EXTRACTING OIL FROM TURMOIL: THE IRAQI OIL INDUSTRY AND ITS ROLE AS A PROMISING FUTURE PLAYER IN THE GLOBAL ENERGY MARKET[1]

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I. INTRODUCTION

Over the past few years, when assessing worldwide energy sources, the international community's attention has been focused primarily on new and promising zones of petroleum, such as Colombia, Mexico, Canada, Eastern Europe, and parts of Africa.[2] Prior to the most recent armed conflict in Iraq, the constant turmoil in the Middle East motivated governments and oil companies alike to "cut the umbilical cord with the Persian Gulf" by diversifying oil supplies in an effort to stabilize prices.[3] Although Iraq was one of the five founding members of the Organization of Petroleum Exporting Countries ("OPEC") in 1960, three wars over the past two decades and twelve years of United Nations sanctions have stymied its technological and economic growth, essentially paralyzing Iraq's oil production capabilities.[4] However, in the aftermath of the most recent war in Iraq, interested parties all over the world are anxiously waiting for the enormous oil-producing potential of dictator-free Iraq to be unlocked.[5] Iraq has emerged as "the most viable oil project in the world," having the second-largest proven oil reserves out of all oil-exporting countries.[6] A significant concern for potential investors, however, is the political and social instability plaguing Iraq.[7] Iraq's oil infrastructure, having deteriorated over the past thirty-five years under governmental control,

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[1] The information and facts presented throughout this comment are current through September 2003.

[2] John Carey, *Taming the Oil Beast: A Sensible, Step-by-Step Energy Policy is Within Our Reach*, BUS. WK., Feb. 24, 2003, at 96.

[3] *Id.*

[4] *See, e.g.*, Donald L. Barlett & James B. Steele, *Iraq's Crude Awakening*, TIME, May 19, 2003, at 49 (discussing the current state of Iraqi oil production capabilities); A. M. Samsam Bakhtiari, *D'Arcy Concession Centennial and OPEC Today: An Historical Perspective*, OIL & GAS J., July 9, 2001, at 22 (describing Iraq as a pioneer in OPEC and a promising source of oil).

[5] *See* Peter S. Goodman, *Iraq is Ill-Equipped to Exploit Huge Oil Reserves*, WASH. POST, June 4, 2003, at A01.

[6] *Id.* at A16.

[7] *Id.*

can only be ameliorated concurrent with social, economic, and political revival throughout the country.[8] While the war efforts of the United States and Britain received scant support from the international community, rebuilding Iraq and revitalizing its oil infrastructure are two tasks in which countless countries share a vested interest.

This comment discusses the social, economic, and political implications of the Iraqi state-run oil industry, taking into account the country's tumultuous history and the likely prospects for future industry development. Part II discusses Iraq's history and the evolution of its oil industry through the present day. Particular attention is paid to Iraq's military conflicts under Saddam Hussein's regime, the international community's response to Iraq's aggression, and the impact of Iraq's United Nations violations on its oil industry. Part III analyzes present-day Iraq as it recovers from its third war in two decades and attempts to rebuild its economic, social, and political infrastructures. Finally, Part IV forecasts likely scenarios and modes in which the Iraqi oil industry will become a major participant in the global energy market.

II. HISTORY OF IRAQ AND ITS TIES TO PETROLEUM

The discovery of oil in Kirkuk in 1927 introduced a factor that would greatly influence Iraq's future development as a country and as a player in the global economy.[9] Oil production has been the dominant force in the Iraqi economy since the 1950s, consistently accounting for well over 90% of the country's exports and 98% of the Iraqi government's revenues.[10] Helping establish Iraq's role as a pioneer in the oil industry, OPEC was founded in Baghdad in 1960.[11] From its inception, OPEC's guiding principle was to "ensur[e] order and stability in the international oil market at all times, with secure oil supplies at reasonable prices that balance the needs of producers and consumers."[12] Fulfilling that vision, between 1973 and 1982, Iraq and other Middle Eastern oil-producing countries prospered while enhancing supplies and exports of crude oil, natural gas, and refined products.[13] During this period, known as the "oil decade," Iraqi oil revenues

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[8] *See* Andrew C. Schneider, *Business to Gain From a Reshaped Iraq*, KIPLINGER BUS. FORECASTS, Jan. 14, 2003.

[9] Bakhtiari, *supra* note 4, at 23.

[10] Rosemary E. Libera, Note, *Divide, Conquer, and Pay: Civil Compensation for Wartime Damages*, 24 B.C. INT'L & COMP. L. REV. 291, 302-03 (2001).

[11] *The Future of Iraq's Oil*, N.Y. TIMES, Apr. 11, 2003, at A24.

[12] Press Release, Organization of Petroleum Exporting Countries, 124th Meeting of the OPEC Conference (Mar. 11, 2003), *available at* http://www.opec.org/NewsInfo/PressReleases/pr2003/PR3_2003.htm.

[13] Libera, *supra* note 10, at 302-03.

ranged from a low of $1.8 billion in 1973 to a high of $26 billion in 1980.[14] Persian Gulf petroleum exports reached their peak in 1974, when the region supplied more than two-thirds of all oil traded in international markets.[15] However, spurred by the oil embargo of 1973, large amounts of non-OPEC oil from outside the Persian Gulf began to enter the market during the late 1970s and early 1980s.[16] As a result of the slight shift in international oil supply sources, approximately 28% of global oil production now comes from the Persian Gulf, down from 37% in 1973.[17]

A. *The Iran-Iraq War*

The global market's becoming slightly less dependent on the Persian Gulf for oil supplies in the 1980s paralleled Iraq's placing less emphasis on developing its oil industry. Rising to power in 1979,[18] Hussein chose to forego opportunities to nurture and expand his country's oil industry in favor of "external military adventure."[19] In September 1980, Hussein launched an attack on Iran in an effort to gain control of the Shatt al-Arab waterway, beginning a grueling, drawn-out war.[20] Although the Iraqi military made some advances into Iranian territory, they were eventually pushed back.[21] In 1988, however, a quick series of Iraqi offenses broke the Iranian will to fight.[22] A ceasefire treaty was signed in July 1988, which temporarily ended Iraq's military engagement.[23]

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[14] *Id.*

[15] Gawdat Bahgat, *Oil and Diplomacy: American Policy in the Persian Gulf*, 24 FLETCHER F. WORLD AFF. 143, 144 (2000).

[16] Ivan Eland, *Middle East: What Should the United States Do About Saddam Hussein?*, 50 EMORY L.J. 833, 848 (2001).

[17] *Id.* at 848.

[18] *See* Tracey A. Basler, Note, *Iraq: A Case Study of the Expulsion Provision of the United Nations Charter*, 9 NEW ENG. INT'L & COMP. L. 259, 268-70 (2003) (discussing the problem between a Hussein-controlled Iraq and neighboring Iran).

[19] *Country Profile: Iraq 2000/2001*, ECONOMIST INTELLIGENCE UNIT (2002), *available at* http://store.eiu.com/index.asp?layout=show_sample&product_id=30000203&country_id=IQ [hereinafter *Iraq Profile*]; *see also* Pamela Constable, *Beyond Oil, Iraqi Industry Struggles Despite Freedom; Factories Working Far Below Capacity*, WASH. POST, Aug. 28, 2003, at A14 ("Iraq's economy, once the epitome of oil-boom consumerism and development with a 5 percent annual growth rate in the 1970s, nearly collapsed in the 1990s under the weight of then-President Saddam Hussein's military adventures and the resulting 12 years of international sanctions.").

[20] *Iraq Profile*, *supra* note 19.

[21] *Id.*

[22] *Id.*

[23] *Id.*

Unfortunately for Iraq, the eight-year war left the country financially drained and still essentially land-locked.[24] Iraq had relied significantly on external sources for funding and military equipment during the war. Ironically, in light of future events, the United States was one of Iraq's leading sources of aid throughout the 1980s.[25] Regarding Iraq as a mode of thwarting Iran, which the United States perceived as dangerous for its ambitions of exporting Islamic revolutionary ideology, the United States provided foodstuffs, equipment, intelligence, and other assistance to Iraq.[26] In addition to accruing a substantial debt to the United States, Iraq became heavily indebted to Russia, owing over $10 billion for arms purchases during the war with Iran.[27] Iraq also sustained nearly $30 billion in war damages.[28] Funding for these repairs was obtained largely by borrowing from various Persian Gulf states and from Western financial institutions.[29] Iraq began the Iran-Iraq War with $35 billion in reserves and ended with $80-100 billion in debt.[30] Rather than generating revenue to pay off debts through an expansion of oil programs, Hussein ordered the 1990 invasion of Kuwait in an effort to gain wealth and bring Iraq closer to becoming a regional superpower.[31]

B. Desert Storm: Aggression Against Kuwait

Using 100,000 troops, Iraq entered Kuwait on August 2, 1990 and claimed it "annexed."[32] Responding immediately, the United Nations Security Council passed Resolution 660, which noted the existence of "a breach of international peace and security as regards the Iraqi invasion of Kuwait" and demanded that "Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on August 1, 1990."[33] In stubborn defiance, Hussein reiterated his belief that Kuwait had been annexed and claimed the invasion was "irreversible."[34] After a series of further United Nations resolutions, the United States, in accordance with the United Nations

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[24] *Id.*

[25] *See* George E. Bisharat, *Sanctions as Genocide*, 11 TRANSNAT'L L. & CONTEMP. PROBS. 379, 392 (2001).

[26] *Id.*

[27] Serge Schmemann, *The World: After Hussein; Controlling Iraq's Oil Wouldn't Be Simple*, N.Y. TIMES, Nov. 3, 2002, at D1.

[28] *Iraq Profile*, *supra* note 19.

[29] *Id.*

[30] Bisharat, *supra* note 25, at 394.

[31] *Iraq Profile*, *supra* note 19.

[32] Basler, *supra* note 18, at 270-71, 273.

[33] *Id.* at 271-72 (quoting S.C. Res. 660, U.N. SCOR, 2932d mtg., U.N. Doc. S/RES/660 (1990)).

[34] *Id.* at 273.

Security Council's authorization, commenced "Operation Desert Storm" with a massive air campaign on January 16, 1991.[35] The campaign destroyed Iraqi command centers, communications buildings, and air bases, which crippled Iraqi infrastructure.[36] The United States began the ground war on February 24, 1991, quickly forcing Iraqi soldiers to retreat. The war was declared over on February 27, 1991.[37]

Although Desert Storm officially ended in February 1991, its after-effects in and around Iraq persisted for well over a decade. One of the immediate effects was the intentional destruction of Kuwaiti oil wells by retreating Iraqi soldiers. In the days before and during their retreat, Iraqis managed to set fire to 650 oil wells. This act was symbolic of the perceived importance of the Middle East's oil supplies to the outside world.[38] In addition to the adverse environmental consequences and other wartime damages and demolition in Kuwait and Iraq, sanctions imposed by the United Nations proved to be particularly adverse for Iraq and its reconstruction efforts.

1. Economic Sanctions

Taking shape before the end of the war in the form of an embargo, economic sanctions against Iraq were supported by the United Nations Security Council. The sanctions were seen as a way to strong-arm Iraq into complying with the various resolutions passed against the Iraqi invasion of Kuwait.[39] United Nations Security Council Resolution 661 first imposed comprehensive multilateral sanctions on Iraq four days after the invasion of Kuwait, prohibiting all states from engaging in any economic exchanges with Iraq except for supplies used for "strictly medical purposes" and foodstuffs meant for "humanitarian" purposes.[40] Resolution 661 proved ineffective as a sanctioning instrument, causing the Security Council to adopt Resolution 687 after the war to reaffirm and reinforce Resolution 661's call for sanctions.[41] In addition to severely restricting Iraq's ability to trade, Resolution

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[35] *Id.* at 274-75.

[36] *Id.* at 275.

[37] *Id.*

[38] *See* Barlett & Steele, *supra* note 4, at 49. *See generally* Meredith D. Huston, Comment, *Wartime Environmental Damages: Financing the Cleanup*, 23 U. PA. J. INT'L ECON. L. 899, 909-11 (2002) (providing specific details regarding the extent of adverse environmental consequences resulting from the intentional oil spill in the Persian Gulf and the deliberate destruction of Kuwaiti oil wells).

[39] *See* Basler, *supra* note 18, at 277-78.

[40] Bisharat, *supra* note 25, at 397 (quoting S.C. Res. 661, U.N. SCOR, 2933d mtg., U.N. Doc. S/RES/661 (1990)).

[41] Luis M. Delmonte, *Economic Sanctions, Iraq, and U.S. Foreign Policy*, 11 TRANSNAT'L L. & CONTEMP. PROBS. 345, 351 (2001).

687 also established an inspection system to deactivate Iraq's most advanced conventional war capabilities, as well as its chemical, bacteriological, and nuclear capabilities.[42]

The sanctions, while arguably effective in their ability to hinder any Iraqi attempts to sidestep United Nations restrictions on creating new weapons programs, were weighed down by problems.[43] For example, there was what some critics called the "moving goalpost" tendency.[44] Whenever Iraq achieved some measure of compliance, sanction requirements would be shifted and new reasons for their maintenance would be cited.[45] Additionally, the sanctions drew sharp criticism when vast malnutrition and other humanitarian problems increased throughout Iraq and were perceived to be the result of the economic restrictions on the country.[46]

2. *The Oil-for-Food Program*

One of the main obstacles the sanctions presented to Iraqi recovery was the freeze on Iraqi oil sales and outside assets. Without such financial resources, Iraq had little to "no means to purchase supplies necessary to sustain civilian life."[47] In July 1991, a United Nations Report estimated that Iraqi infrastructural reconstruction would cost $22 billion. This report helped create momentum for easing the restrictions on Iraqi oil sales.[48] Proponents of easing the load of sanctions argued that Iraq, given its substantial oil resources, should fund the reconstruction itself. In an attempt to lessen Iraq's economic deterioration, the United Nations passed additional resolutions that permitted the sale of restricted amounts of oil in order to fund purchases of food, medical supplies, and other goods imperative to the well-being of the Iraqi citizenry.[49] The initial resolutions authorized the sale of up to $1.6 billion of oil, but the proceeds from those transactions were to be placed into a United Nations-controlled escrow account and then divided up for humanitarian purposes, United Nations operating expenses, and compensation for Kuwait.[50] Iraq initially resisted such proposals, arguing that they disregarded Iraqi sovereignty.[51] This argument would be presented often to United Nations weapons inspec-

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[42] *Id.*
[43] Bisharat, *supra* note 25, at 399-401.
[44] *Id.* at 400.
[45] *Id.*
[46] *Id.*
[47] *Id.* at 401.
[48] *Id.* at 401-02.
[49] *Id.* at 401.
[50] *Id.* at 402.
[51] *Id.*

tors in years to come.[52] Eventually, the United Nations passed Resolution 986 in April 1995, commonly referred to as the "Oil-for-Food" agreement, which Iraq ultimately accepted.[53]

Oil sales under the Oil-for-Food program began in late 1996, but shortly after its implementation, the program was criticized for being ineffective.[54] Initially, there was a restriction limiting Iraq to $1 billion in oil sales every three months.[55] Coupled with the United Nations' condition allotting only a fraction of Iraqi Oil-for-Food revenues for humanitarian relief, the sales restrictions proved to be overly burdensome. In 1998, allowable sales were expanded to $5.25 billion every six months, and restrictions on Iraqi oil sales were removed altogether in December 1999.[56] Despite the lifting of sales caps, the Oil-for-Food program never became a truly beneficial system for the Iraqi economy and society. Its main deficiency, perhaps, was the United Nations' very slow and complicated sales approval system.[57] Iraq's trade contracts were either being rejected by the United Nations Sanctions Committee or approved with delayed implementation.[58] Although most agree that the Oil-for-Food program helped prevent a disaster, critics claim it "institutionalized a state of crisis" by being designed only to prevent further deterioration, rather than to actually *improve* economic and social conditions.[59]

C. Limited Improvement of Iraqi Oil Production and Another Armed Conflict

The Gulf War and the subsequent economic sanctions took a "heavy toll"[60] on the Iraqi oil industry. Two decades of nearly constant political crises left Iraq with very limited financial resources to renew and update the country's energy infrastructure.[61] In addition to being outdated, Iraqi oil wells were also physically harmed by the 1991 war with as many as one-fifth of them having been irreparably damaged.[62] Even when the volume of oil Iraq could export became unrestricted in 1999, sanctions still limited the amount of money Iraq could spend on

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[52] *Id.*

[53] Delmonte, *supra* note 41, at 352-53 (citing S.C. Res. 986, U.N. SCOR, 3519th mtg., U.N. Doc. S/RES/986 (1995)).

[54] Bisharat, *supra* note 25, at 402.

[55] Delmonte, *supra* note 41, at 353.

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] *Id.* at 354 (emphasis added).

[60] Bahgat, *supra* note 15, at 156.

[61] *Id.* at 157 (quoting *Iraq: Sanctions Policy Reaches Fork in the Road*, PETROLEUM ECONOMIST, Vol. 66, No. 2, Feb. 1999, at 39).

[62] *Id.*

spare parts to repair and modernize its oil industry.[63] By 1999, although Iraq had increased its oil production to 2.6 million barrels a day, compared to 305,000 in 1991, other factors began to impede Iraqi attempts at enhancing oil production capabilities.[64]

Hussein viewed United Nations weapons inspectors as an affront to Iraqi sovereignty. As a result, Iraq's relationship and cooperation with the UNSCOM inspection team became more tenuous as the 1990s progressed until the process finally collapsed in 1999.[65] The breakdown of the inspection process signaled a fundamental rift between Iraqi leaders and the vigorous American-backed coalition aimed at containing and ensuring Iraqi compliance with disarmament measures. Iraqi leaders predicted—and it might very well have been correct—that the United States would not lift the sanctions as long as Hussein's regime was still in power.[66] Despite foreign interest from Russia, France, and China in exploring and developing Iraq's oil fields, without the endorsement of the United States, Iraq's struggling oil industry would not have the stability and international support necessary to reach its potential.[67] In short, while Iraq had the potential and seemed to have the willingness to expand its oil industry, the combination of political instability and limitations on Iraqi trade and spending power was never conducive to such expansion. A change was necessary in order for Iraq's oil industry to grow.

That change came in early 2003 with an armed coalition, led by the United States and Great Britain, aimed at toppling Hussein's regime. Mounting pressure from the United Nations eventually forced Iraq to readmit weapons inspectors after considerable stalling by Hussein. In late 2002, President Bush and Secretary of State Powell openly accused Iraq of deceit and non-compliance with inspectors to the point where war and regime change became practically inevitable.[68] While it was evident that Iraq violated several United Nations resolutions and was not forthcoming with information on its weapons programs, much of the international community, nevertheless, did not

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[63] *Id.*

[64] *Id.*

[65] *See* David Malone, *Iraq: No Easy Response to "The Greatest Threat:,"* 95 AM. J. INT'L L. 235, 238 (2001) (reviewing RICHARD BUTLER, THE GREATEST THREAT: IRAQ, WEAPONS OF MASS DESTRUCTIONS, AND THE CRISIS OF GLOBAL SECURITY (2000)). *See generally id.* at 236-45 (providing a detailed background to the United Nations weapons inspection process and its ultimate failure in Iraq).

[66] Bahgat, *supra* note 15, at 158.

[67] *See generally id.*

[68] *See, e.g.*, Bill Nichols, *Soft Approval Greets U.S. Leader's Hard Words; Many Insist Attack Needs U.N. Sanction*, USA TODAY, Sept. 13, 2002, at A13 (describing a speech President Bush delivered to the United Nations in which he made a forceful call to action in response to Iraq's "decade of defiance").

support the aggressive military action calculated to end Hussein's regime. In particular, countries that had already begun to negotiate oil exploration contracts with Iraq were quick to argue that the United States' proffered motive for invading Iraq—to guarantee disarmament and to liberate the Iraqi people—was only a front, and that oil interests constituted the underlying impetus.[69]

Front or not, coalition forces undeniably placed a great emphasis on protecting Iraqi oil fields from the moment they entered Iraq. Just hours after the invasion began, the coalition had seized two offshore oil terminals capable of transferring oil to awaiting tankers.[70] United States forces also secured the southern Rumaila oil field so swiftly that retreating Iraqis could only set fire to nine wells, compared to the hundreds destroyed in Kuwait during Desert Storm.[71] Once they arrived in Baghdad, United States soldiers immediately secured the Oil Ministry building while hospitals and museums were looted.[72] When asked about the United States military's aggressive protection of Iraqi oil interests, General Richard Myers, Chairman of the Joint Chiefs of Staff, explained: "I think it's, as much as anything else, *a matter of priorities*."[73] By the time the combat phase of the war had ended, the inescapable conclusion that Iraq's oil industry had become a primary global priority had set in firmly.

III. PRESENT-DAY IRAQ: PROMISE OVERSHADOWED BY CHAOS

With coalition forces embedded in Baghdad and in other key Iraqi cities, the country faces a deep irony: It sits on one of the largest petroleum reserves in the world, yet it is nearly paralyzed by an energy crisis with gasoline, electricity, and fuel supplies dwindling and unstable.[74] Exacerbating the situation is the utter disarray of Iraq's political, social, and industrial structures. Political instability and so-

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[69] *See* Schmemann, *supra* note 27, at D1 (pointing out that Russia, France, China, and Saudi Arabia—countries not supportive of the war—have "serious interests" in the future of Iraq's oil); James Politi, *Debate Over UN Sanctions to Dominate Council Agenda*, FIN. TIMES (London), Apr. 21, 2003, at 6 (discussing France's and Russia's opposition to the war and to excessive United States influence in post-war Iraq); *see also* Jonathan Steele, *Read the Small Print: The US Wants to Privatise Iraq's Oil*, GUARDIAN (London), Mar. 31, 2003, at 18 ("Suggest that George Bush and Tony Blair launched their war because of Saddam Hussein's suspected weapons of mass destruction. Hoots of derision all round. . . . [E]veryone [in Syria] believes this is a war for oil.").

[70] Barlett & Steele, *supra* note 4, at 50.

[71] *Id.*

[72] *Id.*

[73] *Id.* (emphasis added).

[74] *Id.* at 49.

cial turmoil will make revitalizing Iraq's oil industry an arduous and lengthy task.

A. Political Tug-of-War: An Uncertain Future

Under Hussein's regime, there was only one political voice—the Baath Party and, in particular, Hussein and his sons. With that regime now gone, and allied forces occupying the country, former dissidents from different ethnic groups are competing for political influence.[75] Lieutenant Paul Bremer III, head of the United States occupation authority, has been forced to "navigate the country's uncharted and fractious political landscape" in an attempt to mold the most satisfactory governing body for both global and Iraqi interests.[76] For Iraq's government to be stable, ideally, both the representatives and constituents should be satisfied with the modes of governance. Unfortunately, there are many grievances among the leaders of seven key political groups who are currently collaborating with Lieutenant Bremer and other occupation authorities.[77] Shortly after the war ended, United States officials told Iraqi political leaders that there would soon be a national assembly where hundreds of representatives from Iraq's religious, ethnic, and tribal groups would debate the form and membership of a transitional administration.[78] In June 2003, those leaders were told there would, instead, be an "advisory council" whose influence would be limited to advising United States officials on policy issues and nominating Iraqis to serve in senior positions in government ministries.[79] Iraqi leaders became frustrated about possibly not having the opportunity to independently run certain ministries before a formal transfer of power from the United States authority to a democratically elected Iraqi government, which might be more than a year away.[80]

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[75] *See* Rajiv Chandrasekaran, *Iraqis Assail U.S. Plans for Council*, WASH. POST, June 2, 2003, at A1.

[76] *Id.* Discussing the formation of a new Iraqi government, Lieutenant Bremer admitted: "There's some work for us to be done to identify a truly representative group." E.A. Torriero & Christine Spolar, *Would-be Iraqi Rulers Doling Out Cash, Jobs*, CHI. TRIB., May 27, 2003, at C1.

[77] *See* Chandrasekaran, *supra* note 75, at A1. The groups meeting with Lieutenant Bremer included two main Kurdish factions in northern Iraq, the Iraqi National Congress of Ahmad Chalabi, the Iraqi National Accord of Iyad Alawi, the Shiite Muslim movement of Ayatollah Muhammad Bakr al Hakim, the Shiite Dawa Party, and the democratic movement of Nasir al-Chadirchy. Patrick E. Tyler, *After the War: Baghdad; Troops Attacked in Baghdad in Fresh Signs of Resistance*, N.Y. TIMES, June 2, 2003, at A1.

[78] Chandrasekaran, *supra* note 75, at A1.

[79] *Id.*

[80] *Id.*

The political reconstruction process in Iraq seemingly advanced one step closer toward achieving Iraqi self-governance in mid-July 2003, when coalition officials announced that a "governing council" would promptly replace the advisory council in forming the "cornerstone of a future Iraqi interim administration."[81] Lieutenant Bremer indicated that the council would be given the authority to approve the 2004 budget, select and dismiss ministers, appoint diplomats, and assemble a commission to determine how the country's new constitution should be written.[82] However, the governing council is not yet a fully functioning, influential political entity. Both Western and Iraqi officials alike have criticized the council and its members for being cantankerous, slow, and, for the most part, ineffective.[83] The council was expected to quickly, albeit carefully, appoint ministers, but, instead, the group was locked in "tortured negotiations" for weeks.[84] During the council's first two months in existence, the extent of its decision making has been to establish sub-committees to closely examine individual issues.[85]

The strained dynamics of the twenty-five-member group reflect the "delicacy of the [Iraqi] political enterprise."[86] In assembling and selecting governing council members, coalition officials faced the tedious task of trying to appease Iraq's Shiite Muslim majority, while also making sure to include the country's ethnic minorities.[87] Adding to the governing council's ideological diversity, coalition officials also selected Iraqis who had lived outside Iraq during Hussein's rule and who have tended to be more in line with Western policies and interests.[88] Moreover, Lieutenant Bremer insisted that he would consult with the council weekly and accept their recommendations as often as possible, but he reserved the right to overrule council decisions in "exceptional cir-

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[81] Stephen Farrell, *Governing Council of Iraqis 'Will be in Place in a Week,'* TIMES (London), July 11, 2003, at 23.

[82] Rajiv Chandrasekaran, *Plan Gives Iraqi Council Larger Governing Role; Occupation Authority to Shape Membership*, WASH. POST, July 11, 2003, at A1.

[83] *See* Rory McCarthy, *Cabinet is Finally Named in Iraq: New Ministers Face Huge Test of Credibility as Rifts Emerge Between Governing Council and US-Led Administration*, GUARDIAN (London), Sept. 2, 2003, at 12.

[84] *Id.*

[85] *Id.*

[86] Dexter Filkins & Neil MacFarquhar, *After the War: The Occupation; U.S. Official Tells Iraqis to Assert More Authority*, N.Y. TIMES, Aug. 21, 2003, at A12.

[87] *See* Chandrasekaran, *supra* note 82, at A1.

[88] *See id.* The inclusion of several former Iraqi exiles has been a source of controversy among Iraqi citizens. ("U.S. and British officials want exiles to play a significant role [on the council] because many of them espouse Western ideas of democracy and religious tolerance, but *they are viewed with concern* by Iraqis who never left the country."). *Id.* (emphasis added).

cumstances."[89] Several council members have critically characterized their role as having the power to make but not enforce their own decisions, because coalition forces remain in charge of security, and those forces retain the ultimate authority to accept or decline council recommendations.[90]

Many Iraqi citizens are disgruntled over the governing council's lack of power, the continued presence of coalition forces in Baghdad, and the United Nations resolution giving the United States and British governments the authority to run Iraq until a constitution is drafted, national elections are held, and a new government is in place.[91] Some Iraqis perceive that the Americans are intentionally excluding Iraqis in an effort to customize a new government favorable to Western interests.[92] Evidence of this perception is continued violence directed at American soldiers even after the Iraqi army has been officially disbanded.[93] Supporters of Hussein's Baath Party are still present in Baghdad and have regularly launched rocket-propelled grenade, rifle, mortar, and suicide-bombing attacks on coalition soldiers despite the official end of the war.[94] Although many Iraqis are vehemently opposed to the Baath Party, the presence of militant Saddam loyalists will arguably undermine the stability of Iraq's future government. In any case, a *stable* Iraqi government—necessary for proper management of the oil industry—does not appear to be taking form as quickly as had been anticipated. Once a permanent government is established, Iraq's adjustment and ability to administer its oil industry will depend on the policies put in place by the new government to ensure the creation of the "legal bedrock of a modern economy."[95]

B. Social Instability and Adversity

Desert Storm, United Nations economic sanctions, and the most recent war in Iraq have put a stranglehold on Iraqi citizens, mak-

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[89] Farrell, *supra* note 81, at 23.

[90] *See* McCarthy, *supra* note 83, at 12.

[91] Chandrasekaran, *supra* note 75, at A1.

[92] *See* Patrick E. Tyler, *The Mideast Turmoil: Alliances; Leading Iraqi Shiite Cleric Emerges to Meet U.S. Ally*, N.Y. TIMES, June 6, 2003, at A14. Grand Ayatollah Ali al-Sestani, one of the most senior Shiite clerics in Iraq, noted that the allied campaign to end Hussein's tyranny "is like an occupation, not a liberation, as the people have been told." *Id.*

[93] *See* Tyler, *supra* note 77, at A1.

[94] *See, e.g.*, *id.*; Roland Watson & James Hider, *Iraq 'Not in Chaos, but it Needs Billions,'* TIMES (London), Aug. 28, 2003, at 16 (noting that over 140 coalition troops have been killed since May 1, 2003, the official end of the war).

[95] Schneider, *supra* note 8.

ing day-to-day survival quite difficult.[96] Iraq entered the 1990s as a relatively prosperous country with a fairly high standard of living, one of the region's best healthcare systems, and a large, educated middle class.[97] During the first year of sanctions, Iraq's gross domestic product dropped 75%, sending millions of citizens into poverty.[98] Now, in the aftermath of the most recent war, Iraqis continue to suffer hardship. Although future Iraqi oil revenues will help improve many social problems, immediate international humanitarian aid is necessary to address a number of issues confronting Iraqis.

1. Hunger and Malnutrition

In the early 1990s, sanctions quickly depleted the availability of food in Iraq, and import quantities were also diminished. Supplies of agricultural necessities, such as seed, fertilizers, and pesticides, have been minimal over the past decade.[99] Additionally, fuel and spare parts shortages have prevented refrigerated food storage facilities—imperative in parts of Iraq that can reach extreme temperatures in the summer months—from functioning properly.[100] The net result has been widespread malnutrition among Iraqi citizens, with children and pregnant women being the most seriously affected.[101] Malnutrition makes the human body more susceptible to illness and death, helping to explain why child mortality rates in Iraq have elevated significantly over the past decade.[102]

2. Disease and Inadequate Medical Care

Related partially to malnutrition, the outbreak of certain diseases has devastated Iraq. Infrastructural damage to water supply and sewage treatment facilities has been responsible for epidemics of cholera, typhoid, gastroenteritis, malaria, measles, polio, hepatitis, and other diseases.[103] Unfortunately, the Iraqi medical system has become grossly ill-equipped to treat such illnesses.[104] Hospitals, both before and after the most recent war, have become dilapidated and short of supplies as fundamental as syringes, surgical gloves, and simple medicines.[105] If the Iraqi oil industry is to be revitalized, the

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[96] *See* Bisharat, *supra* note 25, at 406-07.
[97] *Id.* at 406.
[98] *Id.*
[99] *Id.* at 408.
[100] *Id.*
[101] *Id.* at 409.
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *Id.*

health and well-being of the citizenry have to be improved immediately.

3. Unemployment

Before the most recent war commenced, the Iraqi unemployment rate was approximately 50%.[106] Since the war, that figure has grown significantly worse.[107] The extremely heavy bombing of the coalition's "Shock and Awe" tactic damaged factories, roads, and other aspects of Iraqi infrastructure. Furthermore, looting and other crimes have devalued businesses, requiring owners to lay off most of their employees.[108] The practical result of millions of unemployed Iraqis has been a preying ground for formerly exiled political groups that are now attempting to soar to power.[109] Some of Iraq's competing political parties have been recruiting citizens on the streets of Baghdad in exchange for monetary compensation or promises of future employment.[110] U.S. officials fear that this form of "political muscle" could result in corrupt elections and produce a "strongman rule" that would exclude large segments of Iraqi society, undermining efforts to create a diverse and stable government.[111]

4. Energy Shortages

One of Iraq's most serious societal problems is its electricity crisis. During the war, shooting and bombing badly damaged power lines that move electricity into and around Baghdad.[112] As a result, electricity supplies to factories and other businesses have been drastically cut to accommodate residential areas, which account for 80% of all electricity use.[113] Business owners are forced to fire employees because they are not able to afford to run their factories full-time.[114] Additionally, there is very little electricity to power street lights in the city, which encourages robbery, looting, and other forms of dangerous street crimes at night.[115] Although the Army Corps of Engineers and a private American power company have been working day and night to help repair damaged electricity lines, power shortages still exist and

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[106] *Id.* at 408.
[107] Torriero & Spolar, *supra* note 76, at C1.
[108] *See infra* Part III.B.4.
[109] Torriero & Spolar, *supra* note 76, at C1.
[110] *Id.*
[111] *Id.*
[112] Neela Banerjee, *No Power, No Rebirth in Iraqi Business*, N.Y. TIMES, May 25, 2003, § 3, at 1.
[113] *Id.*
[114] *Id.*
[115] *Id.*

pose a serious threat to the Iraqi economy.[116] Some worry that the slow pace of power restoration to Iraqi industry "could devastate what's left of an economy already weakened by twelve years of sanctions."[117]

C. *A Battered Oil Industry*

For a country dependent on oil for over 90% of its export earnings, that ever-so-important industry is in deplorable shape.[118] The Iraqi oil industry is plagued by fractured pipelines, rusting equipment, and 1970s technology that has become antiquated by contemporary industry standards.[119] The exploitation of Iraq's oil reserves is still at a very premature stage, with only fifteen of its seventy-three known fields currently developed.[120] There is also a good deal of unknown information when one considers the fact that no major oil exploration has been conducted in Iraq since 1980.[121] In addition to having dilapidated equipment, some of the oil fields themselves have been damaged by the practice of injecting water into reservoirs to build up pressure.[122]

The Iraqi industrial infrastructure in general is ill-equipped to handle an immediate resurgence in the oil exportation industry. As it currently stands, Iraq is pumping considerably less oil than it did before Desert Storm.[123] Some fault, to be sure, can be attributed to wartime damages. During the 1991 Gulf War, for example, key shipping terminals were damaged. During the most recent conflict, a major export pipeline to Syria was severed.[124] However, additional fault points to Hussein's regime and, arguably, the imposition of United Nations economic sanctions. Hussein's regime lacked the foresight and/or

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[116] *Id*; *see also* Susan Milligan & Stephen J. Glain, *Violence Derails Iraq Rebuilding: Security Needs Take Precedence*, B. GLOBE, Aug. 24, 2003, at A1 ("Pentagon officials did not prevent the looting and destruction of Iraq's infrastructure, from its electrical grids to telephone lines and oil pipelines. No electricity means no pumps to distribute fresh water, no air conditioning, and no streetlights to deter thieves after dark.").

[117] Banerjee, *supra* note 112, § 3, at 1.

[118] Libera, *supra* note 10, at 303.

[119] Barlett & Steele, *supra* note 4, at 49; *see also Country Analysis Briefs: Iraq*, U.S. DEPT. ENERGY, Feb. 2003, *available at* http://eia.doe.gov/emeu/cabs/iraq.html (describing Iraq's poor oil reservoir management, corrosion problems at various oil facilities; deterioration of water injection facilities; lack of spare parts, materials, equipment, etc.; damage to oil storage and pumping facilities; and more).

[120] Goodman, *supra* note 5, at A16.

[121] *Id.*

[122] *Id.*

[123] *Id.*

[124] *Id.*

revenues to purchase a sufficient number of storage tanks, a basic requirement for oil exportation.[125] As a result, if bad weather prevents oil tankers from docking and filling up, oil production must stop.[126] In total, experts estimate a cost of more than $30 billion over the next few years if Iraq wants to bring its oil output up to a potential six-million barrels a day.[127]

IV. THE FUTURE OF THE IRAQI OIL INDUSTRY: CAUTIOUS OPTIMISM

As the twenty-first century progresses, and with Hussein's regime now dead, the focus of global oil companies and oil-consuming nations is, once again, on the Middle East and, in particular, Iraq.[128] Not only does Iraq have the second-largest volume of proven oil reserves, but also Iraq's location in the Fertile Crescent gives it the world's most prolific, accessible, and efficient wells.[129] Easily accessible wells translate into incredibly inexpensive oil production costs. Even Saudi Arabia, another Middle Eastern country with a large volume of oil reserves, has to spend over twice as much money extracting a barrel of oil out of the ground than Iraq.[130] Iraq's re-entry into the global energy business as a major player comes at a time when countries worldwide are more dependent on petroleum supplies than ever, especially the United States. As the world's largest importer of crude oil, the United States' oil imports have been rising since 1982 and are expected to continue rising in the future.[131] When these two factors—Iraq's oil potential and the world's growing need—are considered, it is easy to understand why Iraq's post-war reconstruction is drawing intense interest from the international community. With this interest come several important issues, however, some of which are likely to cause controversy and tension over the next few years.

A. *The Need for a Stable Investment Climate in Iraq*

The transition to a democratic Iraqi government forces the Iraqi citizenry to endure an 180° ideological turn. Some will embrace the new form of government, while others might rebel through violence or threatening propaganda. The current situation in Iraq is "not just a change of government but the forging of a new social contract for a country that has endured much pain and suffering for around a

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[125] *Id.*
[126] *Id.*
[127] *Id.*
[128] *See* Bakhtiari, *supra* note 4, at 24.
[129] Barlett & Steele, *supra* note 4, at 49-50.
[130] *Id.* at 50.
[131] Bahgat, *supra* note 15, at 145.

quarter of a century."[132] Political and economic instability are inevitable byproducts of such a drastic change of culture and leadership. Iraqis realize that one of the keys to restoring stability to their country will be increasing their oil exports. However, when one considers the $30 billion projected cost of repairing Iraq's oil infrastructure and bringing oil-pumping volumes to desired levels, foreign investment is an absolute necessity.[133]

Large oil companies, fortunately, are interested in going back into Iraq because of its vast potential, untapped fields, and very inexpensive extraction costs.[134] Unfortunately for Iraq, the much-needed foreign capital might not become available for a few years.[135] Foreign companies might find it difficult to justify investing in a country where no government exists to sanction contracts, develop new fields, or determine the validity of old contracts.[136] To attract the needed capital, Iraq will "need a stable regime in Baghdad—an entity nowhere yet in sight."[137] However, when stability does exist in Iraq, "there [will be] room for everybody"[138] who wants to invest in its young and promising oil market.[139]

B. Security Services and Protection

Along the same lines as the need for political stability in Iraq, investors and potential businesses will also need Iraqi reassurance of security services and general protection for their employees and projects in Iraq.[140] The end of the war has not necessarily meant the end of the fighting, as evidenced through the numerous suicide bombings and shooting attacks aimed at coalition military personnel in the

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[132] Issam al-Chalabi, *Iraqi Oil Policy: Present and Future Perspectives*, OIL & GAS J., Mar. 24, 2003, at 42.

[133] Bahgat, *supra* note 15, at 158.

[134] Goodman, *supra* note 5, at A16.

[135] *Id.*

[136] *Id.* at A1; *see also Indonesian Oil Company Plans Iraq Project*, N.Y. TIMES, Sept. 12, 2003, at C2 ("[M]ost foreign oil companies have said that they will wait to become active until Iraq has a sovereign government, new constitution and better security on the ground.").

[137] Bob Tippee, *Basic Question Stalls Iraqi Progress: Who Owns the Oil?*, OIL & GAS J., May 5, 2003, at 112.

[138] Goodman, *supra* note 5, at A16 (quoting Alain Lechevalier, Vice President of the Middle East for French oil giant Total S.A.).

[139] *Id.* ("The amount of money needed is so great that no one will be able to do it alone. Nobody will be able to put $30 billion alone into Iraq.").

[140] *Id.* ("[Oil companies] are interested to go back into Iraq, provided that the legal government is *willing to increase its protection* and accept foreign investment.") (emphasis added).

weeks after the end of combat operations.[141] Similarly, Western companies "setting up shop in a post-Saddam Iraq will face the threat of violence on a daily basis, drawing unwanted attention from recalcitrant Saddam loyalists and possibly the al Qaeda terrorist network."[142]

Sabotage of Iraqi oil pipelines became an increasingly alarming menace to reconstruction efforts in the months following the end of the war.[143] In mid-summer 2003 alone, more than two dozen pipelines were reported to have ruptured, due primarily to acts of sabotage.[144] Iraq's largest and most important pipeline with Turkey came under attack in early August 2003, costing the rebuilding effort an estimated seven-million dollars a day.[145] Absent sufficient security measures, would-be foreign investors will likely delay their participation in Iraqi oil ventures, which will, in turn, "significantly delay" the anticipated oil revenues needed for reconstruction.[146]

If the efficacy of attacks on the main oil pipeline in Colombia by FARC[147] rebels as a means of opposing the Colombian government is any indication of tactics Iraqi terrorists might employ in opposition to the coalition's occupation, the safety of new Iraqi oil projects will be severely compromised.[148] Furthermore, sabotage to pipelines is not the only legitimate concern for foreign investors—ethnic squabbles between Iraq's Kurds, Sunnis, and Shiites are also real possibilities that could put the oil endeavors of foreign companies at risk.[149]

C. Bitterness and Skepticism of the United States and Its Motives

Another concern expressed by several countries is the extent to which the United States will control and oversee Iraq during its recon-

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[141] *See* Schneider, *supra* note 8.

[142] *Id.*

[143] *See* Robert Manor, *Gasoline Driven Upward; Global Events, Stronger Economy Boost Petroleum Costs*, CHI. TRIB., Aug. 20, 2003, at C1 (explaining that the "gusher of oil" expected from Iraq has largely failed to materialize due to explosions and sabotage routinely shutting down pipelines).

[144] *Where's the Spinach?*, ECONOMIST, Aug. 16, 2003, at 56.

[145] Milligan & Glain, *supra* note 116, at A1.

[146] *Id.*

[147] "FARC" is the Spanish acronym for the Revolutionary Armed Forces of Colombia, a left-wing guerrilla group that has violently opposed the Colombian government for almost half a century.

[148] *See, e.g.*, Danielle L. Simmons, Book Note, 25 SUFFOLK TRANSNAT'L L. REV. 711, 717 n.33 (2002) (reviewing NOAM CHOMSKY, ROGUE STATES: THE RULE OF FORCE IN WORLD AFFAIRS (2000)) (discussing how FARC rebels control much of the *oil territory in Colombia).*

[149] *Id.*

struction.[150] Countries like Russia, France, China, and Saudi Arabia are particularly concerned since the fate of Iraqi oil is of "critical national interest" to them.[151] Both Russia and France have been openly reluctant to "hand over the management of Iraq's oil sales to the United States" before a transitional government takes power.[152] French President Jacques Chirac has called for the United Nations to have a "central role" in both the political and commercial reconstruction of Iraq.[153] If countries begin to believe that the United States' method of supervising the reconstruction has become too catered to its own interests, there could be serious damage done to the United States' credibility within the United Nations and around the world.[154] Excessive tension could also complicate the negotiation of oil contracts in Iraq. Though recent developments indicate the United Nations will likely broaden its role in supervising Iraq's reconstruction, the scope of its future influence remains to be seen.[155]

D. Uncertainty over Honoring Existing Contracts and the Creation of New Contracts

One of the most significant, but unknown, factors in the reconstruction of Iraq involves whether or not Iraqi oil contracts given to Russia, France, and China while Hussein's regime was still in power should be honored.[156] For example, a Russian company, Lukoil, formed a $3.7 billion contract to expand Iraq's West Qurna field several years ago.[157] Although Hussein's regime invalidated the contract in early 2003, Lukoil feels it still has a "legally binding contract" that was "signed according to international law and agreed to by the Iraqi parliament."[158] Determining whether to honor the previous contracts Iraq made with Russia, France, and China will largely establish the

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[150] *See, e.g.*, Carola Hoyos & James Politi, *Bush Plan to End Iraq Sanctions Faces Opposition: France and Russia Set to Resist at UN*, FIN. TIMES (London), Apr. 17, 2003, at 1; James Politi, *Debate Over UN Sanctions to Dominate Council Agenda*, FIN. TIMES (London), Apr. 21, 2003, at 6.

[151] Schmemann, *supra* note 26, at D1.

[152] Hoyos & Politi, *supra* note 150, at 1.

[153] Politi, *supra* note 150, at 6.

[154] *See* Barlett & Steele, *supra* note 4, at 49 ("[T]he Bush Administration is up against a prevailing world view that the burden of proof is on the U.S. to show that it won't exploit Iraq's [oil].").

[155] *See* Steven R. Weisman, *U.S.-French Rift Reopened as Powell Arrives for Talks*, N.Y. TIMES, Sept. 13, 2003, at A7 (describing the United States Secretary of State's visit to Switzerland for "intensive talks" about expanding the United Nations' role in rebuilding Iraq).

[156] *See* Goodman, *supra* note 5, at A16.

[157] *Id.*

[158] *Id.*

degree of cooperation present as the international community competes to participate in the future of Iraq's oil industry. Many individuals involved in Iraq's oil industry believe that the war replaced one set of preferred beneficiaries (France, Russia, and China) with another: "Hussein's former allies are out, while those who won the war will get most of the deals."[159] While there most likely will not be an extreme shift in loyalties, subtle favoritism towards the United States and Great Britain could result, fueling an already present controversy.

E. Nature of Iraq's Future Membership in OPEC

One final issue of importance concerns Iraq's future as a member of OPEC. Although Iraq was a founding member of the oil cartel, it has not had a quota due to United Nations supervision over the past decade.[160] However, now that sanctions have been lifted, Iraq would be legally free to re-enter OPEC as a quota-sharing member, export oil under a new United Nations program, or export under no program.[161] Iraq's decision will have significant consequences for other OPEC members. For example, if Iraq re-enters OPEC and establishes a higher-than-normal quota, another OPEC country would have to lower its production accordingly, potentially losing billions of dollars.[162] It is too early to predict Iraq's likely export strategy, but its ultimate choice will directly affect oil-producing and oil-purchasing countries.

V. CONCLUSION

A few years ago, Iraq was a country on a downward spiral in economic, political, and social terms. Now, regardless of whether the United States and Great Britain were completely justified in invading Iraq and ousting Hussein, Iraq's future seems brighter, albeit uncertain. In a time of great international dependence on petroleum, Iraq's massive reserves are now "on the market" for exploration and exportation. Although Iraq's present political circumstances are too unstable to attract substantial foreign investments immediately, a restructuring of Iraq's political and industrial infrastructures will bode well for future investments. Iraq's re-entry into the global energy market as a major player is imminent, and once it happens, oil suppliers and consumers will undoubtedly feel the shockwaves.[163]

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[159] *Id.*

[160] Stephen Wyatt, *OPEC Dynamic the Key Issue for Price*, AUSTL. FIN. REV., Apr. 22, 2003, at 25.

[161] *Id.*

[162] *See* Melita Marie Garza, *Questions Flow on Iraq's Oil: Supply Uncertainties Produce a Growing Disarray in OPEC*, CHI. TRIB., Apr. 20, 2003, at C1.

[163] *See* Barlett & Steele, *supra* note 4, at 49.