

General Counsel Cameron F. Kerry Remarks  
Iraq Finance Conference  
June 27, 2012

Thank you for joining us today.

This conference grows out of the United States-Iraq Strategic Framework Agreement, which reflects the continuing commitment of the United States to “building a prosperous, diversified, growing economy in Iraq, integrated in the global economic system....”

I want to thank you for helping this work by being here at this conference today, and I welcome you here.

I especially want to thank my fellow chair, his Excellency Minister of Finance Rafi Al-Issawi, for graciously hosting. I also must acknowledge the hard work of many across the Government of Iraq and the US Government, as well as all those who travelled here to help forge a positive future for the Iraqi people.

And I take special pride in recognizing the work of the Commercial Law Development Program of the Department of Commerce, led here by Mohammed Al-Badissy. This work reflects the commitment of the Department of Commerce to the relationship between our two countries. The Commercial Law Development Program continues to work with many of the ministries represented here today to provide technical assistance focused on strengthening Iraq's business environment, fostering innovation, and expanding trade.

At a time when the Arab world is exploring new hopes and new models of governance, Iraq stands out for its efforts to engage in both a political and an economic revival.

As part of its economic revival, Iraq is embarking on a large scale, comprehensive, and much-needed expansion of trade and infrastructure to rebuild a country ravaged by years of war, isolation, and repression. The US Government welcomes and celebrates Iraq's investment in the critical needs of its people, and will continue to support these efforts through collaboration under the Strategic Framework Agreement.

An important part of my work as the chief legal officer of the Department of Commerce is to ensure compliance with international law and the development of commercial laws that help expand American trade and commerce.

Promotion of the commercial rule of law throughout the world is a top priority of the Department of Commerce. It is a priority because the commercial rule of law is the backbone of any functioning, dynamic, and growing economy. It matters to businesses

around the globe. It matters in the United States. It matters in Iraq. It undergirds every successful economy in the world.

In countries with strong rule of law, businesses can predict and plan their investments, purchases, and sales with greater certainty. Without it, they are left to guess about the costs and benefits of any deal. Without it, they will look to countries with more certain and welcoming investment environments.

Here are some of the questions they face. Will their suppliers hold up their end of the contract? Will the lender provide agreed financing? Will they be able to protect and enforce their intellectual property rights? Will a tender be won by bribery and corruption rather than the best offer? Will a government arbitrarily change the contract price? Will their property be confiscated?

Businesses and capital are risk averse and economies that have strong rule of law principles reassure businesses and are a magnet for investment.

Some businesses, particularly those based in a country, may soldier on without rules, especially if they are in a country that is their base and have little ability to go elsewhere. But it is riskier and more expensive – and profits need to be higher to make up for this exposure and the likelihood of failure is greater. Ultimately, every citizen and consumer will bear the burden of failing to adhere to international business norms and the extra costs of doing business and having fewer goods and services available.

There are three key features that are the hallmarks of a country with a strong commercial rule of law regime. They are predictability, transparency, and security.

Predictability is essential in the modern world of international trade, where goods and services can cross borders only if parties on both sides are confident their contracts will be respected and payment is assured. A legal regime that ensures predictable outcomes is especially important for the financing of transactions, since financial institutions, such as private banks, international institutions or export credit agencies, will only extend credit if they have full confidence in the repayment of any obligations.

The importance of a predictable legal regime for access to financing cannot be understated. Without the ability to finance trade transactions, exporters are unable to establish routine and low-cost transaction terms and must instead engage in more costly case-by-case transaction negotiations. Without the ability to finance infrastructure construction, project developers cannot take advantage of long-term coordinated construction plans and must instead build projects in a piece-meal and inefficient manner. Without the assurance they can avoid corruption, lenders, developers, and exporters that comply with anti-bribery laws in the US, Germany, and other countries will not do business.

The goal here today is to increase predictability through internationally accepted business practices. Integration of internationally-accepted contract terms in both public and private contracts to cover issues such as payment terms, arbitration, insurance and insolvency will help bring certainty to business transactions in Iraq. In the public sector,

procurement systems with clear qualification terms and competitive bidding will enhance the quality and increase the number of bids. Establishing commercial laws that foster predictability will make doing business in Iraq desirable, routine, and profitable.

The second key to a strong commercial rule of law regime is transparency.

Each party to a business transaction needs to be able to know the rules and understand its responsibilities, obligations, and roles. The public laws and regulations that apply need to be accessible and established through open processes, and applied even-handedly. And, in the domain of private law, potential lenders expect potential borrowers to adhere to international standards of transparency. This means disclosure of financial data such as budgets, expenditures, balance sheets and debt obligations to permit due diligence. It also means establishing a Sovereign Credit Rating and similar risk indicators by respected third parties to enable the effective evaluation of investments.

The final critical element of a successful commercial rule of law regime is financial security. Companies looking to do business in Iraq and investors looking to provide financing want their investments to be protected. Legal protections such as political risk insurance, expropriation prohibitions and sovereign guarantees mitigate lending risks and reduce financing costs. Streamlined regulations for the registration of collateral, transfer of title, and recovery upon default ensure businesses can efficiently secure their agreements. Enabling Iraqi, US, and world businesses to provide greater assurance of the security of an investment allows business to flourish.

A predictable, transparent, and secure legal regime for trade and investment can be established by the integration of international best practices into Iraq's commercial law code and commercial practices. For example, Iraq should renew its efforts to join the World Trade Organization and adopt WTO-consistent legislation on customs, intellectual property, and procurement. Adoption of WTO standards would foster a business environment where international lenders feel more comfortable extending credit to Iraqi companies. Moreover, it will signal to business leaders around the world that Iraq is serious about taking its place in the world economy and is open for business.

Today and tomorrow, you will hear from the experts who will discuss how predictability, transparency, and security can be established through a number of legal and financial strategies. We will hear, as we have heard from Minister Al-Allawi this morning, what steps Iraq is taking to expand these mechanisms.

This morning you will hear about fundamental concerns like credit ratings, risk mitigation, the use of collateral and project sizing. This afternoon you will hear how the adoption of internationally-accepted best practices could allow Iraq to leverage lending capacity of export credit agencies. You will also learn how better access to letters of credit will allow Iraq to increase the flows of imports and how the use of asset-backed financing will make it easier for Iraq to undertake large equipment purchases.

Tomorrow, the conference will focus on the unique financing challenges posed by infrastructure projects. You will learn how public institutions can partner with private

companies to finance and develop critical infrastructure projects. You will also learn how the use of payment guarantees, particularly in the context of power projects, can help mitigate the risk of using consumer payments to service project debts. Finally, there will be a discussion of how the future sale of commodities can be used to generate the capital needed for large infrastructure projects.

I hope you will enjoy the presentations by the many experts who have joined us in Baghdad today. For the US Department of Commerce and the Commercial Law Development Program, this conference is just a first step in a new collaboration with the Ministry of Finance focused on Iraq's capacity to attract financing. I look forward to additional programs to follow up.

I know that I speak for all of us who have traveled here when I say that it is a privilege to work with those of you from Iraq as you take on the challenge of developing a legal regime that will permit Iraq to access the financing it requires, enhance trade, and build critical infrastructure.

You have an important opportunity to unleash the potential of the Iraqi economy and build the future that Iraq deserves.

It is with hope and the promise of that brighter future that I help open this conference. An Iraqi child growing up today will one day have the idea for a new and innovative product that can change the world. Inshallah, he -- or she -- may be the Bill Gates or Steve Jobs of the future.

The discussions we have today, the training that will continue, and the decisions and policies you make will determine whether that child's idea remains an unfulfilled dream because Iraq's rule of law stifles innovation and investment, or whether his or her idea brings prosperity to millions. That is what is at stake.

Thank you again Minister Al-Issawi for making possible this conference, and for the dedication to a prosperous future for Iraq that it reflects. I look forward to meeting many of you in the next day and thank you for the opportunity to speak with you this morning.