BOOK REVIEWS

PERMANENT SOVEREIGNTY OVER OIL RESOURCES: A Study of Middle East Oil Concessions and Legal Change. By Muhamid A. Mughraby, Beirut: The Middle East Research and Publishing Center. 1966. xviii and 233 pp. $7.00.

Canadians should not be indifferent to a study of the problems besetting Middle East governments in their efforts to assert greater sovereignty over oil resources. In Canada, too, it is questioned whether the high percentage of foreign control of oil resources is in the national interest. Walter Gordon, the former Minister of Finance, advocates strong remedial measures to restore sovereignty over the petroleum industry in his book, *A Choice for Canada.*

Dr. Mughraby begins his study with a review of the events and debates leading to the United Nations General Assembly Resolution No. 1803 (xvii) of December 14, 1962, concerning Permanent Sovereignty over Natural Resources. He regards this resolution as firmly establishing the principle of sovereignty over resources not only as governing sovereign states in their relations with each other, but also as guiding them in their relations with private international corporations. In the context of the oil industry in the Middle East, with its "small club of concessionaires", the major international oil companies, Dr. Mughraby concludes that:

> Thus the target of permanent sovereignty is the private international corporation The end is not to provide for the right of nationalization, since this right is clearly recognized in international law, but to enable the underdeveloped countries to seek equitable corrections of the old regimes of co-operation between the state and the foreign corporation in a way that will ensure the optimum employment of their natural resources for the strengthening of their undeveloped economies.[1]

The oil concessionary system, described by Dr. Mughraby, is an outcome of the retarded development of the political, economic and legal systems of the Middle East countries. In the preface to the book, he identifies the especial legal aspect of the problem of sovereignty in the following way:

> On the municipal level, most legal systems of oil producing countries have failed to develop effective bodies of rules to control and regulate relations with oil concessionaires, thereby leaving the oil concession document itself as the controlling regime.

It is implicit, of course, in this statement that the oil concession document, with its monopoly provisions, long duration and minimal government regulation of producing and accounting, is an unsatisfactory regime from the point of view of the Middle East countries.

Direct nationalization is not the way to end the regime. Dr. Mughraby cites the Iranian nationalization in 1951 as a failure, and concludes that nationalization is not a workable solution for many years to come because the national governments have not either the capital, the know-how or the marketing outlets essential for disposing of the oil produced.

1 At 39.

The book then analyses two approaches which Dr. Mughraby hopes and expects will lead to correction of the abuses of the concessionary system and to re-establishment of permanent sovereignty over oil resources. They involve the emergence of controls from within the state through the joint venture arrangements which are paramount in all new concession agreements, and control from without through the collective bargaining machinery of such an agency as the Organization of the Petroleum Exporting Countries (O.P.E.C.).

Those who are directly involved in the petroleum industry may find the most fruitful part of Dr. Mughraby's study to be his detailed analysis of the new joint venture agreements and of the constitution and role of O.P.E.C. Canadian oilmen will recognize in the joint venture agreements made in Iran and U.A.R. provisions similar to those found in typical Canadian farmout and joint operating agreements, with the state corporation in the role of farmer contributing the oil lands, and the foreign oil company in the roles of farmee and operator providing the risk capital for exploration and the know-how for operations. The only difference might be that, should oil be found, an operating corporation jointly owned by the parties would take over development. Apart from its effect of changing the distribution of profits from the established 50-50% formula to a 25-75% formula in favour of the Middle East country, the new agreement is seen as making the foreign oil company "a 'partner' on equal footing with the national state-controlled enterprise, and not an 'exploiter' as the major oil companies are thought to be".[2]

The role of O.P.E.C. is likened to collective bargaining in labour-management relations. "Only if the major oil-exporting countries unite their efforts in seeking changes in the prevailing concessionary system will they be able to pool enough bargaining power to match that of the major companies".[3] A justification in international law for these efforts to change existing concession agreements is to be found in the emerging law of permanent sovereignty over oil resources drawing on three new sources, in addition to the traditional sources of international law, namely, the general principles of comparative law, equity, and resolutions of the United Nations and other international organizations reflecting world consensus. These require that the oil concessions be analysed in the light of the concept of mutual equivalence of contractual advantages and of the doctrine of economic compulsion, both of which must reveal the inequity of the old concessions and justify their re-negotiation. The new terms should be based on a fair return on investment, and should reflect the fact that the old concessionaires have already amortised their investments and have no more exploration risks to take. O.P.E.C.'s role is to bargain for these new terms, and Dr. Mughraby describes the negotiations between O.P.E.C. and the major oil companies in the "royalty expensing case" as indicating a measure of the achievements which may be expected of O.P.E.C. in the future.

There is an implicit conflict between the role of O.P.E.C. and the function of the joint venture agreements. O.P.E.C. signifies a confrontation between united producing countries against hostile foreign oil companies, whereas the joint venture scheme depends on mutual

2 At 65.
3 At 153.

co-operation between the country and the oil company. Dr. Mughraby resolves this conflict by describing these two approaches to the re-establishment of permanent sovereignty over oil resources as complementary and not overlapping, in that the joint venture model is to be applied to new concessions, whereas O.P.E.C. is to be restricted to revision of the old concessions.

Fortunately for Canadians, the issue of sovereignty over oil resources lies in a different plane. Foreign investors in the Canadian oil industry are received on like terms to domestic investors, and there is sufficient competition to invest so that the problems of monopoly and exclusivity do not arise, nor have concessions been granted of inordinate duration. Canada's supply and demand of oil are reasonably in balance so that market regulation is within its power. Oil revenues are important, particularly to provincial governments, but they do not comprise the main part of national income. But a more significant difference is that the legal regime in Canada provides the mechanism for the periodic revision of oil agreements that Dr. Mughraby advocates as the pattern for which O.P.E.C. must strive.[4] In Alberta, for example, Crown leases are granted subject to such rates of royalties as may from time to time be prescribed, and 10-year revisions are the rule. Other terms of the lease are subject to changes in accordance with legislative amendments and regulations which may from time to time be promulgated.[5] The reviewer concludes that for Canadians the problem of sovereignty over oil resources is one, not of legal power to change, but of will to change the pattern of foreign ownership and control; he believes that there is no national consensus which would promote increased domestic ownership of the oil industry at the expense of slower development of oil resources, and Canadians have few illusions about the likelihood and effectiveness of retaliation against nationalistic economic measures.

In the Middle East, the issue is not only one of economic power, for the pattern of the past has been for the foreign oil companies to claim sanctity of contract for the oil concessions backed up by the threat of diplomatic intervention. Dr. Mughraby presents a formidable juridical basis in international law for the revision of the oil concessions. The extent to which O.P.E.C. can muster economic strength to accomplish this change remains to be seen. Possibly, as Dr. Mughraby suggests, the outcome will be international oil agreements between agencies of exporting countries and importing countries such as O.P.E.C. and the European Common Market, providing for periodic fixation of prices and production quotas, as well as long-term supply contracts, with the oil companies restricted to the purely commercial aspects of the industry. For the Canadian oil industry, these developments with their consequences for world oil markets and prices must be of the greatest significance.

—A. R. THOWPSON*

4 At 198.

5 This capacity of the government to revise the terms of oil agreements is the subject of an article by this reviewer entitled *Sovereignty over Resources—A Study in Canadian Petroleum Legislation* (to be published in the next issue of the Valparaiso Law Journal).

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