SOPAC-OIC HYDROCARBON LEGISLATION AND POLICY WORKSHOP
Port Vila, Vanuatu
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SOPAC Secretariat

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SOPAC Miscellaneous Report 140

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OPENING SPEECH

by
The Honourable Prime Minister
of the Republic of Vanuatu

Honourable Minister, Distinguished Delegates of the Pacific Nations, Distinguished Guests and Experts of the South Pacific Geoscience Commission and the Oceans Institute of Canada, Chairman, Vice Chairman and Members of the SOPAC Governing Council, Deputy Director of SOPAC, Senior Government officials, Ladies and Gentlemen.

For those of you who have come from the islands of the Pacific and from the Pacific edge, Welcome to Vanuatu, and to this International Workshop on Hydrocarbon Legislation and Policy organised and arranged by the South Pacific Applied Geoscience Commission and the Oceans Institute of Canada. Welcome also to this attractive venue on the tiny island of Iririki where one of our principal hotels has been developed.

Really we like islands, we have had five thousand years to get used to them, and over 80 islands are homes for our people, where we still live, for the most part, from our gardens and from the produce of the reef, in a conservative traditional way that most of us would like to see preserved and every effort must be made to keep the traditional values of our lives.

Nature, principally as the interaction of geology, climate and time, has given much to Vanuatu and sister nations of the Pacific, and much of that gift is seen as the green islands, the blue sea and the produce which supports us, Nature, however may also have given us something more than we at first thought, and that something we could certainly not have used until modern times.

Modern technology and recent scientific studies indicate that one day soon we may discover oil. There is no doubt that sometime in the future, perhaps some years hence, perhaps sooner, drilling for oil will take place in our islands. I was impressed by the recently published booklet on the petroleum potential of Vanuatu which widely indicated to non-scientific and commercial interest alike that we had prospects. Thank you gentlemen and ladies here today who contributed to that booklet, and to the scientific work which has taken place out at sea, and in the laboratory, and has recognised the oil possibility.

In order to protect all our interests, and also to obtain the best benefits from any oil which we have it is now essential that we are both ready to receive and control any developments of that resource particularly in this region of islands, where oil is perhaps more likely found offshore than on land.
This gathering is at a good time when Vanuatu, for one, is drafting oil legislation. The growing awareness of the possibility of oil in the Pacific has, I know, prompted geoscientists, the legal profession and administrators to come together at this workshop to exchange ideas and experiences on the necessary frameworks and procedures to be developed before governments and oil companies can embark on oil exploration.

Vanuatu welcomes you ladies and gentlemen, and wishes you well in your professional discussions, such that our developmental interests are eventually well protected and enhanced by good resource management and that profound consideration is given to preservation of the unique environment of the Pacific and its traditional customs.

It is my great pleasure to declare this Workshop on Hydrocarbon Legislation and Policy in SOPAC member countries, open.

Thank you Mr Chairman.

CONCLUSIONS OF THE WORKSHOP

The member country representatives at the Workshop agreed to base the Workshop concluding statements on the submission from the Fiji delegation. As agreed, these have been amended to incorporate suggestions from other member country representatives. In addition, the member country representatives agreed that individual country statements should be appended to the report of the Workshop.

General

1. The Workshop wishes to acknowledge the generous sponsorship of the Canadian International Development Agency (CIDA), and the support given by SOPAC, the Oceans Institute of Canada (OIC), the United Nations Centre on Transnational Corporations (UNCTC) and the Commonwealth Fund for Technical Co-operation, which has enabled representatives from member states to converge at Port Vila, Vanuatu and to address important issues relating to hydrocarbon legislation and policy.

2. The knowledge acquired through the consultants and resource persons is invaluable and the frank exchange of views among the participants is most encouraging. The Workshop wishes to thank the consultants for bringing to the Workshop their wealth of knowledge, skills and experience which enriched their presentations.
3. The Workshop is excited about Papua New Guinea’s new status as an oil producer and welcomes the prospect that the other member states will stand to gain from sharing Papua New Guinea’s first hand experience with the great hope that in the future they will join the exclusive club of oil or gas producers.

4. It is important that representatives of member states meet from time to time to review important issues relating to hydrocarbon legislation and policy and to discuss other important issues relating to exploration and exploitation of the world’s scarce resources. Knowledge gained in this workshop could be enhanced by future like workshops. As such, CIDA and SOPAC are encouraged and requested to support regular meetings of senior policy advisors of member states in the area of natural resources to assist the member countries in coping efficiently and effectively with the changes associated with the oil and gas Industry.

5. The Workshop congratulates SOPAC and OIC for the organisation of the Workshop and expresses the hope that other workshops will be organised to discuss relevant issues and to review and update member states on the position of the oil industry and more importantly to explore ways and means to equip governments on how best to deal with it.

6. Participants are grateful to Vanuatu and its delegation for hosting the Workshop. It is an experience to be remembered.

Session 1-Background
1. The Workshop is appreciative of the present state of developments of oil exploration in member states and the hydrocarbon potential in the region. As regards the latter it is noted that while Papua New Guinea has the best geology onshore for the discovery and commercial exploitation of hydrocarbon, the other member states are not as fortunate although Fiji and Tonga have good potential in offshore areas.

2. The Workshop noted that there is a shortage of data for the Solomon Islands and Vanuatu for the oil industry to consider and this is hindering the proper evaluation of potential oil and gas reserves.

3. On the overview of the economics of the world petroleum industry, indications are that the world is now in a much better position as far as pricing and increase in
reserves are concerned, and the overall effect is that it will be necessary for member
states other than Papua New Guinea to make necessary adjustments in their
legislations and policies in order to attract oil companies to invest in them.

Session 2 - Mineral Rights Ownership and Jurisdiction
1. The Workshop recognises the importance of establishing ownership rights of offshore
   hydrocarbon and appreciates the complex and sometimes lengthy negotiations,
   conciliations and in some cases arbitration to settle boundary disputes.

2. The Workshop is also mindful of the complex issues relating to land ownership and
   land rights and particularly customary rights to land and the fisheries and that a
   proper appreciation and understanding of these issues and rights will assist in
   negotiations prior to exploration for, and exploitation of hydrocarbons and the
   resolution of disputes while development projects are continuing.

Session 3 - Fiscal Regime
1. The Workshop recognises that host countries and oil companies have their own
   various objectives and foremost of these are to receive the maximum take and to
   maximise profits respectively.

2. The Workshop also recognises that there are numerous fiscal systems which can be
   used, including royalty/tax, production sharing and service contract, and is aware of
   some of the principal systems being used throughout the world.

   The Workshop notes that all systems employ elements of more than one fiscal
   system, however, a simple one is recommended for member states.

3. The Workshop notes that the amount of government take is related to the geology of
   the country and that the better the geology the higher the government take. It is also
   recognised that Papua New Guinea possesses good geology. Of the other member
   countries, Tonga and Fiji have the most attractive geology, whilst the Solomon
   Islands and Vanuatu is less promising. The level of government take therefore
   proposed for other member states should be commensurate with that of other frontier
   regions. At present this should be about 50%.

4. Royalty and tax are recognised as the most reliable form of government take and it is
noted that if this form is used, then it should be a progressive type.

5. The Workshop is aware that it is important that member states are aware of the concept of economic rent particularly in re-location to the government's share of revenue (government take) so that maximum financial benefit is realised to the government.

6. That it is necessary to harmonise the various components of a state fiscal regime through progressive fiscal policies in order to ensure that both the government and the oil company are satisfied.

**Session 4 - Licensing and Permitting**

1. The Workshop recognises that there are various legal systems of conferring a license or granting an exploration permit and there are different terms and conditions which can be included depending on the facts and circumstances and particularly the geology of a country. That there are several systems in use and that, in economic terms, the type of legal system does not really matter as the economic result can be similar.

2. The Workshop is reminded that careful consideration be given to the drawing up of the terms and conditions of an Agreement and the policing and enforcement of such conditions are vital if government is to enjoy the maximum benefit. It will therefore be necessary for all government departments involved with the oil industry to cooperate, consult and work together. Further, it will be necessary to train and develop expertise in all disciplines concerned with the industry to enable government to properly deal with the industry.

**Session 5 - Resource Management**

1. The Workshop supports and is thankful to SOPAC for its proposed strategy to set up Petroleum Data Packages for each member country with hydrocarbon potential containing all data which could be made available to oil companies. The Workshop also notes the importance of promotion to attract oil industry investments.

2. The Workshop realises the importance of collecting all data generated during exploration and further notes that all data belongs to the State. Bonds demanded should be sufficient to also safeguard retrieval of data which oil companies fail to deliver.
3. It is recognised that National Oil Companies, if set up should be run efficiently and not be a drain on the national purse.

4. The Workshop is mindful of the importance of strategically providing for training during exploration and development of petroleum by oil companies. It is also recognised that there are different types of training which should be taken advantage of. If a nationalisation agreement is negotiated, training and transfer of technology should be addressed together and carefully,

5. On settlement of disputes, the Workshop notes that negotiating an amicable solution out of court is preferred. Arbitration clauses should be line with international rules and standards.

6. The Workshop recognises that in any development project the environment will be affected and as such, member states are encouraged to put in place policies to protect and restore the environment. This will mean that compensation has to be paid and a portion of the profit be set aside to be utilised when environmental damages occur.

7. Pipeline ownership is important and it is vital that tariffs are properly determined and regulations are in place as a control. The interest of customary right owners should be addressed and reasonable compensation should be paid to them after thorough investigation to establish their entitlement to compensation has been carried out.

8. In any industry, safety is vital. Proper measures should be in place to address all issues, including compensation, concerning safety. It is noted that considerable delays can occur in determining compensation and liability and there is a need to streamline matters.

Session 6 - Negotiating with Oil Companies

The Workshop notes that the key to successful negotiation is information and preparation.
MEMBER COUNTRY CONCLUSIONS AND RECOMMENDATIONS

New Caledonia

1. The Workshop appreciates the presentations of the SOPAC and OIC representatives. It notes that speeches have covered technical points of view and that they have inspected all facets of problems posed by hydrocarbon legislation and policy. This has given the tools to the SOPAC members for successful discussion with oil companies and to find original solutions for each member.

2. Particular attention must be provided for training that will assure a well developed and harmonious introduction of oil activity.

Papua New Guinea

The various issues relating to or affecting petroleum exploration and development as they relate to the legislation and policy were discussed and are noted. A fair amount of discussion on how the issues relate to the SOPAC member countries took place. The major issues worth noting are:-

Background
Active promotion of a country’s petroleum potential within the framework of a workable and stable set of legislation and policies result in exploration by international oil companies. Papua New Guinea has gone through this exercise and as a result commercial production of oil and gas is now taking place.

Member countries with good potential for hydrocarbon, such as Fiji, Tonga, Vanuatu and the Solomon Islands need to consider means of attracting exploration companies either by active promotion or by making necessary legislative and policy adjustment.

Mineral Rights Ownership and Jurisdiction
Following presentations by Fiji and Papua New Guinea on customary rights, mineral rights ownership, it is noted that proper recognition will have to be given to the rights of traditional landowners in petroleum and other resources development.

Fiscal Regime
Various fiscal systems are available. The Workshop noted that these could be described as regressive, neutral and progressive in nature. Although the Workshop did not recommend any particular one, member countries were encouraged to re-examine their existing systems and
make necessary adjustments to ensure an appropriate level of take goes to the State.

Royalty is a good potential source of revenue for the State but the rate payable should be reviewed and adjusted where appropriate, such that it is progressive and hence becomes an effective revenue source.

Papua New Guinea's fiscal system is built around the Resources Rent Tax concept. The Workshop strongly advocated the need to review it, in light of the fact that the country is now an oil producer and exporter, and hence is no longer a frontier country. It was suggested that few changes to the "rules of the game" may not necessarily have an adverse impact on exploration and development of future prospect.

Licensing and Permitting

Papua New Guinea has experience on most of the issues discussed and can therefore share its experience with other member countries.

Resource Management

Issues relating to resources management is another area Papua New Guinea has substantial experience in and hence can share it with member countries.

Solomon Islands

1. So far the areas covered are beneficial especially the presentation on the fiscal regime. Papua New Guinea presentations have been informative in regard to their experience. It would appear that oil companies are diverting their attention to the Soviet Union and Europe. What are the implications for us Pacific Islands?

2. Hydrocarbon legislation must take into consideration the right of customary land owners. If the present setup (i.e. the payment of royalties does not solve the problem) is ineffective, what are the other alternatives? Should customary land owners be given the opportunity to have direct negotiations with Oil Companies?

Tonga

"The Workshop is being organised at the request of SOPAC Member Countries and the SOPAC Governing Council. A final narrative report and recommendations will be produced and adopted during the workshop. This report will be presented to the SOPAC Annual Session to be held in Tonga in September" (First Circular on the Hydrocarbon Policy Workshop from the Technical Secretariat).
The Tongan Representatives were asked for their concluding recommendations regarding the key recommendations identified by the Workshop and to identify future training needs for developing hydrocarbon legislation and policy for SOPAC member countries.

The National Representative of Tonga to the Governing Council, Vice-chairman and Workshop Participant, Mr Sione Latuila Tongilava recommends the following to the Governing Council at the 21st Annual Session in Tonga in September:-

**Narrative and Recommendations**

1. In recognising the principles of Mineral Rights Ownership and Jurisdiction the Representative of Tonga recommends and supports the consensus of opinions expressed by most SOPAC member states with hydrocarbons potentials that Petroleum Exploration Legislations should be based on the existing Lands Tenure Systems as practised by SOPAC member states.

2. In further recognising the Hydrocarbon Potential of the SOPAC region, the Representative of Tonga does not support the discouraging news expressed by one speaker that more acreages in other regions have better potentials than this region. The oil industry is based on optimism not pessimism. It took Papua New Guinea 80 years and more than 100 dry wells before they struck oil (quote home on the range).

3. The Representative of Tonga welcomes, recognises and recommends the encouraging talk from the same speaker Mr Pedro van Meurs who discussed the disadvantages during exploration phase in the so-called ‘frontier’ situations in the SOPAC Region that small oil companies do not provide the best opportunities of exploring for oil particularly in prime target areas. Mr Van Meurs recommended attracting major oil companies for negotiation in the open market.

4. Well-known South Pacific economist, Mr Savenaca Siwatibau, director of EPOC warned the participants of the negative economic consequences of dependence on foreign aid which increases deficits thus reducing balance of payments. He recommends diversifying the national economics into other economic activities and Foreign exchange sources including SOPAC Hydrocarbons Exploration Programme.

5. The Representative of Tonga, Sione L Tongilava draws the attention of the Workshop to the origin of SOPAC in 1970 was due to the discovery of oil seepages in Tonga in
In discussing secrecy and Confidentiality the Representative of Tonga warned SOPAC members that the oil game is very competitive. If oil is discovered by an oil company in commercial quantity the host country will be contented and feel grateful to the oil company. But the host country should bear in mind that it will immediately become an 'Economic Target Area' to the eyes of the Oil World. They will come to you and certainly the geologic data of the newly discovered area will become very important indeed. The eyes of oil companies will focus on the geology of the rest of the unleased areas of the host country. And again the negotiation platform of the host country will be similar to a victorious general who has won a decisive victory in a very difficult battle to win a commanding position, say a hill for example.

The victorious general when standing on top of the hill must remember that it was the weapons of the oil company which fired the winning shot. But other scud or patriot missiles of other oil companies could win the battle for the next hill.

The present trend in the Hydrocarbon Exploration in Tonga is that we have abundant data only in one area. That leaves us in a fairly difficult situation when we have two or three oil companies wanting to take up concession area for exploration.

We firmly request the assistance of SOPAC in promoting two other areas that have shown structures in seismic profiles that could have potential, but the available data is inadequate and therefore warrants a closer grid MCS on for verification. This will ease the problem that we are now having.

We strongly support the promotion of the Hydrocarbon Exploration in Tonga at international major conferences as a Priority A with assistance from the Technical Secretariat.

With regard to Petroleum Agreements the Consultant from United Nations Centre for Transnational Corporations (UNCTC), Mr Pedro van Meurs strongly recommends to
SOPAC Member States the financial advantages of fixing royalty arrangements at the Point of Measurements and not at the Wellheads.

11. Also on Petroleum Agreements, Dr Ken Havard formerly of the SOPAC Secretariat emphasises to the Workshop that the interests of SOPAC members will be better served by quicker relinquishment of oil data acquired in licensed areas.

12. In discussing the Environmental Impact Assessment (EIA) the Representative of Tonga strongly recommends to the Workshop that all Project Programme Activities of the Technical Secretariat of SOPAC must have an EIA component simply because, all member countries of SOPAC do have now, an EIA component in their Environmental Law.

Vanuatu
The knowledge of petroleum in SOPAC member countries can be classified into three categories:

(1) Papua New Guinea with known hydrocarbon reserves;
(2) Fiji and Tonga with abundant hydrocarbon data including seismics and drilling;
(3) Solomon Islands and Vanuatu with limited data which is insufficient to determine drill targets.

Given the above scenario and keeping in mind the expensive nature of oil business it is imperative that a regional approach is necessary to:

(i) promote the oil potential of Fiji and Tonga to the oil industry, and;
(ii) to gather data, especially closely spaced MCS in Vanuatu and Solomons to upgrade the information that can be promoted to the oil industry.
APPENDIX 1

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AGENDA

Monday
08:00  Registration continues

08:30  Opening: The Honourable Prime Minister of the Republic of Vanuatu

08:45  Introduction to Workshop: SOPAC, OIC and Vanuatu representative

SESSION 1: BACKGROUND
09:15  Present state of national oil exploration and objectives for the Workshop. National representatives

10:15  Break

10:45  Hydrocarbon Potential of the region/Jon Rodd

11:15  Evaluation of potential oil and gas reserves/Bill Barclay

11:45  Overview of economics of the world petroleum industry/Pedro van Meurs

12:15  Lunch

13:45  Developing legislation and policies for hydrocarbon exploration/Rowland Harrison

SESSION 2: MINERAL RIGHTS OWNERSHIP AND JURISDICTION
14:15  Offshore hydrocarbon rights and boundary issues/Ian Townsend-Gault

14:45  Break

15:15  Customary rights and offshore development/PNG and Fiji speakers

15:45  National Perspectives: various country papers and general discussion/ National representatives

16:45  Recommendations for the day

17:00  Close

Tuesday

SESSION 3: FISCAL REGIME
09:00  The Concept of Economic Rent/Pedro van Meurs

09:30  Overview of government share of revenue: Government objectives in choosing revenue mechanisms/Savenaca Siwatibau

10:00  Break
10:30 Government share of revenue - royalty, carried interest, windfall profits and production sharing/Pedro van Meurs

11:00 Tax, accounting, foreign exchange and inflation/Pedro van Meurs

11:45 Lunch

13:15 Fiscal policy in PNG/PNG speaker

14:00 Individual group discussions on special problems in the region

15:30 Break

16:00 Revenue distribution/Pedro van Meurs

16:30 Recommendations for the day

17:00 Close

Wednesday

SESSION 4 LICENSING AND PERMITTING

09:00 Legal methods used in petroleum licensing/Ian Townsend-Gault

10:00 Break

10:30 Comparison of terms in member countries/Ken Havard

11:00 Regional overview of existing terms/Ken Havard

11:30 General discussion and or individual group discussion

12:15 Lunch

13:45 Legal aspects of model petroleum agreements
   Example of model agreement/Ian Townsend-Gault and Rowland Harrison

14:15 Royalty, tax, foreign exchange and accounting/Pedro van Meurs

14:45 Break

15:15 Bonuses fees and rent/Pedro van Meurs

15:45 Safeguarding exploration commitments - security deposits, bonds and bank guarantees/Ian Townsend-Gault/Rowland Harrison

16:15 Work commitments and assignment/Carl Dundas

16:45 Recommendations for the day

17:00 Close
Thursday

LICENSES AND PERMITTING (CONTINUED)
09:00 Assessment of prospective licensees - how does one select the right company?/Rowland Harrison and others

10:00 Break

SESSION 5: RESOURCE MANAGEMENT
10:30 Data management, ownership and promotion/Ken Havard and Jon Rodd
11:00 National oil companies, pros and cons/Ian Townsend-Gault
11:30 General or individual group discussions
12:15 Lunch
13:45 Joint management committees and regulatory bodies/Ian Townsend-Gault
14:15 Training and transfer of technology/Pedro van Meurs
14:45 Break
15:15 Government obligations and infrastructure/Ian Townsend-Gault
15:45 Commercial development/Rowland Harrison
16:15 Settlement of disputes/Ian Townsend-Gault
16:45 Recommendations of the day
17:00 Close

Friday

RESOURCE MANAGEMENT (CONTINUED)
09:00 Environmental Assessment and pollution control, and organisations offering advice/Ian Townsend-Gault

10:15 Break

10:45 Safety regulations/Rowland Harrison
11:15 Pipelines, ownership and disposal of installations/Ian Townsend-Gault
12:00 Lunch

SESSION 6: NEGOTIATING WITH OIL COMPANIES
13:30 Organisations offering advice
   Special closed session on developing negotiating skills - delegates and advisors only/Ian Townsend-Gault/Rowland Harrison and others

15:00 Break

[MR140 - SOPAC Secretariat]
15:15  Recommendations for the day
15:30  Adoption of Final Narrative report including all recommendations
16:00  Close