

REPORT OF THE
REGIONAL TRAINING WORKSHOP ON JOINT VENTURES
AND OTHER COMMERCIAL ARRANGEMENTS IN FISHERIES

(Lima, Peru - 2 - 7 September 1985)

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REPORT OF THE UNCTC/FAO/OLDEPESCA REGIONAL TRAINING WORKSHOP ON JOINT VENTURES
AND OTHER COMMERCIAL AGREEMENTS IN FISHERIES WITH TNCs

2-7 September, 1985, Lima, PERU

I. INTRODUCTION

A training workshop for 20 officials from Latin American and Caribbean countries on Joint Ventures and Other Commercial Agreements in Fisheries, was held from 2 to 7 September 1985, in Lima, Peru. The workshop was organized by OLDEPESCA (Latin American Organization for Fisheries Development) in co-operation with the United Nations Centre on Transnational Corporations (UNCTC) and the Food and Agriculture Organization (FAO).

OLDEPESCA is a newly formed independent organization for Latin American and Caribbean countries on fishery matters which replaced the Action Committee on Sea and Freshwater Products of the Latin American Economic System (CAPMAD/SELA).

UNCTC financed participation of two lecturers and 10 delegates from the Trust Fund. FAO provided two lecturers and most of the documentation.

The workshop was attended by participants from 20 Latin American and Caribbean countries; the list of participants is annexed to this report.

II. OBJECTIVE AND ORGANIZATION OF THE WORKSHOP

The objective of the workshop was to strengthen the capabilities of government officials in negotiating joint ventures and other forms of ~~commercial~~ agreements with TNCs.

The workshop programme provided for lecturers and discussions on the critical policy, economic and technical issues that arise when developing countries seek to exploit their fishery resources to the best advantage of the nation.

The lectures and discussion sessions were led by a group of international experts with practical experience in negotiating fisheries agreements

with TNCs in the developing countries.

General background documents on various topics covered during the lectures, as well as papers prepared earlier by each lecturer on the specific items discussed during individual sessions, were distributed to the participants. A copy of the workshop programme which includes a list of the faculty members and the background document is attached to this report.

III. SUMMARY OF WORKSHOP PRESENTATION

The workshop was inaugurated by the Minister of Fisheries of Peru, Mr. Jose Palomino Roeder. Opening statements were delivered by UNCTC OLDEPESCA, FAO and the Minister of Fisheries.

In his speech Mr. Palomino underlined the problems of developing countries and recounted their disappointments with the benefits they received from foreign fishing and the consequent decision to increase the national effort, a long and arduous task. He expressed the confidence that the workshop assist the participating countries in attaining their objective.

Mr. Christy from FAO expressed special gratitude to Norway for their assistance in funding FAO participation in this workshop and much of their similar work on joint ventures.

The workshop began with an overview of the policy choices available to ~~coastal~~ states for different forms of foreign participation in their fisheries by Mr. Lawrence Christy, FAO. The main choices outlined were exclusion of foreign participation, commercial licensing, joint ventures and other miscellaneous arrangements such as over the side sales.

This was followed by the participants' presentation of national experiences on foreign involvement in fisheries. The delegate from Chile described the unusual approach of Chile in not distinguishing between

national and foreign fishing, but of regulating foreign investment in fishing through foreign investment legislation.

The Colombian representative said that his country did not have a fisheries policy and was only now in process of instituting a National Fishery Development Council.

The delegate from Honduras explained that although Honduras has licensed no foreign vessels, it has joined Eastern Pacific Tuna Agreement providing for joint licenses with Costa Rica, Panama and USA.

The delegates from Mexico described the development of a Mexican foreign fishing policy since the declaration of EEZ (1976). The policy has emphasized the gradual reduction of foreign licences and replacement by expansion of national effort and joint ventures, of which there are currently 16 involving 32 vessels. Reference was also made to disagreements with the US over tuna jurisdiction. Mexican tuna exports have been excluded from the US. One of Mexican ways of dealing with this situation has been to promote a Latin American Regional Tuna Agreement.

Several other countries described their current fishery situation. Jamaica and Cuba particularly expressed interest in regional cooperation.

The following day started with the presentation by Philip Appleyard who described TNCs' role in its broadest context in the development of fisheries as been changing and dynamic.

~~The creating~~ of exclusive economic zones and the significant increase in fuel costs have caused many countries to redefine their fishing strategy and utilization of fishing effort. The inputs of foreign partners vary substantially according to needs and opportunities. Apart from the variation between, say Asian and Eastern Bloc countries, there tends to be a species/activity breakdown (tuna, shrimp, demersal, pelagic, and culture). The foreign partner (sometimes a TNC) can introduce financial strength; management and technical expertise; staffing and recruitment;

technology transfer; markets; equipment procurement; technical back stopping and training.

Mr. Appleyard also spoke about the preparations for joint ventures. He said that there was a need for careful and sensible preparation. The possibility of bad and difficult times requires consideration. Specialized legal advice is essential although some agreements can be complicated. The ingredients for a joint venture are fish resources, human resources, funding, markets, infrastructure, and operational stability. The objective need clear definition and the invitation of the partners require examination. Compatibility is important as is the track record of the participants. Problems can arise because of cultural differences; communication and language; social aims, and ethical variations. A competent feasibility study covering viability; capital arrangements and expenditure; procurement; taxation, duties, training and indigenization is an essential. Subsidiary agreements covering management and marketing aspects need clear definition.

Mr. Hughes described the development of fisheries in the South Pacific in the last 25 years, referring particularly to tuna fishing and the regulation of access to 200 mile zones, the establishment of national fishing fleets, and fish processing. He referred to the 1960s as the period of becoming aware of the value of fish resources; the 1970s as the decade of achieving independence, creating 200 miles zones and the beginning of national fishing industries; and the 1980s as the decade of making legal and economic reality out of these concepts. He described in detail the development of regional solidarity, negotiating with distant-water fishing nations and their tuna fleets, and the relevance of fisheries joint ventures.

Mr. Lipton talked about the nature of TNCs and their tactics and strength. He emphasized the different objectives of TNCs and those of the host country in fisheries joint venture.

In particular, he referred to the problems of transfer pricing and arms length transactions together with the complexities of subsidiary

agreements (management and marketing agreements).

The main point he made was that ownership, control, contributions, sharing of profits and sharing risks were not necessarily related to each other in a joint venture. He gave ample examples from his experience. The necessity of expert advice in negotiating joint ventures was also stressed.

The next day (4 Sept.) continued with the country experience presentation. Representative of Brazil described the changes planned following the establishment of the new government. There would seem no need for the introduction of foreign inputs in as much as Brazil had the necessary management and technological capability.

Apart from marine catches, there was considerable progress in the field of aquaculture. Special mention was made of the UNDP/FAO regional aquaculture center which has made considerable progress.

Brazil is very sympathetic to matters of regional co-operation and would expect to be a donor as well as a recipient. Also in the case of some species such as hake, Brazil might provide a market for some of the Argentina and Uruguay production.

The Uruguay representative, spoke of the considerable progress made in the fishery industry in recent years in his country. The industry is now almost indigenous. There is a high level of co-operation with Argentina in managing and exploiting the demersal resources. Uruguay anticipated a ~~higher level~~ of co-operation with other Latin American countries in the future.

Mr. Hughes dealt with the financial aspects of fisheries joint ventures. He stressed the concept of the evolutionary potential of the JV; the importance of risk minimization for both the government and a TNC partner; and the effect of time on the value of financial benefits. Mr. Hughes discussed feasibility studies and financial projections; the use of

discounting and rates of return constant and current prices; government inputs to JVs; the returns lacked for by TNCs; and the different time preferences of the co-venturers together with the use of loans; equity rations; various forms of taxation and other government resources and the various ways a TNC can obtain its return.

The workshop moved on to the fourth day. After discussing methods by which a government of a host country acquire shares in joint ventures agreements. Mr. Lipton discussed formula for fade-out arrangements. He also discussed the evaluation of assets at the end of joint venture agreements.

Mr. Christy pointed out various arrangements in the chartering of fishing vessels and possibilities of abuse in transfer pricing when fair market price in charter arrangements is being determined. He mentioned risks of obtaining inefficient and uneconomic vessels.

Mr. Lipton continued by talking about limiting of force majeure in fishing development agreements; the importance of default termination; and methods of dispute resolution with the juridicial and constitutional constraints of Latin American countries with respect to arbitration in accordance with Calvin doctrine.

Mr. Appleyard talked about the preoperational and operational issued of establishing joint ventures. He also stressed methods by which the government could assist the development of the fishery sector.

By the provision of infrastructure and education facilities, Mr. Christy explained the problem of protecting artisanal fishing activities. He stressed the importance of the fisheries administration taking the necessary action at the outset for provision of such protection.

Management contracts were discussed by Mr. Lipton. This item was followed by general discussion among the lecturers concerning management contracts including linking management fees to performance, "unbundelling"

of management services, the inclusion of a detailed training programme, provision for periodic review of performance and budgetary control by the joint venture board of directors.

A discussion of marketing contracts followed. Mr. Appleyard pointed out differences between TNCs in their marketing abilities and importance of periodic reporting and information. Mr. Hughes described methods of protecting against transfer pricing abuse.

On the fifth day, Mr. Lipton covered the subject of organizing government negotiations, preparing for the negotiations and described government negotiating tactics and strategy. There was a discussion of review procedures together with drafting styles of the civil and common law of countries.

Mr. Lipton particularly stressed the advantage of governments taking both the negotiating and the drafting initiative. Methods of obtaining the assistance of international agencies in the preparation and the provision of staff support were also indicated.

Mr. Hughes discussed the importance of effective systems of monitoring the performance of a JV and ensuring compliance with national laws and the terms of the JVA. He described methods internal to the JV and those to be operated outside of the JV itself. He discussed the role of government directors in a JV company and emphasized the importance of staff training. He suggested to make available resources of personnel and funds independent of the JV itself in order to enable effective monitoring and enforcement.

The Peruvian delegate reported on Peruvian fishery industry and gave details of agreements for fisheries development, specially in respect of the arrangement with Cuba and USSR.

The afternoon session was conducted by Mr. Appleyard. He talked about the various methods of monitoring of joint ventures performance and stressed the need for strong inputs by local directors.

The importance of reliable market information was emphasized. He stressed that the regulation of joint ventures as a good citizen was important.

There was some merit in establishing an independent review committee to consider the aspects of joint ventures other than financial ones.

Afterwards the delegate from Venezuela described current development of fisheries in his country and emphasized the need for regional co-operation and support by regional and international bodies.

The workshop was concluded by Mr. Christy presenting 4 case studies. In the case of Solomon Taiyo a joint venture between the Government of the Solomon Islands and a Japanese TNC, special attention was devoted to the handling of the crisis of tuna prices falling in the early years of the joint venture and the gradual increase of Solomon Islands participation in the ownership and management of the JV.

The other cases illustrated a successful and unsuccessful joint venture and indicated reasons the strategy of moving cannery operations to developing countries.

A question was raised as to how to deal with foreign partners who evade local ownership requirements.

Another case was presented which characterized the operation of the joint venture vessels as part of the foreign fleet. It appeared to have the ~~advantage~~ of efficient management, but had the disadvantage of lack of local participation.

At the end of the meeting, several delegates expressed their appreciation of the workshop. It was suggested that future workshops might include some University students and, possibly, the private sector. Perhaps future workshops shall have a broader base of study in fisheries development and not be confined to the role of TNCs. Participants expressed particular appreciation of the session giving advice on the preparation and negotiation of joint ventures. Several participants had combined their views and presented a document of recommendations which is attached to this report.

REGIONAL TRAINING WORKSHOP
ON JOINT VENTURES AND OTHER COMMERCIAL ARRANGEMENTS
IN FISHERIES

LIMA, PERU, 2 - 7 SEPTEMBER 1985

List of Lecturers

Mr. Charles LIPTON (USA)

Attorney-at-Law; Adviser to governments of developing countries on negotiation with transnational corporations; Adjunct Professor of Law, New York University; Senior Consultant to UNCTC; former U.N. Interregional Adviser on mineral law and development. Has been Adviser to a number of developing countries on matters related to transnational corporations.

Mr. Anthony HUGHES (Solomon Islands)

Governor of the Central Bank of Solomon Islands and a chairman of a joint venture company in fisheries in Solomon Islands. Has extensive experience on matters related to TNCs and in negotiating with transnational corporations. Has served as UNCTC consultant in a number of advisory and training projects.

Mr. W. Philip APPLEYARD (U.K.)

Consultant to a number of private and public companies and to the World Bank, FAO, and Asian Development Bank in the fisheries sector. From 1974 to 1979 Chief of FAO Fisheries Development Service. From 1979 to 1980 Management Director of OMAN National Fishing Co. From 1980 to present international fisheries consultant and chairman of several fisheries companies.

Mr. Lawrence CHRISTY (USA)

Legal Officer, FAO, since 1976. Adviser to governments on legal aspects of fisheries, including legislation, international agreements, contracts and public-sector organization.

REGIONAL TRAINING WORKSHOP ON JOINT VENTURES AND OTHER COMMERCIAL
ARRANGEMENTS IN FISHERIES
OLDEPESCA - UNCTC - FAO - PNUD
Lima, September 2 to 7, 1985

WORKSHOP PROGRAMME

1. Opening of Workshop (FAO/UNCTC/OLDEPESCA)
2. Host Government Policy Choices
 - Licensing
 - State fishing (contract management, chartering)
 - Joint venture
 - Hybrid arrangements
 - Role of state fishery enterprises
3. Presentation of Country Experiences with Joint Ventures

Presentation to be made by participants.
4. a) TNCs in International Fisheries
b) Fishery TNCs Operating in the Region
c) Pacific Islands Fisheries Development
5. Preparing for joint ventures :
 - resource information
 - feasibility analysis
 - surveys and exploratory fishing
6. Issues in Joint Venture Negotiations
 - Financial aspects and discounted cash flow (DCF analysis)
 - Ownership and control
 - Valuation of TNC and government contributions
 - Gearing
 - Affiliated company transactions
 - Protection of minority shareholders
 - Taxation, royalties and other forms of government revenue
 - Optimum terms
 - Phase-out

Case Study
8. Operational Issues
 - Resource management
 - Protection of local fisheries
 - Fishing technology
 - Equipment
 - Construction of shore facilities
 - Employment, training and transfer of technology
 - Shipping and repair facilities.

9. Subsidiary Agreements
 - Management contracts
 - Marketing contracts
 - Processing arrangements
 - Charters
10. Case Study
11. Termination Clauses of Agreements
 - termination
 - force majeure
 - choice of law
 - dispute settlement
12. Negotiation and Drafting of Agreements
13. Compliance and Monitoring Performance of Joint Ventures
 - Fair market prices and role of government directors.
14. Presentation of Case Studies
15. Evaluation
16. Closing of Workshop

Lima, Peru
2 - 7 September 1985

MONDAY 2 SEPTEMBER	TUESDAY 3 SEPTEMBER	WEDNESDAY 4 SEPTEMBER	THURSDAY 5 SEPTEMBER	FRIDAY 6 SEPTEMBER	SATURDAY 7 SEPTEMBER
1. OPENING FAO/UNCTC/ OLDEPESCA	4a. TNCs in inter- national fisheries	6. Issues in joint venture nego- tiations (Continued)	9. Subsidiary agreements	12. Negotiation and drafting of agreements	14. Presentation of case studi
2. Host government policy choices	FAO/UNCTC				
	4b. Fishery TNCs operating in the region	UNCTC	FAO/UNCTC	UNCTC	OLDEPESCA/FAO
	OLDPESCA/ PARTICIPANTS				
FAO	4c. Pacific Islands Fisheries Development UNCTC		10. Case study FAO/SMALL GROUPS		
3. Presentation of country experiences with joint ventures	5. Preparing for joint ventures	7. Case study	11. Terminal clauses of agreements	13. Compliance and monitoring performance of joint ventures	15. Evaluation
PARTICIPANTS	FAO	FAO/SMALL GROUPS	UNCTC		FAO/OLDEPESCA/ UNCTC
	6. Issues in joint venture negotiations	8. Operational issues		FAO/UNCTC	16. CLOSING OF WORKSHOP
	UNCTC	FAO			FAO/OLDESPECA/ UNCTC

SEMINARIO SOBRE ENTRENAMIENTO EN NEGOCIACION DE CONVENIOS DE PESCA Y
OTROS ACUERDOS COMERCIALES CON EMPRESAS TRANSNACIONALES

Lima, Perú 2 al 7 de setiembre, 1985

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CONCLUSIONES DEL II SEMINARIO-TALLER SOBRE CONCERTACION DE CONVENIOS DE PESCA Y OTROS ACUERDOS COMERCIALES

Los participantes al Seminario han considerado conveniente emitir los siguientes comentarios finales :

- 1) Los participantes consideran que el Seminario ha permitido adquirir conocimientos e intercambiar experiencias sobre las negociaciones de convenios pesqueros con empresas mixtas por lo cual estiman que se han cumplido con los objetivos propuestos por OLDEPESCA . Expresan así mismo, su reconocimiento a los Organismos co-auspiciadores, FAO, UNCTC y PNUD por su colaboración con OLDEPESCA para lograr éste cometido y particular agradecimiento a los señores Conferencistas por la información y experiencia transmitida.
- 2) Las atribuciones y responsabilidades que emanan del Nuevo Derecho del Mar, exigen de los Estados Costeros, una constante capacitación de sus cuadros técnicos y un cada vez mayor conocimiento de los mecanismos de acción de los convenios pesqueros y empresas mixtas, de forma tal que las negociaciones se produzcan en condiciones ventajosas y reporten adecuados beneficios a nuestros países.
- 3) La pesquería latinoamericana y del Caribe por su trascendental importancia económica viene adquiriendo, sólo recientemente, una ubicación estratégica que exige una atención prioritaria de parte de nuestros Gobiernos. Ello ha traído como consecuencia que el sector pesquero no tenga la capacidad y experiencia que se observa en sectores como el petrolero minero y energético, que si la han desarrollado en función a su rol estratégico dentro de las economías nacionales.
- 4) La diversidad de los campos de interés que tienen las Empresas Mixtas y otras modalidades de cooperación hacen necesario que cualquier proceso de negociación se desarrolle sobre la base de coordinaciones previas en el frente interno, de modo tal que los intereses del país estén garantizados, tanto sectorial como globalmente.

- 5) La creciente necesidad de alimentos en el mundo y el sobredimensionamiento de las flotas pesqueras a nivel global están generando una masiva afluencia de embarcaciones hacia zonas de alta productividad pesquera. Ante esta circunstancia, América Latina y el Caribe están en condiciones de elegir las opciones más ventajosas en negociación de convenios, empresas mixtas y otras formas de arreglos comerciales de preferencia. Es altamente conveniente, fortalecer las relaciones y acuerdos con los países hermanos de la Región que tengan mayor desarrollo pesquero relativo .

- 6) Al haberse creado la Organización Latinoamericana de Desarrollo Pesquero (OLDEPESCA), como genuino organismo de cooperación regional en el ámbito pesquero, existe el consenso de que a ella le corresponde generar un flujo dinámico de intercambio de experiencias, conocimientos e información entre los países de la Región, acudiendo para ello a la colaboración de la FAO, el PNUD y el UNCTC.

- 7) Los participantes en el Seminario identificaron la necesidad de continuar realizando los mayores esfuerzos en el marco de OLDEPESCA, para que los técnicos y expertos de la Región realicen contactos de intercambios de experiencias y de información en materia de desarrollo pesquero, particularmente, en los campos de acuicultura, comercialización de productos pesqueros, capacitación y organización de cuadros, cooperativas y comunidades pesqueras, entre otros. Motivado por tal deseo el participante de Brasil propone que se realice un encuentro en Brasil, que permita a los países de la Región observar la experiencia en este país en el desarrollo del sector pesquero, especialmente en lo referido a la acuicultura.

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Lima, 7 de setiembre de 1985

