WHAT HAPPENS TO THE OIL: INTERNATIONAL LAW AND THE OCCUPATION OF IRAQ

I
INTRODUCTION

• Need to analyze the mandates of international law as it applies to petroleum in regard to any possible occupation of Iraq

II
IRAQ’S OIL

• 112 billion barrels of reserves and 2.5 million barrels per day--one of the world’s premier petroleum producing regions

III
THE LAW OF LAND WARFARE

• History
• Commenced in the U.S. Civil War with the Lieber Code
• 1907 Hague Convention
• 1929 and 1946 Geneva Conventions
• Codification into LLW in 1954
• Widely deemed customary law

IV
DUTIES OF THE BELLIGERENT OCCUPANT

• To restore order, provide food, medical care and education to residents of occupied territory
• To avoid pillaging, unnecessary damage to private property

V
RIGHTS OF THE BELLIGERENT OCCUPANT

• To exercise limited sovereignty on temporary basis
• To “regulate commercial intercourse”

• To control property to prevent its use by hostile powers

• To take possession of cash funds and all movable property of the enemy state which may be used for military purposes

• To requisition private property and services upon payment or giving of a receipt

• To use as an “administrator and usufructuary” public building and real estate

• To work existing mines and produce existing oil wells and use the proceeds for the purposes of the occupation

• To pay for the occupation—not the war—with reasonable levies and with the proceeds of the enemy states’ immovable property, including petroleum production

VI

ISRAEL’S OCCUPATION OF THE SINAI AS AN EXAMPLE

• Drilling of new wells deemed unlawful by US State Department

• Exploration for new fields in the West Bank and Offshore - unlawful

• Use of petroleum and petroleum proceeds for purposes other than costs of occupation unlawful

• Production of existing Egyptian wells for use in the occupation lawful

• Dispute among scholars: Cummings and Claggett versus the broad permissive approach of Gerson

VII

OBLIGATIONS OF THE BELLIGERENT OCCUPANT TOWARD PRIVATE PROPERTY

• A complicating factor in Iraq’s petroleum fields

• Issue of the undetermined or claimed rights of foreign contractors, joint venturers and concessionaires

• Issue of rights of foreign contractor and service companies
Risk of international tensions resulting from treatment of national oil companies within Iraq or from damages to foreign-owned petroleum property and equipment

VIII
COOPERATION BY THE IRAQI NATIONAL OIL COMPANY

Right to requisition services granted by LLW

Difficulty of forced servitude and prolonged use of troops or foreign contractors

Essentiality of cooperation

IX
INTERNATIONAL LAW REQUIRES AN OCCUPATION PERIOD OF SUFFICIENT LENGTH TO FULLY RESTORE ORDER

Hasty departure followed by disorder would violate duty as belligerent occupant

X
OIL FIELDS CAN BE SEIZED TO PREVENT ENVIRONMENTAL DAMAGE

Example of Kuwaiti action of Iraq

XI
CONTROWNG THE OIL FIELDS TO PREVENT TERRORISM, FACTIONALISM AND WARLORDISM

Rebel factions and tribal warlords must be denied access to the petroleum funding possible from uncontrolled access to the oil fields

Issue of role of U.N. “Food for Oil”

World opinion may favor continued role for U.N.

XII
THE SIGNIFICANCE OF “OPERATING AUTHORITY”

Who is to control the selection of suppliers, consultants and contractors?

Who is to control sale process, i.e., price and purchasers?
• Who is to make operational decisions (techniques for rehabilitation, allocation of funds to infrastructure needs, new wells, U.S. rehabilitation of all wells)?

• Coordination with foreign interest owners

IX
OPEC AND THE PRODUCTION LEVEL QUESTION

• Will OPEC membership be maintained?

• What production level will be sought?

• Possible Persian Gulf instability and Russian hostility to a high production scenario

IX
CONCLUSION: NEED FOR AN EARLY PRONOUNCEMENT OF COMPLIANCE WITH INTERNATIONAL LAW

• Pre-invasion offer to INOC personnel of continued fair treatment and employment

• Pre-invasion liaison with foreign petroleum interests to assure fair treatment and minimal damage to assets

• Assembly of knowledgeable military/civilian staff to administer petroleum matters in early months
  Establishment of tribunal for resolution of issues and claims

• Do not underestimate significance of petroleum issues in reestablishing order