

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 building⁴ 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 CONTROLLING 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