



**\*\*\*\* URGENT \*\*\***

**Open Letter  
To all members of the United Nations Security Council  
On Ending Corporate Immunity in Iraq**

June 4, 2004

Dear Ambassador,

The draft United States/United Kingdom Security Council resolution on Iraq contains language that immunizes existing oil contractors from legal proceedings, but does not extend these immunities to contractors that would be hired by the new Iraqi government. **The Council should strike language that creates such competitive inequities and a lawless environment for corporate operations in Iraq's oil sector.**

United States President George W. Bush far overreached a provision in United Nations Resolution 1483<sup>i</sup>, adopted May 22, 2003, that was designed to protect Iraqi oil revenues for humanitarian purposes. The same day that the resolution was adopted, Bush, by executive fiat, established a separate set of rules that places U.S. corporations above the law for any activities "related to" Iraqi oil, either in Iraq or domestically.

The broad reach encompassed in Bush's Executive Order 13303<sup>ii</sup> could be institutionalized further through the draft resolution on Iraq now being circulated.

**Executive Order 13303 violates Resolution 1483**

In order to encourage the flow of oil revenues into the Development Fund for Iraq, paragraph 22 of the UN Security Council's Resolution 1483 declares Iraqi oil and gas revenues to be immune from legal proceedings until Dec. 31, 2007.

Bush's Executive Order 13303 grants Iraqi oil a lifetime exemption, provided that US companies are involved in the oil's production, transport, or distribution. This applies to Iraqi oil products that are "in the United States, hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons." Under U.S. law, corporations are "persons." Executive Order 13303 means that if oil companies establish separate corporations to handle Iraqi oil, they may be able to escape liability entirely.

EO 13303 violates paragraph 22 of Security Council Resolution 1483, rather than implements it. **The order overrides all boundaries required by the Security Council:**

- 1483 protects “petroleum, petroleum products, and natural gas”; 13303 protects “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,” a much larger category of protected items.
- 1483 provides protection from legal proceedings only until December 31, 2007; 13303 is unlimited in time and provides immunity indefinitely into the future.
- 1483 only provides protection until “title passes to the initial purchaser” (in other words, until the oil is sold for the first time); 13303 grants immunity at any time for any transaction “arising from or related to the sale or marketing,” which means the oil and oil assets are protected from sale to sale to sale.
- 1483 protects oil profits and “obligations” from lawsuits and judgments to the extent the UN is protected from suit, except in the case of an ecological accident, including an oil spill; 13303 protects a larger category of items without reservation.<sup>iii</sup>

The impact of EO 13303 is to provide extraordinarily broad protection to U.S. oil companies working in Iraq. Under the terms of EO 13303, an oil company employee injured in Iraq cannot get redress; the owner of an oil tanker that spills en route is immunized from suit; and local Iraqis who suffer human rights abuses associated with oil production are unable to access U.S. courts.

In the midst of the investigations of prisoner abuse scandals, the Bush administration’s continued actions to protect private oil contractors from human rights – and all other – litigation are remarkable. Bush renewed EO 13303 on May 20, 2004.<sup>iv</sup>

#### **Draft resolution maintains selective immunity**

These efforts to protect U.S. corporations extend into the draft U.S./U.K resolution on Iraq. Paragraph 22 of the revised draft resolution circulating within the Security Council on June 2, 2004:

“decides that the provisions of paragraph 22 of resolution 1483 (2003) shall continue to apply, except that the privileges and immunities provided in that paragraph shall not apply with respect to any final judgment arising out of a contractual obligation entered into by Iraq after 30 June 2004.”<sup>v</sup>

The combination of paragraph 22 of resolution 1483 (which establishes limited immunities related to Iraqi oil), Executive Order 13303 (which extends a greater category of immunities to U.S. corporations), and the new draft resolution on Iraq (which maintains pre-existing immunities to companies already in Iraq), **favors U.S. corporate interests.**

This language proposed by the United States would extend into the indefinite future existing immunities for contracts made by the Coalition Provisional Authority prior to June 30. Only those obligations entered into *by the new Iraqi government* after June 30

will not be exempt from litigation. Presumably, contractors hired by the United States or other non-Iraqi institutions after June 30 will still be immunized.

## Recommendation

Therefore, we urge that the above-referenced draft paragraph 22 be stricken and replaced with new language, as follows:

"decides that the privileges and immunities provided in paragraph 22 of resolution 1483 (2003) shall no longer apply. National governments are to render any existing legislation or orders granting these and/or broader immunities to their persons and corporations null and void."

Such language places the new Iraqi government on equal legal footing with the country's current occupiers. It also ensures foreign corporations now involved in Iraq's oil sector, and those that enter this sector in the future, are no longer immunized from the consequences of their actions.

Yours Sincerely,



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## ENDNOTES

<sup>i</sup> United Nations Security Council, "Resolution 1483 (2003): The situation between Iraq and Kuwait Security Council," May 22, 2003. Full text available at: [http://www.un.org/Docs/sc/unsc\\_resolutions03.html](http://www.un.org/Docs/sc/unsc_resolutions03.html)

<sup>ii</sup> President George W. Bush, "Executive Order 13303: Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq Has an Interest," May 22, 2003. Full text available at: [http://www.archives.gov/federal\\_register/executive\\_orders/2003.html#13303](http://www.archives.gov/federal_register/executive_orders/2003.html#13303)

<sup>iii</sup> For further legal analysis of Executive Order 13303, see:

- "EarthRights International examines EO 13303 for possible illegality," EarthRights International, September 22, 2003, available at: <http://www.earthrights.org/news/eo13303memo.shtml>
- Tom Devine, "Assessment of Executive Order (EO) 13303," Government Accountability Project, memorandum to the Sustainable Energy and Economy Network, July 18, 2003, available at: <http://www.seen.org/GAPEO.pdf>
- and, Anthony J. Sebok and Claire R. Kelly, "Does a Presidential Iraq Executive Order Take Away Victims' Right To Sue?," *Findlaw's Writ*, November 3, 2003, available at: [http://writ.news.findlaw.com/commentary/20031103\\_kelly.html](http://writ.news.findlaw.com/commentary/20031103_kelly.html)

<sup>iv</sup> Bush, "Message to the Congress of the United States," May 20, 2004, available at: <http://www.whitehouse.gov/news/releases/2004/05/20040520-15.html>

<sup>v</sup> "Text: Iraq draft resolution," published by *BBC News*, June 2, 2004, at: [http://news.bbc.co.uk/2/hi/middle\\_east/3768769.stm](http://news.bbc.co.uk/2/hi/middle_east/3768769.stm)