

Bush grants permanent legal immunity to US corporations looting Iraqi oil

Rick Kelly
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An extraordinary Presidential Executive Order, signed into law by President Bush on May 22 but kept out of the pages of the US media, further underscores the real motivations behind the illegal US-led invasion and occupation of Iraq.

Ostensibly drawn up in order to protect Iraq's oil wealth, Executive Order (EO) 13303, "Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq Has an Interest", provides unlimited authority for US corporations to loot Iraqi oil and grants them permanent immunity from any legal actions over the consequences.

EO 13303 begins with a declaration that the possibility of future legal claims on Iraq's oil wealth constitutes "an unusual and extraordinary threat to the national security and foreign policy of the United States." It goes on to state that "any ... judicial process is prohibited, and shall be deemed null and void" with regard to the Development Fund for Iraq, as well as for any commercial operation conducted by US corporations involved in the Iraqi oil industry.

Section 1(b) of the EO eliminates all judicial process for "all Iraqi petroleum and petroleum products, and interests therein, and proceeds, obligations or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof, and interests therein, in which any foreign country or a national thereof has any interest, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons."

Condemning it as a "blank check for corporate anarchy", Tom Devine, legal director for the non-profit legal firm, the Government Accountability Project (GAP), issued a damning assessment of Bush's EO on July 18. "In terms of legal liability," Divine's report

began, "the Executive Order cancels the concept of corporate accountability and abandons the rule of law."

Devine noted that section 1(b) of the EO protects "all corporate activities with roots or any connection to Iraqi oil [and] covers everything from extraction through transportation, advertising, manufacture, customer service, corporate records and payment of taxes. It covers compliance with contractual obligations involving Iraqi oil that industry enters with the US government in post-war Iraq. The scope can be further expanded to virtually all oil-related commerce, by blending Iraqi oil with domestic supplies for any given commercial transaction."

The EO means that American oil companies operating in Iraq are now completely immune from legal accountability. If they carry out environmental destruction, oil spills or labour rights violations, no one affected will have any legal recourse. In addition, the EO eliminates the potential for any future Iraqi government to sue US oil companies for compensation and damages. The GAP report describes it as "a licence for corporations to loot Iraq and its citizens".

The EO exempts US oil companies operating in Iraq not only from international law, but from American civil and criminal liability as well. It renders any commercial activity within the US involving Iraqi oil exempt from judicial accountability. Devine notes that this legal exemption covers everything from laws concerning workplace safety, minimum wage requirements, environmental protection and consumer fraud.

Also overridden are the normal accountability requirements relating to US corporations in receipt of government contracts. US administrative law enforces a raft of conditions for the awarding and administration of US government contracts in areas such as

competitive bidding, labour conditions and open accounting standards. None of these will now be enforceable for contracts involving Iraqi oil, giving the Bush administration a free hand in its relations with companies such as Halliburton and Bechtel. As Devine noted, “the EO is a blank check for pork barrel spending”.

The unprecedented character of Executive Order 13303 has been recognised by a number of legal commentators. Evan Berlack, counsel with Baker Botts, a Washington D.C. law firm, told the *Oil Daily* that it was “an unusual executive order. I can’t recall any comparable action being taken”.

Jamin Raskin, Professor of Law at American University, Washington commented to the *Los Angeles Times* that the EO’s language reminded him of an earlier executive order establishing military tribunals to try “enemy combatants”. The latest EO, Raskin said, “seems to destroy the prospect of any enforcement of civil or criminal liability. People are saying of Iraq, ‘it’s a jungle out there’, and this order kind of makes that the law”.

The Bush administration has dismissed all criticism of EO 13303, claiming that the immunity granted to US corporations is a necessary step towards the safeguarding of Iraq’s natural resources for the Iraqi people. A Treasury Department spokesman declared that the EO “does not protect the companies’ money. It protects the Iraqi people’s money”.

That the Bush administration can claim to be motivated by humanitarian concerns is due in no small part to the complicity of the United Nations. EO 13303 was signed by President Bush only hours after the UN Security Council adopted Resolution 1483. Approved without a single dissenting vote, Resolution 1483 provided de facto legitimisation for the US invasion and occupation of Iraq.

The UN resolution rubber-stamped the sweeping powers of the US-controlled Coalition Provisional Authority in Baghdad, and authorised the creation of the so-called Development Fund for Iraq. Controlled by Paul Bremer, the Development Fund is empowered to collect all revenue generated under the now defunct oil-for-food program, as well as from all future sales of Iraqi oil and gas.

In a critical section, Resolution 1483 stipulates that, until the end of 2007, all revenue from Iraqi

“petroleum, petroleum products, and natural gas” will be immune from legal claim, “until title passes to the initial purchaser”. The US insisted on this section as a necessary step to protect Iraq’s resources from claims by Baghdad’s creditors, including Russia and France, for an estimated \$US60 billion in outstanding debts. In another passage, the UN resolution encouraged member states to “take any steps that may be necessary under their respective domestic legal systems to assure this [legal] protection”.

The Bush administration seized upon this provision to justify EO 13303 as a domestic translation of the Security Council resolution. But the legal immunity granted under the EO goes way beyond that mandated by the UN, which is restricted to the point of initial sale of Iraqi oil and does not apply to ecological accidents, such as oil spills. As the GAP report explained, the “EO violates UN Security Council Resolution 1483, rather than implements it”.

There is some evidence that UN Security Council members are concerned about the sweeping character of Bush’s EO. On August 8, the *Oil Daily* quoted an unnamed “Western diplomat” who objected to the EO’s blanket protection of US oil companies operating in Iraq. “There can be no confusion about the interpretation, as a country has the obligation to follow the UN resolution,” the diplomat said.

Nevertheless neither the UN itself, nor a single UN member state, including those who nominally opposed the war against Iraq, has raised any public objections to EO 13303. No doubt all of them are all keenly aware that any such protest would inevitably highlight their own role in granting the US unfettered control over Iraq.



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