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TÍTULO: Investigación de leyes contractuales iraquíes en el sector de la aviación e impacto de la explotación.

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RESUMEN: El propósito del estudio fue comprender el papel que desempeñan las leyes contractuales iraquíes en los programas de rehabilitación en el sector de la aviación, así como el impacto de la explotación en las actividades de desarrollo en este sector. Los datos (33 observaciones) se obtuvieron de la Autoridad General de Aviación Civil de Iraq y del Departamento Central de Estadísticas e Información de Iraq e incluyeron el número de contratos firmados con las líneas aéreas iraquíes en el período en estudio, el número de operaciones de las vías aéreas en los segmentos de pasajeros y carga, y los créditos bancarios adelantados a las compañías aéreas. Los hallazgos revelan que los programas de rehabilitación iraquíes fueron contribuidos adecuadamente por la asociación público-privada, pero se vieron empañados por los males de la corrupción.

PALABRAS CLAVES: corrupción, aviación civil, asociación público-privada.

TITLE: Investigating Iraqi Contract Laws in Aviation Sector and Impact of Exploitation.

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ABSTRACT: The purpose of the study was to understand the role of Iraqi contract laws in rehabilitation programs in the aviation sector, as well as the impact of exploitation on development

activities in this sector. The data (33 observations) were obtained from the General Authority of Civil Aviation of Iraq and the Central Department of Statistics and Information of Iraq and included the number of contracts signed with the Iraqi airlines in the period under study, the number of operations of the airways in the passenger and cargo segments, and the bank loans advanced to the airlines. The findings reveal that Iraqi rehabilitation programs were adequately contributed by the public-private partnership, but were marred by the evils of corruption.

KEY WORDS: corruption, civil aviation, public-private partnership.

INTRODUCTION.

There are several companies in Iraq, including those in the aviation sector that have signed different types of contracts, starting from MOU to binding contracts (GACA, 2014).

The elements in Iraqi contract law are similar to those found in most other legal systems across the globe; however, with a few exceptions like the Iraqi contract law imposes legislative and judicial restrictions on charging interest, unlike the Western law, but contrary, to some Sharia law countries, Iraqi law allows charging of interest; for example, in commercial and banking transactions, provided the total interest does not exceed the principal amount. In the case of breach of contract, compensatory and liquidated damages are also allowed. Similarly, the statutes of Iraqi contract law may vary and act as a valuable tool to help in special cases; for instance, foreign investors who cannot invest in real estate in Iraq are allowed to sign construction contracts (Ali Hassan, 2010).

After the war turmoil was over in Iraq, the government passed a new commercial agency law in November 2017 that provided new protections for businesses wholly-owned by Iraqis (Regulations for Implementing Government Contracts, 2017).

It is yet to be seen how the law has been enforced, but it has definitely disrupted the existing foreign investment in the Iraqi aviation sector. It has restricted the freedom of foreign contractors who supplied products to Iraq through air cargo services and used various airline services.

The new commercial agency law was approved by the Iraqi parliament following the presidential approval on 1 November 2017 and was subsequently published in the Official Gazette as Law No. 79 of 2017 (the “New Commercial Agency Law”). The New Commercial Agency Law had several provisions that directly or indirectly related to the aviation sector (Regulations for Implementing Government Contracts, 2017). According to the New Law, only a registered commercial agent (Article 13) can import goods for trading purposes and foreign investors may not terminate or refuse to renew the contract with a commercial agent without a “reason that justifies” (Article 20). The New Commercial Agency Law also abolished restrictions of public sector entities trading with commercial agents (Regulations for Implementing Government Contracts, 2017).

Related to public private partnerships (PPP), the New Commercial Agency Law permitted an Iraqi public sector body to enter into a joint venture (JV) with a private partner, provided that the proposed JV will operate in general interest. The New Commercial Agency Law also distinguished between contractual JVs and incorporated JVs and put limitations on certain issues related to taxation, and bank transactions.

After the war ended in 2005, Iraqi Airways resumed its domestic operations and to neighboring Middle Eastern destinations and to Europe in 2009. Iraq signed several airway contracts with leading airline companies across the globe under the New Commercial Agency Law. In May 2008, the Iraqi government signed a \$2.2 billion contract with Boeing for 30 Boeing 737-800s. It was also working on a deal involving the order of ten Boeing 787 Dreamliner aircraft which would allow for long-range service (GACA, 2014). Another contract worth \$398 million was signed for ten Bombardier CRJ-900ER aircraft. In 2014, IATA worked with Iraqi Airways (IA) to prioritize the implementation of the most needed systems and programs to help Iraqi Airways comply with the international standards and open doors for partnerships and interline agreements with regional and international airlines (GACA, 2014).

DEVELOPMENT.

Exploitation.

Corruption, defined as “the abuse of entrusted power for private gain”, is a social evil that has created political, socio-economic and environmental problems leading to severe crises (Andersson, 2008; Brioschi, 2017). There is also a link between exploitation and governance as it takes many forms from bribes to extortion (Saha & Gounder, 2013) highlighting that weaker institutions of political democracy and economic freedom are significantly associated with exploitation (Ares & Hernández, 2017; Armeý & Melese, 2017; Bauhr & Charron, 2017).

In the present context of this study, it is envisaged that Iraqi officials have the access to such legal and administrative resources that facilitates corruption. The New Commercial Agency Law also prioritized several fiscal demands in contracts that may encourage officials to involve into illegal activities. Empirical studies exist that have discussed the issue of exploitation affecting the policy responses to issues of governance (Fredriksson et al, 2004; Koyuncu & Yilmaz, 2009; He, et. al., 2007; Borges et al, 2017; Borja, 2017; Maxim, 2017).

The Iraqi soil is also no exception to corrupt practices and their impact on its economy in general. Taking a recent example from the aviation industry itself in Iraq, the Iraqi anti-exploitation agencies are investigating the duty-free shops exploitation scam at Baghdad and Basra airports.

The issue emerged when the Iraqi Civil Aviation Authority (ICAA) and the Ministry of Transport extended Iraq Duty Free’s exclusive contract at the airports by ten years until March 2029. The two governing bodies were alleged for the breach of Iraqi law for the contract duration as well as for a premature extension of the contract, two years before its expiry. The matter also worsened when it was revealed that Iraq Duty Free company, *Financial Links*, was owned by one UK-citizen Ahmed Sarchil Kazzaz, who had been convicted for fraud and bribery earlier in 2012 for winning contracts in Iraq and hence the fresh contract again to the same company was much criticized in Iraqi media (Iraq Business News 21st May 2018 Iraq Duty Free Responds to Allegations).

Iraq Duty Free strongly refuted all allegations regarding the contract renewal and conceded that these contract renewals had passed through appropriate legal and regulatory procedures and were approved by Iraqi Civil Aviation Authority as well as Ministry of Transportation. The company further reiterated that it had acted according to the provisions of the contract and had developed the duty-free shops at both airports including modernization and reconstruction of the facilities. Secondly, it was also emphasized that there was no legal impediment to prevent renewing the contract even before its expiry; rather both contracted parties were entitled by law to do that with mutual consent.

Regarding the conviction of the owner of company in the US, the company spokesperson denied the charges and reported that the owner of company was an Iraqi National and not convicted of any crime of punishment. Nothing can deprive him from contracting inside Iraq, the sourced further reiterated (Iraq Business News 21st May 2018 Iraq Duty Free Responds to Allegations).

The major Iraqi airlines are Al-Naser Airlines, Fly Baghdad, FlyErbil and Iraqi Airways. All these airlines were seriously affected by ISIS forces who left airports at Baghdad and Mosul in a dilapidated condition. A huge rehabilitation and reconstruction work was required for almost every facility at airports. In 2014, for instance, the government announced plans to invest \$50 billion in the country's aviation industry, partly via the construction of new or expanded terminals, air traffic control facilities and all the essential behind-the-scenes activities that allow an airport to perform efficiently (GACA, 2014).

For this resurgence of Iraqi aviation industry, attempts were made to secure assistance across the globe. In July 2017, Erbil International Airport (EIA) in the autonomous Kurdistan region, signed a partnership agreement with Lufthansa Consulting to develop and expand infrastructure including \$17.5 million landscaping project and \$6.5 million fuel farm and a water treatment plant. In October 2017, the World Bank also approved a \$400 million financial assistance package for Iraq which included airport improvement. In April 2018, the Iraq Airports Aviation Forum (IAAF) hosted an exhibition of the aerospace sector companies to highlight new technologies required for improvement of the airports. In addition, plans are being made to uplift airports at Baghdad, Basra, Najaf, Nasiriya,

Erbil and Sulaymaniyah and make new investment at Dohuk, Kirkuk, Mid-Euphrates and Diwaniya airports (IATA, 2017).

Problem statement.

Due to political instability and lack of a strong leadership in Iraq, due attention has not been given to the aviation sector. Learning lessons from the global aviation and transportation network, Iraq has shown a great interest in rebuilding its aviation sector. Globally, for instance, close to 2 billion passengers annually travel by air and 40% of interregional exports of goods (by value) is airborne. The air transport industry also generates over 30 million jobs globally; 25% of all companies' sales are dependent on air transport and 70% of businesses admit that their access to bigger market depends much on air services. As per IMF calculations, the global economic impact of the aviation sector is estimated at US\$ 2,960 billion, equivalent to 8% of world Gross Domestic Product.

Iraqi economy has been much affected by war, terrorism and political instability. However, ever since the peace was restored in the region, Iraq has started rehabilitation tasks with aviation sector receiving a most significant attention. A serious threat that Iraq faces in its rehabilitation program of aviation sector is exploitation which may be due to poor leadership in the sector, lack of regulatory compliance, unhealthy competition between the airlines and like. Airport Council International (Philippe Le Billon, 'Corruption, Reconstruction and Oil Governance in Iraq', 2005; ACI, 2014). This study has attempted to empirically investigate the impact of exploitation on the Iraqi aviation sector and explore remedies to curb this evil.

The rest of the paper is organized as follows. Section 2 presents an overview of relevant empirical literature. Section 3 provides a description of methodology. Empirical results and discussions are presented in Section 4. Finally, Section 5 deals with conclusion of the study.

Literature review.

A study on Sri Lankan Airlines narrates the exploitation investigation of a controversial termination of the Sri Lankan Airlines contract with Emirates airline (AFP, 2018). The problem erupted when the

Sri Lankan government canceled a deal with Emirates in 2008 due to a personal rivalry and appointed an inexperienced CEO of Sri Lankan Airlines. Such an exploitation at higher level resulted in a drastic loss of estimated loss of more than a billion dollars and debts of \$3.2 billion. The investigation panel also examined what corrupt practices were used to terminate the contract between Sri Lankan Airlines and Emirates and buying off the Emirates' share by the Sri Lankan government. The investigation panel also examined the purchase of new Airbus aircraft at a cost of over two billion dollars during Rajapakse's tenure. This case exemplifies how exploitation at top government levels cost huge losses to nation.

In another study on Nepalese Airlines, several examples are cited of the contribution of the aviation sector in the Nepalese economy but it also examines how exploitation might has obstructed the economic progress. The study shows how the Nepalese Aviation industry which had a capacious potential to develop and expand the country's economy was adversely affected by corrupt practices (Bastola, 2017). In another study on Saudi Aviation industry, Alshammary empirically examined the aviation-led growth hypothesis for Saudi Arabia by testing causality between civil aviation and economic development. The empirical results of this study revealed the existence of the civil aviation led-economic growth hypothesis (economic expansion causing the civil aviation sector to grow) for a developing country like Saudi Arabia. It also drew attention to several impediments in the march toward progress with exploitation as one of them (Alshammary, 2017).

In another study on Nigerian Aviation sector, ATQ describes the aviation sector as “hyperactive” with no profit margins forcing carriers to resort to cost reduction in order to improve customer services. This becomes even more challenging with government interference, its negligence and limited amenities of growth opportunities to the domestic airlines. As a result, all foreign reserves were drained out and foreign airlines thrived in the absence of strong domestic carriers. The Nigerian aviation officials showed no business integrity towards the domestic carriers that resulted in bankruptcy and takeover. The Arik Air, for instance, suffered 300 billion worth of debt with all its aircrafts withdrawn by creditors. The company could barely afford aviation fuel for its operational

aircrafts. Investigations about what caused this mess revealed corrupt practices of company's management that led to poor infrastructure, irregular fuel supply and disconnect between operators and policymakers (ATQ News, 2017).

A similar fate was meted out to another Nigerian Airline, Virgin Nigeria Airways, which suffered at the hands of government bureaucracy. While the airline was performing well internationally, also having obtained the IOSA/IATA operational safety audit accreditation, its plan was to expand over to six other countries, for which it invested over \$3m in employee training and pilot programmes. In midst of these preparations, the government changed the airline's routes with insufficient time to make preparations. Its routes were granted to foreign airlines even by violating the Federal Airports Authority of Nigeria (FAAN) guidelines. The Virgin Nigeria Airways suffered huge losses. Besides, the Virgin Airways had to deal with government officials' demands for free flights and other favors. The Nigerian aviation has seen the closure of 25 airlines in in just three decades. Such cases like Virgin's and Ariks' are examples of turbulence caused by unfavorable business environment (ATQ News, 2017).

As a remedial measure to resolve the issues faced by the Nigerian Aviation, Jannamike reports that Economic and Financial Crimes Commission (EFCC) was set up to deal strictly with exploitation in the aviation sector. The Commission set up anti-graft laws and produced anti-exploitation sensitization programme for the Federal Airports Authority of Nigeria (FAAN) and other aviation sector workers. The commission prepared a list of corrupt practices in the aviation sector which included misuse of funds, bribery, extortion, abuse of authority by airport officials etc. and reiterated to wipe off exploitation from all government ministries, departments and agencies. The EFCC issued a declaration that the evil of exploitation and poor infrastructure have affected the aviation industry. The staff and employees in the sector were urged to erase all corrupt practices, attitudes and behavior that adversely affect nation's reputation. They were also advised to get familiar with the EFCC Act and other laws. It was also promised that FAAN, in collaboration with the EFCC, would fight exploitation and other illicit activities (Jannamike, 2017).

An example can also be cited of Airbus group which had halted vendors' payments and terminated their contracts for no valid reasons (Aceris Law LLC, 2017). These vendors moved the British anti-exploitation courts against the Airbus under the charges of the breach of contract. A formal investigation revealed that the Airbus Group took services of the third-party consultants to enter the airway markets without involving themselves in direct market research. The study reveals that these third-party consultants paid bribes in order to secure orders for Airbus. The Airbus was alleged with fraud charges and misappropriation of over 300 million Euros through third-party consultant contracts for securing potential new business opportunities in China and South-East Asia. As a result of these findings, the Airbus terminated all contracts with the third-party consultants resulting in allegations of breach of contracts (O'Sullivan, 2018).

Methodology.

This study investigated the evil of exploitation through a rigorous examination of aviation contracts over the period 2005 to 2015. The publicly available secondary annual data (40 observations) related to aviation industry were selected from the Iraqi General Authority of Civil Aviation (GACA) and the Iraqi Central Department of Statistics and Information (CDSI). These observations included the number of contracts signed with Iraqi airlines during the period under study, the number of airways operations in both passengers and cargo segments and bank credits advanced to the airline companies. The study also observed media reports published during the time period of this study.

Results and discussion.

The data collected from authentic sources of GACA and CDSI revealed the actual reality of the claims made that Civil aviation was responsible for the growth of Iraqi economy and that economic expansion consequently caused civil aviation sector to grow. On the contrary, the data hinted at factors such as lack of efficacy, low performance, low return on investment, and exploitation that were responsible for influencing the civil aviation sector. This study has focused only on the factor of exploitation and studied how it affected the rehabilitation measures made in infrastructure, airport privatization

programs, and exploring of the public private partnership (PPP) projects in the aviation sector. The data also revealed that the measures taken by the Iraqi government had failed to enter long term partnerships with international airlines and carriers. There was also a negative impact on investment in the aviation sector during the time period of the study.

The data however also hinted at the challenges faced by law enforcement agencies that tried to design anti-exploitation legislation (Campbell & Saha, 2013; Mohamadi et al, 2017; Salmon & Serra, 2017; Sundell, 2016). It was rather difficult to place accountability on the events that lead to corrupt behavior; however, it was observed that the individual behavior and the thinking patterns were much more responsible for exploitation rather than the systemic failure of aviation companies. exploitation was seen explicitly in the behavior of errant individuals who abused the power entrusted upon them and manipulated business transactions for their private gain (Hough, 2017).

It was also observed that how public services such as civil aviation were poorly delivered and tainted by corruption. The study observed such instances where the civil aviation agencies operated with lack of integrity, without transparency and accountability. These agencies succumbed to greater exploitation risks because of their closeness to governments and public officials and their control on the assets and services. Moreover, the situation worsened when government's contracts were given to cronies and such corrupt politicians who embezzled the public funds for their own interest and personal gain (Button & Yuan, 2013; Button et al, 2010; Al- Saeed, 2002; Mukhitdenova, 2016).

A positive thing observed during this study was that the Iraqi national government along with a few private business representatives and members of civil society organizations came forward to create and feel committed to form exploitation free governance. A few lawyers and legal institutions have also volunteered to design legal frameworks and legal processes to curb corruption. All these efforts aim at implementing best legal practices in Iraq and enactment of anti-exploitation laws.

IATA also started a joint operation with Iraqi Airways to prioritize the implementation of most needed systems and programs to help Iraqi Airways comply with the international standards and open doors for partnerships and interline agreements with regional and international airlines. It introduced

programs such as IATA Clearing House (ICH) and IOSA Agency Program. Both these programs aimed at collaborating with the Iraqi airways to regain economic sustainability by fighting the pertinent issues (IATA, 2017). These results are consistent with the empirical studies who found that GACA in any country may operate as a bureaucratic public service provider but with least business orientation. In fact, such an intervention would only result in low service and poorer customer satisfaction (GACA, 2014).

CONCLUSIONS.

The main purpose of the study was to empirically examine the impact of exploitation and other fraudulent activities that affect the civil aviation sector in Iraq. The study considered the post-war updating of the civil aviation infrastructure, airport privatization programs, expansion of public private partnership (PPP) projects, increase in the number of airports in major cities of Iraq, and partnerships with international airlines and carriers. These steps by the Iraqi government were much relevant and progressive but unfortunately the corrupt practices of its officials and the bureaucrats deeply impacted the sustainability of the aviation sector.

The Iraqi aviation sector has a potential to flourish since it has all pre-requisites for sustainable development of the aviation industry. What it requires is the continuous support from the government and its determination to fight corruption. In a nutshell, a well-designed rehabilitation plan with reasonable political stability in Iraq can result in aviation growth. It is hoped that the findings of this study will draw attention of the Iraqi authorities and bring to their attention the need of fighting corruption. This will also become a valuable source of reference for aviation officials who want to grow their business around the globe.

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