

Ministry of Oil of the Republic of Iraq v. 1,032,212 Barrels of Crude Oil Aboard the United Kalavrvta: Is the UNITED KALAVRVTA’s Oil Cargo a Slippery Slope for U.S. Courts?

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I. OVERVIEW

From July 2014 until at least late January 2015, the UNITED KALAVRVTA sat outside U.S. territorial waters off the coast of Galveston, Texas, carrying 1,031,312 net barrels of crude oil, valued at over \$100 million.¹ The Kurdistan regional government extracted this oil from its province and transported it through the Iraq-Turkey Pipeline, where the Turkish pipeline operator, against the Iraqi government’s instructions, loaded the cargo onto the UNITED KALAVRVTA near Ceyhan.²

When it was evident that the UNITED KALAVRVTA was approaching the coast of Galveston, Iraq filed a complaint in admiralty, requesting that the court seize the cargo on the basis that it had been converted by Kurdistan.³ Iraq claims that under the Iraqi Constitution,

1. Ministry of Oil of the Republic of Iraq v. 1,032,212 Barrels of Crude Oil Aboard United Kalavrvta (*Ministry III*), No. CIV.A. G-14-249, 2015 WL 851920, at *1 (S.D. Tex. Feb. 26, 2015).

2. Ministry of Oil of the Republic of Iraq v. 1,032,212 Barrels of Crude Oil Aboard United Kalavrvta (*Ministry I*), No. CIV.A. G-14-249, 2014 WL 4215357, at *2 (S.D. Tex. Aug. 25, 2014).

3. *Id.* at *2.

the oil in the Kurdish region belongs to Iraq.⁴ Iraq's constitution states, "[O]il and gas are owned by all the people of Iraq in all the regions and governorates."⁵ Iraq proceeded by stating that under Iraqi law, before any oil from the state may be exported, it must be authorized by the State Oil Marketing Organization.⁶ Magistrate Judge Johnson issued an order to seize the cargo.⁷ Then Iraq brought to the court's attention that the vessel remained in international waters, more than sixty miles off the coast.⁸ Kurdistan filed a motion to vacate Magistrate Johnson's seizure order.⁹ Iraq responded to the motion, claiming that the maritime tort of conversion occurred on navigable waters. The United States District Court for the Southern District of Texas *held* that it was not premature to hear Kurdistan's motion to vacate and that the court did not have admiralty jurisdiction to sustain Iraq's order for seizure; however, the court granted Iraq's request to amend its complaint for the purposes of obtaining jurisdiction by invoking the Foreign Sovereign Immunities Act. *Ministry of Oil of the Republic of Iraq v. 1,032,212 Barrels of Crude Oil Aboard United Kalavrvta (Ministry I)*, No. G-14-249, 2014 WL 4215357, at *7 (S.D. Tex. Aug. 25, 2014).

II. BACKGROUND

A. Admiralty Jurisdiction

Article III, section 2, clause 1, of the United States Constitution states, "The judicial Power shall extend to . . . all Cases of admiralty and

4. *Id.*

5. *Id.* at *1. There is debate between the Kurdish Regional Government (KRG) and the Iraqi government regarding the Iraqi federal constitution's treatment of oil in the Kurdish region. The KRG claims that under the federal constitution, it may run its own oil industry. Much of the focus of the drafting committee in writing Kurdistan's regional constitution was on the control over oil exploration and production because of the resource's lucrative nature and Iraqi Kurdistan's need to support its local economy (agriculture and oil are the primary sectors in the region). Michael J. Kelly, Comment, *The Kurdish Regional Constitution Within the Framework of the Iraqi Federal Constitution: A Struggle for Sovereignty, Oil, Ethnic Identity, and the Prospects for a Reverse Supremacy Clause*, 114 PENN ST. L. REV. 707, 749 (2010).

6. *Ministry I*, 2014 WL 4215357, at *2.

7. *Id.* Seizing the cargo would have policy implications regarding the United States' foreign policy in the region. Christian Sinclair, *Oil for Sovereignty? America, Iraq, and Kurdistan*, SISMEC (Sept. 8, 2014), <http://www.sismec.org/2014/09/08/oil-for-sovereignty-america-iraq-and-kurdistan/>.

8. *Ministry I*, 2014 WL 4215357, at *2. Iraq then amended its complaint pleading the issue of ownership should be heard in the Iraqi Supreme Court. Kurdistan has not accepted service of process or responded to summons to appear. Additionally, Iraq amended its complaint in the United States District Court for the Southern District of Texas, asserting three causes of action under Rules B, C, and D of the supplemental admiralty rules. *Id.* at *3.

9. *Id.* In response, Iraq alleged a maritime tort occurred when Kurdistan loaded the oil onto the UNITED KALAVRVTA on navigable waters in the Mediterranean Sea. *Id.*

maritime Jurisdiction.”¹⁰ The United States Congress affirmed the federal courts’ jurisdiction over admiralty claims by enacting 28 U.S.C. § 1333(1) that grants “federal district courts ‘original jurisdiction . . . of . . . [a]ny civil case of admiralty or maritime jurisdiction.’”¹¹ The ultimate justification for admiralty jurisdiction relies on the principle of the protection of maritime commerce.¹²

The traditional test for admiralty jurisdiction was solely a locality test.¹³ The appropriate question to ask when determining admiralty jurisdiction was, “[D]id the tort occur on navigable waters?”¹⁴ In 1948, Congress enacted the Extension of Admiralty Jurisdiction Act, which expanded admiralty jurisdiction to include “‘all cases’ where the injury was caused by a ship or other vessel on navigable water, even if such injury occurred on land.”¹⁵ This expansion of admiralty jurisdiction was clarified by a series of United States Supreme Court cases.¹⁶ The Court’s decisions in these cases emphasized the ultimate justification for admiralty jurisdiction and the protection of maritime commerce. They also established a two-part test that is at present used to determine admiralty jurisdiction.¹⁷

In *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, the Supreme Court first delineated this two-part test to determine whether admiralty jurisdiction exists.¹⁸ In order to establish federal admiralty jurisdiction, (1) location and (2) connection with maritime activity must be satisfied.¹⁹ The location test is satisfied if either (1) the tort occurred on navigable water or (2) the injury suffered on land was caused by a vessel on navigable water.²⁰ The connection to maritime activity is established if (1) the incident potentially disrupts maritime commerce and (2) the “‘general character’ of the ‘activity giving rise to the incident’ shows a ‘*substantial relationship* to traditional maritime activity.”²¹ A brief overview of the development of the test for admiralty jurisdiction is

10. U.S. CONST. art. III, § 2, cl. 1.

11. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 531 (1995).

12. Cheryl A. Morris, *Maritime Seizures: Not Just Ships-Maritime Seizures of Cargo, Freight, Fuel, and Other Tangible and Intangible Items*, 19 U.S.F. MAR. L.J. 69, 75 (2007).

13. *Grubart*, 513 U.S. at 531-32.

14. *Id.* at 552.

15. *Id.*

16. *See* *Executive Jet Aviation, Inc. v. City of Cleveland, Ohio*, 409 U.S. 249 (1972); *Foremost Ins. Co. v. Richardson*, 457 U.S. 668 (1982); *Sisson v. Ruby*, 497 U.S. 358 (1990).

17. *Grubart*, 513 U.S. at 534.

18. *Id.*

19. *Id.* at 533-34.

20. *Id.*

21. *Id.*

necessary to understand why the court decided that it did not have jurisdiction over the claim.

B. Satisfying the First Test for Admiralty Jurisdiction: Location

The location test is satisfied if either (1) the tort occurred on navigable water or (2) the injury suffered on land was caused by a vessel on navigable water.²² “In determining whether the tort occurred on navigable water, [the] court looks to where the alleged wrong took effect rather than to the locus of the allegedly tortious conduct.”²³ The second way to satisfy the location test is applied strictly “to injury or damage done by the vessel.”²⁴

C. When Conversion Is a Factor in Determining Location

The appropriate question in determining whether the location test is satisfied in a conversion claim is whether conversion occurred on navigable waters.²⁵ Conversion is the same in relation to admiralty claims as it is elsewhere; it is “a wrongful exercise of dominion or control over a chattel, which seriously interferes with the owner’s rights in the chattel.”²⁶

D. Satisfying the Second Test for Admiralty Jurisdiction: Substantial Relationship to Maritime Commerce

In *Executive Jet Aviation, Inc. v. City of Cleveland, Ohio*, the Court noted the shortcomings of the traditional locality test to determine federal admiralty jurisdiction and expanded the test for admiralty jurisdiction to include that the wrong must bear a significant relationship to traditional maritime activities.²⁷ The Court noted that there are “perverse” situations that demonstrate the inadequacies of the locality

22. *Id.*

23. *Egorov v. Terriberly*, 183 F.3d 453, 456 (5th Cir. 1999). In determining locality, it may be necessary to determine where the act of conversion took place. “Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.” RESTATEMENT (SECOND) OF TORTS § 222A (1965). Generally, conversion accrues with the unlawful taking. However, if the taking is not unlawful, then conversion accrues when the person in possession has unequivocally exercised acts of domination over the property inconsistent with the claims of the owner or the person entitled to possession. *Rogers v. Ricane Enters., Inc.*, 930 S.W.2d 157, 166 (Tex. App. 1996).

24. *Egorov*, 183 F.3d at 456.

25. *Evergreen Marine Corp. v. Six Consignments of Frozen Scallops*, 4 F.3d 90, 94 (1st Cir. 1993).

26. *Id.*

27. *Executive Jet Aviation, Inc. v. City of Cleveland, Ohio*, 409 U.S. 249, 268 (1972).

test for admiralty jurisdiction, such as where a court found admiralty jurisdiction did not exist when an employee was killed by a cargo-laden sling while standing on the pier. In that case, the “occurrence which gave rise to the cause of action” occurred on land.²⁸ The Court expanded the test for admiralty jurisdiction to include a nexus requirement, noting that Congress, in enacting the Extension of Admiralty Jurisdiction, and scholars have suggested the need to expand admiralty jurisdiction to include damage done on land caused by a vessel on navigable waters.²⁹

The ruling in *Executive Jet* specifically applied in the context of aviation.³⁰ Some lower courts applied the two-part rule to invoke federal admiralty jurisdiction outside the context of aviation, and it was not until *Foremost Insurance Co. v. Richardson* in 1982 that the Supreme Court clearly established that the two-part test was not confined to cases involving aviation.³¹ In *Foremost*, the Court also established that a traditional maritime activity is commerce and that the appropriate question to ask in determining whether the wrong bears a significant relationship to maritime commerce is, “[W]ould there be a *substantial effect* on maritime commerce?”³²

The Court again applied the two-prong test to invoke federal admiralty jurisdiction in *Sisson v. Ruby*. There the Court considered whether admiralty jurisdiction could be invoked where a dryer on a yacht caught fire.³³ In determining whether the incident had a potential effect on maritime commerce, the Court reasoned that it must look to the *general* activity and the *potential* effects on maritime commerce.³⁴ There, the general activity was the fire on a vessel, and while the general activity did not impact maritime commerce, the Court determined that it has the *potential* to disrupt commercial maritime activity. Therefore, the Court found that it was proper to invoke federal admiralty jurisdiction.³⁵ This decision emphasized that the inquiry into the effect on commerce is a question of potential effect rather than actual effect.

E. Attachment

The use of the process of maritime attachment long predates 1844 when the Supreme Court promulgated the first formal federal admiralty

28. *Id.* at 255 (quoting *Smith & Son v. Taylor*, 276 U.S. 179, 182 (1928)).

29. *Id.* at 260.

30. *Id.* at 272.

31. *Foremost Ins. Co. v. Richardson*, 457 U.S. 668, 668, 677 (1982).

32. *Id.* at 675 (emphasis added).

33. *Sisson v. Ruby*, 497 U.S. 358, 360 (1990).

34. *Id.* at 362.

35. *Id.* at 363.

rules.³⁶ Its origin can be traced back to the remotest history of the civil and the common law.³⁷ The reasons for this are evident, considering that the “perpetrators of maritime injury are likely to be peripatetic.”³⁸ In order to address injuries on the seas, it makes sense to allow for attachment, and because the constitutional power of the federal courts is separately derived in admiralty, suits under admiralty jurisdiction involve separate policies to some extent.³⁹

The Supplemental Rules for Certain Admiralty and Maritime Claims were established in 1966.⁴⁰ The advisory committee noted:

[T]hese Rules are not to be construed as limiting or impairing the traditional power of a district court, exercising the admiralty and maritime jurisdiction, to adapt its procedures and its remedies in the individual case, consistently with these rules, to secure the just, speedy, and inexpensive determination of every action.⁴¹

The advisory committee note highlights the committee’s intent to allow district courts to retain some flexibility when applying the Supplemental Rules.

Rule E(4)(f) is the relevant rule to determine whether a motion to vacate is premature.⁴² “Rule E(4)(f) is designed to satisfy the constitutional requirement of due process by guaranteeing to the [defendant] a prompt post-seizure hearing at which he can attack the complaint, the arrest, the security demanded, or any other alleged deficiency in the proceedings.”⁴³ Rule E(4)(f) states, “[W]henever property is arrested or attached, any person claiming an interest in it shall be entitled to a prompt hearing”⁴⁴ The language of this rule suggests that a motion to vacate is appropriate only after the property is arrested or attached. Additionally, courts have come to different conclusions regarding the order of operations of the hearing to contest attachment and the seizure of the property. In *Steel Co. v. Citizens for a Better Environment*, the Supreme Court found that a court must examine subject matter jurisdiction at any time before final judgment.⁴⁵ In a

36. Morris, *supra* note 12, at 70.

37. *Atkins v. Fibre Disintegrating Co.*, 85 U.S. 272, 303 (1873).

38. *Amoco Overseas Oil Co. v. Compagnie Nationale Algerienne de Navigation*, 605 F.2d 648, 655, 1979 AMC 1829, 1838 (2d Cir. 1979).

39. U.S. CONST. art. III, § 2; *Parcel Tankers, Inc. v. Formosa Plastics Corp.*, 569 F. Supp. 1459, 1462 (S.D. Tex. 1983).

40. Morris, *supra* note 12, at 70.

41. FED. R. CIV. P. SUPP. A advisory committee’s note.

42. FED. R. CIV. P. SUPP. E(4)(f).

43. *Winter Storm Shipping, Ltd. v. TPI*, 310 F.3d 263, 272 (2d Cir. 2002).

44. FED. R. CIV. P. SUPP. E(4)(f).

45. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 88-90 (1998).

concurring opinion, Justice Breyers stated that generally the question of jurisdiction should be addressed prior to considering the merits of the claim; however, “The Constitution does not impose a rigid judicial ‘order of operations,’ when doing so would cause serious practical problems.”⁴⁶

III. THE COURT’S DECISION

In the noted case, the district court found it was not premature for it to hear arguments prior to seizing the cargo of the UNITED KALAVRVTA.⁴⁷ The court also held it did not have admiralty jurisdiction to sustain the order of seizure because the location test for admiralty jurisdiction was not met.⁴⁸ The court determined that it was not premature to hear Kurdistan’s motion to vacate prior to an arrest of cargo because the court’s duty is to independently review the case before it, and it may consider subject matter jurisdiction any time prior to making a final judgment.⁴⁹ The court then determined it did not have admiralty jurisdiction because the tort that was committed, the extraction and exportation of oil in Kurdistan, was an act of conversion that did not occur on navigable waters and thus the location test for admiralty jurisdiction was not met.⁵⁰

First, the court determined it was not premature for it to hear vacatur argument before an arrest of the UNITED KALAVRVTA’s cargo.⁵¹ The court rejected a literal interpretation of Rule (E)(4)(f), which suggests a motion to vacate is only sensible after an arrest or attachment.⁵² In rejecting a literal interpretation of this rule, the court rejected the United States Court of Appeals for the Second Circuit’s interpretation in *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.* that the defendant may contest attachment only after it occurs.⁵³ The district court reasoned a literal interpretation would fly in the face of the court’s role as an independent review body and supported its reasoning with the Supreme Court’s finding in *Steel Co.* that the court must consider subject matter jurisdiction at any time before final judgment.⁵⁴

46. *Id.* at 111.

47. *Ministry I*, No. CIV.A. G-14-249, 2014 WL 4215357, at *3 (S.D. Tex. Aug. 25, 2014).

48. *Id.* at *6.

49. *Id.* at *2.

50. *Id.* at *6.

51. *Id.* at *3.

52. *Id.*

53. *Id.*

54. *Id.*

Second, the court examined whether it had admiralty jurisdiction to sustain the order of seizure.⁵⁵ The Constitution grants federal jurisdiction over admiralty and maritime cases because of its close connection with interstate and foreign commerce.⁵⁶ In order to invoke federal admiralty jurisdiction, the “party seeking [the] federal forum . . . ‘must satisfy the conditions both [1] of location and [2] of connection with maritime activity.’”⁵⁷ The first prong of locality is satisfied either if the tort occurred on navigable waters or if an injury on land was caused by a vessel on navigable waters.⁵⁸ Kurdistan argued that admiralty jurisdiction cannot be invoked because the alleged wrong occurred when the Kurds extracted the oil and exported it to Turkey, whereas Iraq argues that conversion occurred when the Kurds exercised control over the oil and loaded it onto the UNITED KALAVRVTA.⁵⁹

The court determined that conversion took place when the Kurds extracted the oil from the ground and exported the oil to Turkey.⁶⁰ It is well accepted that conversion takes place “when, wrongfully and without authorization, one assumes and exercises control and dominion over the personal property of another.”⁶¹ While conversion applies only to personal property (oil and gas in the earth are part of the realty), once oil is extracted from the earth it becomes “personal property subject to conversion.”⁶² The court emphasized the point that once the oil was extracted from the earth and exported to Turkey, conversion accrues.⁶³

The court further noted that Iraq’s own pleading negates its argument that an act of conversion did not occur until the crude oil was loaded onto the vessel.⁶⁴ Iraq pled that Kurdistan violated Iraqi law by exporting the oil without the participation of the State Oil Marketing Organization.⁶⁵ The jurisprudence Iraq relies on in support of its argument also works against its argument.⁶⁶ Iraq cites *Adams v. Unione Mediterranea di Sicurta* in support of its argument.⁶⁷ In *Adams*, the

55. *Id.* at *4.

56. *Id.*

57. *Id.* (quoting *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995) (alterations in original)).

58. *Id.*

59. *Id.*

60. *Id.* at *5-6.

61. *Id.* at *4.

62. *Id.*

63. *Id.* at *5.

64. *Id.*

65. *Id.* According to Iraqi law, the State Oil Marketing Organization has exclusive authority to export Iraqi oil. *Id.*

66. *Id.* at *4-5.

67. *Id.* at *5.

defendant was a salvor, with limited possessory rights, who transferred possession of steel to a company who then used the steel.⁶⁸ The court found that when the defendant sold the metal to the company, he committed an act of conversion because he had limited rights over the material.⁶⁹ The court further reasoned that when the company used the steel, this was not a second claim of conversion, but rather this act emphasized the company's negligence.⁷⁰ In the noted case, the court reviews the facts of *Adams* to show that the similar fact pattern supports its reasoning: when Kurdistan loaded the crude oil onto the vessel, this was not a new act of conversion. As Iraq alleges, it "merely strengthen[ed] Iraq's claim of a terrestrial tort."⁷¹

Lastly, the court examined Iraq's alternative argument to satisfy the location test.⁷² Iraq's argument relied heavily on the United States Court of Appeals for the Eleventh Circuit's decision in *Doe v. Celebrity Cruises, Inc.*⁷³ The court reviewed the facts in *Doe* to demonstrate how that case is distinguishable from the noted case. There, a cruise ship was docked at a scheduled stop when the plaintiff was raped on land by an employee of the cruise line.⁷⁴ In *Doe*, the Eleventh Circuit found that the location test for admiralty jurisdiction was satisfied, reasoning that the tort occurred near the docked ship in an area frequented by passengers and crewmembers, and had the victim not previously interacted with the employee onboard, it is unlikely the rape would have occurred.⁷⁵ The Eleventh Circuit expressly qualified that *Doe* represents a broad interpretation of the location test.⁷⁶ The court reasoned that the fact patterns are too dissimilar; in the noted case, conversion was removed from maritime activity, and the court found there was no reason to adopt this broad interpretation of the location test.⁷⁷ Because the location test for admiralty jurisdiction was not satisfied, the court did not proceed to consider the nexus prong of determining admiralty jurisdiction. The district court granted Kurdistan's motion to vacate and gave the Iraqi government ten days to amend and refile the case.⁷⁸

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at *6.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.* at *7.

IV. ANALYSIS

The noted case has a narrow holding yet it has broad foreign policy implications. The court's reasoning to hear the Kurdistan regional government's motion to vacate is not particularly strong; there is little case law on the subject of hearing a vacatur motion in admiralty prior to seizing the vessel's cargo. The court's reasoning in deciding to hear the motion is largely based on the role of the court system to independently review cases and the Supreme Court's decision in *Steel Co.*, in which the Court decided to consider subject matter jurisdiction prior to a final ruling.⁷⁹ The majority of the court's opinion addresses the question of admiralty jurisdiction.⁸⁰ On that issue (admiralty jurisdiction), the court's reasoning is based on rules well developed and established in jurisprudence.⁸¹

The court's holding that it did not have admiralty jurisdiction is consistent with prior jurisprudence.⁸² While the more recent Supreme Court decisions focused on the second prong of the test for admiralty jurisdiction (the nexus test), this case is illustrative of the importance of the locality test.⁸³ The court did not need to examine the nexus test because the locality test was not satisfied, and therefore the court did not have admiralty jurisdiction to consider the case.

In the noted case, the court expressly stated that its holding "is quite narrow: Kurdistan's unauthorized export of oil over land—and later overseas—may violate Iraqi law, but it does not violate U.S. maritime law."⁸⁴ This statement was important because it emphasized the court's commitment not to address broader foreign policy issues. In March 1970, the Iraqi government granted the Kurds autonomy and agreed to a peace accord with the Kurdish parties.⁸⁵ In 2006, one year after the adoption of the current Iraqi constitution, Iraqi Kurdistan signed the Kurdistan Regional Government Unification Agreement, which resolved internal disputes in the region and enabled Kurdistan to act in a unified manner and operate much like a sovereign state.⁸⁶ Articles 112 through

79. *Id.* at *3.

80. *Id.* at *4.

81. *Id.*

82. *See* Executive Jet Aviation, Inc. v. City of Cleveland, Ohio, 409 U.S. 249 (1972); *Foremost Ins. Co. v. Richardson*, 457 U.S. 668 (1982); *Sisson v. Ruby*, 497 U.S. 358 (1990).

83. *Ministry I*, 2014 WL 4215357, at *4-6.

84. *Id.* at *7.

85. *Iraqi Kurdistan Profile*, BBC NEWS (Aug. 12, 2014), <http://www.bbc.com/news/world-middle-east-15467672>.

86. Matthew Packard, Comment, *Earning Independence in Iraqi Kurdistan*, 27 TEMP. INT'L & COMP. L.J. 177, 181 (2013).

114 of the current Iraqi constitution provide that the Kurdish Regional Government (KRG) and the Iraqi federal government must share power, “including oil and gas development.”⁸⁷ The current Iraqi constitution treats oil extracted prior to 2005 differently from oil extracted after 2005.⁸⁸ Oil extracted prior to 2005 is administered by the Iraqi federal government, whereas oil extracted after 2005 requires “federal and regional governments to ‘together formulate the necessary strategic policies’ to develop the country’s oil and gas, and [the constitution] suggests that local governments, like the Kurds, have final authority over extracting oil in their areas.”⁸⁹ The two largest sectors of Iraqi Kurdistan’s economy are agriculture and oil; because of the significant profit that could be earned through exporting 1,031,312 net barrels of crude oil on the UNITED KALAVRVTA, the noted case could impact the potential future of Iraqi Kurdistan’s economy and the Kurdish quest for independence.⁹⁰ The ongoing legal battle indicates the difficulty Kurdistan will face in offloading crude oil in the U.S. market as well as the difficulties it will likely face in selling other oil in the international market.⁹¹ Nat Kern, an oil industry analyst, stated, “‘When the United States says don’t buy Kurdish oil, no one’s going to buy it.’”⁹²

Had the court determined, as Magistrate Judge Johnson was inclined, to seize the cargo, this might have given credence to the derecognition of the KRG.⁹³ This would have been in line with the United States’ commitment to Iraqi unity.⁹⁴ While recognition is not a legal requirement of statehood, lack of recognition impairs a state from engaging in the international community and hinders the political and economic future of the emerging state.⁹⁵

The court may have been fortunate that there was significant support for its finding that it did not have admiralty jurisdiction. Instead of making a decision that may have implications for the relations between the United States, Iraq, and Kurdistan, the noted case’s limited holding confirms the established two-part test to determine whether

87. *Id.* at 185.

88. Dexter Filkins, *The Fight of Their Lives: The White House Wants the Kurds To Help Save Iraq from ISIS. The Kurds May Be More Interested in Breaking Away*, NEW YORKER (Sept. 29, 2014), <http://www.newyorker.com/magazine/2014/09/29/fight-lives>.

89. *Id.*

90. Kelly, *supra* note 5, at 749.

91. Filkins, *supra* note 88.

92. *Id.*

93. *Id.*

94. Sinclair, *supra* note 7.

95. Philip S. Hadji, Comment, *The Case for Kurdish Statehood in Iraq*, 41 CASE W. RES. J. INT’L L. 513, 536 (2009).

federal admiralty jurisdiction exists.⁹⁶ It emphasizes the quintessential question in fulfilling the locality prong of the test, “[D]id the tort occur on navigable waters?”⁹⁷

If Kurdistan is able to sell the 100 million dollars’ worth of crude oil in the international market without the approval of Iraq, this would give credence to recognizing Kurdistan as an independent state.⁹⁸ Considering the Presidential change in Iraq and the threat of the Islamic state, it is likely that if the oil reaches the U.S. market, there will be a difference in policy implications.⁹⁹

V. CONCLUSION

Since the original time of writing this Note, two subsequent decisions have been rendered by the United States District Court for the Southern District of Texas.¹⁰⁰ On January 7, 2015, the court granted the KRG’s motion to dismiss due to lack of admiralty jurisdiction.¹⁰¹ The court reaffirmed its prior conclusions that the act of conversion accrued on land, thereby failing the location test for admiralty jurisdiction.¹⁰² The court further explored whether admiralty jurisdiction existed in regard to a possible U.S. buyer and found that it did not because the act of conversion—the buyer contracting to purchase oil—did not have a substantial connection to admiralty.¹⁰³

The court did, however, determine that it has jurisdiction over the claim on the basis of the commercial activities exception to the Foreign Sovereign Immunities Act.¹⁰⁴ On February 26, 2015, the court granted

96. Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 546 (1995).

97. *Id.* at 552.

98. Filkins, *supra* note 88. It would also have implications for future Kurdistan-Turkey relations. As in the noted in case, it is likely that future oil would be transported through the pipeline into Turkey. Turkey is Kurdistan’s only friendly neighbor that has a pipeline into the Kurdish region. *Id.*

99. As of December 2, 2014, an oil-sharing arrangement was reached between Iraq and the KRG where Kurds will release 300,000 barrels of oil per day from Kiruk and 250,000 barrels per day from Kurdistan through Turkey. In return, Baghdad will release 17% of its oil revenues to the Kurdish region (as previously agreed upon) and provide \$1,000,000,000 to fight the Islamic State. There has yet to be an agreement reached regarding the KRG’s right to independently export and sell oil. *Iraq Government Reaches Deal with Kurds on Oil Exports*, BBC NEWS (Dec. 2, 2014), <http://www.bbc.com/news/world-middle-east-30289955>.

100. Ministry of Oil of the Republic of Iraq v. 1,032,212 Barrels of Crude Oil Aboard United Kalavrvta (*Ministry II*), No. CIV.A. G-14-249, 2015 WL 93900, at *1 (S.D. Tex. Jan. 7, 2015); *Ministry III*, No. CIV.A. G-14-249, 2015 WL 851920 (S.D. Tex. Feb. 26, 2015).

101. *Ministry II*, 2015 WL 93900, at *10.

102. *Id.*

103. *Id.* at *11.

104. *Id.* at *10.

the KRG's motion to stay the case pending an appeal to the Fifth Circuit on the court's denial of the KRG's sovereign immunity defense.¹⁰⁵

In the noted case, Judge Miller's decision to grant Kurdistan's motion to vacate strictly adheres to the well-established test of admiralty jurisdiction.¹⁰⁶ The decision allowed the U.S. court to remain uninvolved in Iraq-Kurdistan relations. In his concluding statements, Judge Miller addressed the greater political implications this decision could have. Judge Miller noted the importance of the debate over the oil on board the UNITED KALAVRVTA and stated, "[W]hen such debates involve overseas governments, issues of foreign law and relations are invariably complex. Today's holding, however, is quite narrow: Kurdistan's unauthorized export of oil over land—and later overseas—may violate Iraqi law, but it does not violate U.S. maritime law."¹⁰⁷

Subsequent decisions by the court qualify the judicial role to interpreting foreign constitutions and statutes within the parameters of the established U.S. foreign policy. In its January 7th decision, the court determined that it may hear the merits of the case because in doing so it can work within the parameters established by the Executive.¹⁰⁸ Judge Miller stated, "No matter how desirable it may be to avoid deciding a case like this one, a court 'cannot shirk this responsibility merely because [its] decision may have significant political overtones.'"¹⁰⁹

Given the economic importance of 1,031,312 net barrels of oil on board the UNITED KALAVRVTA and the political implications of what happens to this cargo, it is likely that the U.S. courts will continue to play a role in this debate.¹¹⁰ For now, there are reports that the UNITED KALAVRVTA offloaded its oil in the Port of Ashdod in Israel.¹¹¹ The KRG sent a letter to Judge Miller on January 20, 2015, indicating that the KRG will soon dispatch more oil to the United States.¹¹² The request of Iraq to have the United States seize the oil shipment has slipped away

105. *Ministry III*, 2015 WL 851920, at *4.

106. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995).

107. *Ministry I*, No. G-14-249, 2014 WL 4215357, at *7 (S.D. Tex. Aug. 25, 2014).

108. *Ministry II*, 2015 WL 93900, at *13.

109. *Id.* at *7 (quoting *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986)).

110. *Ministry I*, 2014 WL 4215357, at *7.

111. *Kurdistan's Texas Oil Tanker Unloads in Israel*, TRADE ARABIA, <http://www.trade-windsnews.com/tankers/355309/kalavryta-offloads> (last visited Mar. 17, 2015).

112. *Ministry III*, No. CIV.A. G-14-249, 2015 WL 93900, at *1 n.1.

for now, but it is likely that this issue of crude oil shipments from the KRG to the United States will appear again.

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* © 2015 Suzanne S. Kimble. J.D. candidate 2016, Tulane University Law School; M.S. 2010, London School of Economics; B.A. 2009, University of South Carolina. To my family, my friends, and all of the Journal members, I am truly grateful to have you in my life and for the many ways in which you inspire me. Thank you for your support and encouragement. Again, thank you all so very much.