2007) Paper presented at the 7th Global Forum on Reinventing Government, Building Trust in Government, June 26-29, Vienna.

performance. Moreover, there were no institutions and systems to guarantee investments. These had adverse effects on the cash flows generated by FDI.[84] The Iraqi government was therefore compelled to lower the country risk factors. This is why it has been held that a State in transition represents a major challenge to FDI. Some studies have shown that the northern region of Kurdistan which is relatively stable has attracted more FDI.[85] As such, it may be difficult to argue that FDI influenced the compliance of the State of Iraq with international norms or the there is a strong link between the increase of FDI inflow and the liberal policies adopted by the Iraqi government since 2003. The policies were imposed by the CPA, as well as the enactment of laws reflecting international norms.

3.5 Conclusion

This Chapter has examined the link between the increase in FDI inflows in the country and its compliance with international norms. It was noted that despite the dire economic situation, there has been a sustained increase in the flow of FDI since 2003. Also, there has been an upheaval of investment laws and a desperate attempt to comply with international norms since that time. Iraq applied for membership in the WTO in 2004 and has since shown that its national investment law is compliant with the WTO's TRIMs. However, the various Iraqi governments since 1958 have been very reluctant to open the economy to FDI. This is because of the contention that the periphery countries with abundant natural non-renewable resources such as oil are impoverished since their resources and cheap labour flow to and enrich the 'core' or wealthy countries. Thus, FDI is not essential for the economic development of periphery countries because it entails foreign investors from core countries exploiting non-renewable resources in periphery countries and repatriating the profits. This stance as noted above is supported by the contention that international law governing the exploitation and trade in natural resources (especially the non-renewable resources such as oil) is deemed in to reflect the liberal international economic order that perpetuates the historically built injustices.

However, the Iraqi Governing Council and the CPA that governed the country under occupation actively sought to facilitate the flow of FDI into the oil and gas sector. The CPA

[84] Hanna et al, note 47, 141.
[85] See Shubber, note 74, 93-94.

issued Order 39 governing foreign investment in the country. It provided for national treatment of foreign investors except in the banking and insurance sectors, as well as the oil and gas industry. Foreign investors were allowed to own real property and could engage in retail sales. It was replaced by the national investment law of 2006 that provides that if Iraq enters into international agreements, foreign investors will obtain benefits such as investor protections that are enshrined in the international agreements. It excludes foreign investors in extraction and production in the oil and gas industry. However, the Kurdistan investment law of 2006 allows foreign investment in any project in any other sector that Supreme Investment Council approves. Thus, it extends national treatment to foreign investors even in sectors that are excluded under the national investment law. The conflict between the national investment law and the Kurdistan investment law reveals a continuous reluctance by Iraqi officials to liberalise trade in spite of the appeal to foreign investors. Thus, it is uncertain whether the investment laws compliant with international standards would have been enacted in Iraq without the intervention of the occupying force.

Chapter 4: The Link between FDI and Legal Compliance in Iraq

4.1 Introduction

This Chapter examines the link between the steady increase of FDI inflow and the compliance of the Iraqi governments with international norms. It follows from Chapter 2 which demonstrated that the direct impact of FDI is generally positive as regards the legal compliance of the host State. It equally follows from Chapter 3 which showed that Iraqi governments have traditionally been reluctant to open the economy to FDI, and the enactment of investment laws to attract FDI in the past decade was largely based on the convictions of the CPA. In this light, this Chapter begins with an assessment of the legitimacy of these investment laws. It seeks to determine whether a future Iraqi government would be obliged to abide by the provisions of these laws, and whether the laws will logically be enhanced in order to attract even more FDI. The main objective of this Chapter is to determine whether there is a link between FDI and legal compliance of the host State as shown in Chapter 2 or whether in the case of Iraq, the impact of FDI is simply overstated as shown in Chapter 3.

4.2 The Legitimacy of the 2003 and 2006 Laws

The poor management of the Iraqi economy by the Saddam Hussein regime and the international economic sanctions that lasted over a decade did not only ruin the country's economy but also trivialized the commercial code and companies law (no 21 of 1997) that were applicable at the time.[86] Also, it may be assumed that these discouraged FDI. In this light, the overhauling of the investment law by the CPA and Iraqi Governing Council was geared towards repairing and improving the economy. As shown in Chapter 3, the investment laws enacted in 2002 and 2006 have eliminated barriers to entry for foreign investors and provided legal protection to foreign investors that are 'no less favourable than those

[86] Gardner H, *Averting Global War: Regional Challenges, Overextensions and Options for American Strategy* (Palgrave Macmillan, New York, 2007) 65-66.

applicable to an Iraqi investor.'[87] Foreign investors are also allowed to establish their presence in Iraq through joint ventures with local investors, a direct office or acquisition of a local business. They are only excluded from extraction and production in the oil and gas sector. However, a project in this realm may be approved by the Supreme Investment Council in the semi-autonomous region of Kurdistan.

In the wake of the enactment of Order 39, the CPA further enacted Orders 64 and 85 that allow foreign persons (natural or artificial) the right to acquire membership in a local company as shareholder or partner. Also, local companies were free to enlist foreign investment to meet local demand and foreign investors were no more required to abide by the Arab Boycott of Israel policy.[88]

It is true that FDI is crucial for the modernization of Iraq's economy and reconstruction of the country. However, despite the introduction of new investment laws in both mainland Iraq and the northern region of Kurdistan, it is shown in Chapter 3 that foreign investors are not investing their capital and expertise in the country in light of expectations. There is for example no foreign drug manufacturer despite the high demand in the Iraqi drug market.[89] Also, the rate of the inflow of FDI is relatively small compared to other post-conflict oil producing periphery countries such as Nigeria and Kuwait. Nonetheless, the argument here is whether the enactment of the CPA Order 39, and investment laws of 2006 demonstrates the willingness of the Iraqi government to comply with international standards in order to attract FDI. There remains much uncertainty as regards how these law ought to implemented, together with the part of the Iraqi commercial law that was not abolished, in a country that is fully sovereign. The CPA of 2003 and the investment laws of 2006 were enacted by an occupied Iraq that sought to pass laws that reflected the values of the occupying forces and not necessarily of traditional Iraq society.[90] There was much disgruntlement with the policies of the CPA intended to attract FDI. For example when the CPA sought to overhaul the commercial law of the country, which in its opinion impeded foreign investment, Iraqi experts expressed a preference of a limit of 10 to 30 per cent of foreign ownership. However, a month later, the CPA drafted that allowed for 100 per cent of foreign ownership with the

[87] Section 4(1) of Order 39 of the CPA.
[88] Tadlock RD 'Occupation Law and Foreign Investment in Iraq' (2004) 39 *University of San Francisco Law Review* 227, 240-242.
[89] Ibid.
[90] Ibid, 238.

exception of the oil and gas sector. This logically received mixed reviews with the former Minister of Trade, Ali Allawi, complaining that the draft 'was made with little discussion with the Governing Council.'[91] This implies that the impact of FDI on legal compliance by the State of Iraq is not as significant when examined closely. The investment laws reflecting liberal policies of international trade were not enacted by the Iraqi officials to attract FDI but because they were compelled to do so by the CPA. This implies that the legitimacy of the laws of 2003 and 2006 may be questioned given that they were passed under the auspices of the US-led occupying force.

In order to attract FDI, the interim government must be able to create a legal regime that will legitimately provide protection to foreign investors and facilitate their access to the market, even after a new government takes over. Nonetheless, interim administrations in occupied territories such as Afghanistan and Kosovo are likely to enact liberal foreign investment laws in order to attract FDI given its importance to the development of the economy. Thus, the Law on Domestic and Foreign Private Investment of Afghanistan is very similar to the foreign investment law of Kosovo that was revised after occupation.[92] Both laws seek to encourage and protect foreign private investment. However, these neoliberal policies are not always popular as shown above. They are sometimes interpreted as reinforcing the dependency of the periphery country and hegemony of the core countries, which are mostly the Western countries that led the occupation forces in the first place. Also, the policies may lead to crony capitalism whereby only a few people are permitted property rights by the government in return for support for the regime.[93] However, the strongest argument against the legitimacy of the laws imposed under occupation is the incompatibility between the process of enacting the law and the requirements of international law. The next section examines this argument in regard to the requirements of the Hague Convention of 1907.

4.2.1 The Hague Convention

This Convention was among the first formal statements on the incorporation of rules governing war in the body of secular international law. Article 43 of the Convention provides as follows:

[91] Dobbins, note 53, 213.
[92] Enderwick P 'What's Bad about Crony Capitalism?' (2005) 4 *Asian Business & Management* 117.
[93] Ibid,

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

The above provision clearly requires that the occupying force honours the existing laws of the occupied territory unless it is absolutely prevented from doing so. As such the US-led occupying force and interim government had to ensure that the CPA orders and investment laws complied with Iraqi constitutional and commercial law at the time; that is, the constitutional and commercial law before the country was invaded. The only justification for disregarding the applicable law at the time is if it was absolutely critical to the security of the State. Hence, although change was required to attract FDI in order to enhance economic development, the enactment of the new laws deviated from Article 43. This created uncertainty as regards the legal authority of the CPA and must have left foreign investors in a quandary.

Foreign investors generally cite legal and political uncertainties as impediments to investing, especially in countries with transitional economies.[94] The governments of these countries are therefore required to set up internal mechanisms of sovereignty such as law and order that are compliant with international norms. Also, foreign investors would expect to use contracts as effective means of minimizing risk.[95] Usually, where the foreign investor enters into a contract with the host government, they insist on a stabilization clause that specifically addresses political risk. This clause is an important tool as regards the protection of international investments. It creates an 'anchor' that neutralizes the host state's sovereign legislative authority to affect the right to any property located within its jurisdiction.[96] Stabilisation clauses generally provide that if any governmental action adversely affects the operation of any contract, the parties will be restored to their respective financial positions held at the time the contract was signed.[97]

[94] Li S, *The Legal Environment and Risks for Foreign Investment in China* (Springer, Heidelberg, 2007) 72.
[95] Waelde TW and Ndi G 'Stabilising International Investment Commitments: International Law versus Contract Interpretation' (1996) 31 *Texas International Law Journal* 215, 223.
[96] Bishop et al 'Strategic Options availale when Catastrophe Strikes the Major International Energy Project' (2001) 36 *Texas International Law Journal* 635, 641.
[97] Ibid.

Foreign investors also seek certainty as regards the tax laws and acceptable tax avoidance schemes; the nature of contractual and proprietary rights and titles; the investor's ability to transfer capital and repatriate profits earned; and that the standards of safety and work are compliant with international standards. Although the Order 39 of the CPA and investment laws of 2006 seek to achieve these objectives, it is uncertain whether a stabilization clause entered under these laws will be enforced in the post-occupation Iraq. This is very important since the CPA and Governing Council were only interim bodies and did not enact what reflected the values and convictions of the country's political leaders. As such, the legal authority of these interim bodies, as well as the occupying force as a whole was contentious. It is therefore uncertain why a future elected government of Iraq would respect the terms of these laws given that they were enacted contrary to Article 43 of the Hague Convention. This may explain why FDI has not increased significantly in Iraq. This also supports the argument that there is at best a tenuous link between legal compliance and FDI in Iraq since the interim government did not necessarily comply with international standards because it sought to attract FDI.

4.3 The Limited Influence of FDI

In light of the importance of FDI to economic development in developing countries especially, it was expected that the increase in the flow of FDI into Iraq would require new legislative action to change the basic structure of the institutions governing the behaviour of the main actors. The convergence was therefore supposed to be formal in the sense that the main legislative organs or the interim government would provide common solutions to all institutions in the country.[98] Moreover, it was expected that local businesses acquired by FDI from the core countries would change their practices and operations to those of the foreign owners. Thus, the standards adopted by both Iraqi businesses and regulators would reflect international norms. Nonetheless, it does not imply that a future elected would enforce the law and comply with international standards. Equally, local businesses may not necessarily change their management practices and compliance models in order to effectively compete with foreign companies or businesses owned by foreign investors that have better practices.

[98] La Porta et al 'Investor Protection and Corporate Valuation' (2002) 57 *The Journal of Finance* 1147.

The reason for convergence is the normative consensus that requires governments to act in the interest of their citizens. However, in this particular instance, it is uncertain whether compliance with international norms is in the interests of citizens. It may very well be in their interests but if it is opposed by the same citizens then it would not be legitimate. It is true that the competitive pressures of global commerce drive convergence; in this case, convergence towards laws that attract FDI. However, this awaits demonstration in Iraq as the current laws were not necessarily enacted because of the competitive pressures. This also shows that FDI has limited influence on the enactment of liberal trade policies. This is because the inflow of FDI has steadily increased since 2003, albeit not at the same rate as in other oil producing periphery countries, but there have been little attempts at further liberalizing the economy to attract a larger share of global FDI. Thus, the different Iraqi governments that took over power from the CPA have not demonstrated the willingness to adopt more liberal policies in order to attract more FDI.

4.4 Conclusion

This Chapter has sought to determine whether there is a link between FDI and legal compliance of the host State as shown in Chapter 2 or whether in the case of Iraq, the impact of FDI is simply overstated as shown in Chapter 3. It began with the assumption that FDI inflow in Iraq was low before 2003 due to the poor management of the Iraqi economy by the Saddam Hussein regime and the international economic sanctions that lasted over a decade.

It was noted that although the enactment of the CPA Order 39, and investment laws of 2006 demonstrates the willingness of the Iraqi government to comply with international standards in order to attract FDI, there remains much uncertainty as regards how these laws will be implemented, together with the part of the Iraqi commercial law that was not abolished, in a country that is fully sovereign. Also, it is uncertain whether guarantees such as stabilization clauses entered under these investment laws will be enforced in the post-occupation Iraq. This is because these investment laws were not enacted by the Iraqi officials to attract FDI but because they were compelled to do so by the CPA. There is a risk that the laws may be interpreted as reinforcing the dependency of the periphery country and hegemony of the core countries, which are mostly the Western countries that led the occupation forces in the first place. Also, although change was required to attract FDI in order to enhance economic development, the enactment of the investment laws deviated from Article 43. It was then noted that this may explain why FDI has not increased significantly in Iraq; and supports the argument that there is at best a tenuous link between legal compliance and FDI.

It was then concluded that FDI has limited influence on the enactment of liberal trade policies in Iraq. The inflow of FDI has steadily increased since 2003 but there have been little attempts at further liberalizing the economy to attract a larger share of global FDI fine.

Chapter 5: Conclusion and Recommendations

5.1 Introduction

This Chapter draws conclusions from the appraisal of the investment laws enacted in Iraq in 2002 and 2006 in order to comply with international law standards and attract FDI. It shows the contributions of each chapter of the study towards achieving the research aim and objectives and concludes with a discussion of opportunities for future studies.

5.2 Achieving the Aim and Objectives

The focus of this study was narrowed down to the link between the increase in FDI inflows in Iraq and its compliance with international norms. Emphasis was placed on the overhauling of the investment law by the CPA and Iraqi Governing Council in order to attract foreign investment to enhance economic development. An assessment of the theoretical relationship between legal compliance and foreign investment reveals that the direct impact of foreign investment is generally positive as regards the legal compliance of the host State. Legal compliance in this context is based on the model of compliance with international law developed by the institutionalist tradition of international relations. The model draws upon neorealism and institutionalism which emphasise the autonomy of the State and the incentive of self-interest, but demonstrates that the behaviour of States may be influenced by international law. It was however noted that there is no clear constructive theoretical framework or steadfast legal theory of compliance, and from the viewpoint of the traditional neorealist and institutionalist theories, compliance may generally be said to refer to the awareness and observance of rules of international law by States. Nonetheless, the positive impact of FDI on legal compliance is more likely to be the case with States where domestic participation in the industry or sector is low, and local firms, employment and supply chains are not adversely affected by the incentives given to foreign investors.

It follows from the above that FDI is not essential for the economic development of periphery countries because it entails foreign investors from core countries exploiting non-renewable resources in periphery countries and repatriating the profits. In Chapter 3, it was noted that this stance is supported by the contention that international law governing the exploitation and trade in natural resources, especially the non-renewable resources such as oil, is deemed to reflect the liberal international economic order that perpetuates the historically built injustices.

It was concluded that FDI has limited influence on the enactment of liberal trade policies in Iraq. The inflow of FDI has steadily increased since 2003 but there have been little attempts at further liberalizing the economy to attract a larger share of global FDI. Moreover, the investment laws of 2003 and 2006 were not enacted by the Iraqi officials to attract FDI but because they were compelled to do so by the CPA. Thus, there is a risk that the laws may be interpreted as reinforcing the dependency of the periphery country and hegemony of the core countries, which are mostly the Western countries that led the occupation forces in the first place. Equally, although liberal laws providing for national treatment and non-discrimination were required to attract FDI in order to enhance economic development, the enactment of the investment laws deviated from Article 43 of the Hague Convention. As such, there remains much uncertainty as regards how these law ought to implemented, together with the part of the Iraqi commercial law that was not abolished, in a country that is fully sovereign. It was then noted that this may explain why FDI has not increased significantly in Iraq; and supports the argument that there is at best a tenuous link between legal compliance and FDI.

The table below shows how each of the research objectives were achieved:

Research objectives	Conclusions after analysis
Determine a causal link between the enforcement of international law standards and the level of foreign investment	• Where the State's compliance with international law attracts foreign investment, it is likely to implement policies in this regard • States carry out a cost/benefit analysis of compliance in order to choose the particular course of conduct. • A State may refrain from violating

	international standards because it wants to be perceived by foreign investors as attractive
Determine whether the increase in FDI inflows in Iraq motivated the enactment of investment laws that reflect the conventional liberalism of international trade	• Although the enactment of the CPA Order 39, and investment laws of 2006 demonstrates the willingness of the Iraqi government to comply with international standards in order to attract FDI, these investment laws were not enacted by the Iraqi government to attract FDI but because they were compelled to do so by the CPA
Determine how the Iraqi investment laws may be modified in order to attract more FDI	• FDI may not motivate compliance by the host State where policymakers are compelled to ignore pollution regulation or money laundering checks in order to reduce the cost of compliance with domestic laws. • The direct impact of foreign investment will be positive as regards the legal compliance (with international investment law) of the host State, where domestic participation in the industry or sector is low, and local firms, employment and supply chains are not adversely affected by the incentives given to foreign investors

5.3 Recommendations for Future Studies

This study was conducted as a first step of a longitudinal study of the impact of FDI on the compliance of the Iraqi government with international norms governing the oil and gas industry. Given that the US-led occupation only recently ended, it is important to observe and determine whether a fully sovereign Iraqi government would implement the investment laws enacted in 2003 and 2006. This is because these laws were imposed by the CPA and Iraqi Governing Council despite the concerns of some local political leaders and legal experts. As such, it is only in the future that researchers should be able to ascertain whether the steady increase of the inflow of FDI since 2003 has truly impacted on the compliance of the Iraqi government with international standards.

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