

## **OBSERVATIONS ON THE TURKISH PETROLEUM LAW (\*)**

It is very pleasant to be here today and to have this opportunity to discuss with you some of the aspects of the Petroleum Law of Turkey. It becomes impossible in a single discussion such as this to do more than outline a few of the key principles which are embodied in that Law and to illustrate by selected examples a few of the ways in which these principles practically operate.

A law is a funny kind of thing. Many people look upon the law - any law - as if it were something far removed from their every day lives ; some special thing that only remotely has something to do with them. In point of fact, experience over the years has seemed to me to contradict this popular opinion. Law, it has seemed to me, is the common denominator of human activity, and, as such, in innumerable ways touches each of us every day most intimately.

It is quite true that when we are dealing with complex subjects, the laws governing them, themselves become complex. It is also quite true that in the handling of particular details under law, special knowledge, special aptitudes and special training may be appropriate and necessary. This specialization, however, is really a matter of intelligent treatment of the details and while fun-

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damentally important to the conduct of effective, dignified and law abiding activity, it does not in any way minimize, or become a substitute for, the necessity of a broader understanding by all concerned of the basic principles of a law and how these basic principles operate to the common good of all, private and governmental, who are bound by that law.

After all, in the present mode of civilized thought, most laws are not derived from devine inspiration. They are merely a set of rules, enacted by man, hopefully founded upon sound experience, carrying with them concepts of fair play, the purpose of which is to govern in an orderly manner human relations. Essentially, the object of the great bulk of our laws, is to establish by a non-discriminatory procedure, equally applicable to every person, a means by which conflicts in human relationships can be resolved to the mutual satisfaction of all without resort to force.

In the last analysis, mankind must recognize that differences of opinion will always exist, and, temperately held, are the touchstones of progress ; these differences of opinion, however, strongly held can and sometimes do mature into conflict. It is at this point that law in its largest sense comes into operation : Law provides the means by which the healthy spirit of differences of opinion can be preserved and the differences resolved in an orderly and peaceful manner. In the absence of law, such resolutions can take place only by conflict in a physical sense, with might determining what is right. Civilisation, in large measure, derives from a willingness of people to forego might as a means of resolving conflicts and to substitute in its place the principles of Law.

Now, the Petroleum Law of Turkey is merely an application of the foregoing to an extremely complex industry. Necessarily, a petroleum law which seeks to preserve the benefits of differences of opinion and at the same time provide an orderly means for their settlement will also be complex. Indeed the modern Petroleum Law is not in any true sense merely a petroleum law ; it is rather a whole body of law, or a code of law, setting forth specific rules applicable to the petroleum industry, designed to provide the key

assurances requisite to stimulating petroleum activity in accordance with an established policy of the State.

Most of you are familiar with the four major branches of the petroleum industry production, transportation, refining or manufacturing, and marketing and distribution. The Turkish Petroleum Law deals with three of these areas of endeavor ; it does not deal with the marketing and distribution activities whose essential relationship is more akin to ordinary commercial activities than to the peculiarities of finding, producing, moving and transforming into useable products the tremendous mobile energy of raw petroleum. As to the areas of activity covered by the Law, it is first imperative to examine precisely what the basic policy of this Law is.

That policy can be stated very simply : It is the establishment of a Law designed to foster a free enterprise system with maximum opportunity to all types of enterprises interested in petroleum : large, middle sized and small, foreign and domestic, on a fair basis for the purpose of establishing as quickly as possible an effective, dynamic petroleum industry in Turkey.

The Law proceeds on the assumption that the basic purpose behind petroleum endeavor by most people is financial gain ; and that people adept in an industry, working toward their financial gain, necessarily are in the best position to make the proper decisions which have to be made in the conduct of every day operations : It is a basic objective of this Law that only the broad outlines — the broad ground rules — be set forth to guide individual endeavor and to provide these adequate guaranties necessary if that endeavor is to be successful. It has been a fundamental of this Law that the day to day decisions best are left in the hands of those best qualified to make them; that is, in the hands of the operators themselves, rather than in the hands of the Government.

There is another aspect of this Law which in basic. It is designed to provide assurances with respect to all the phases of industrial activity, appropriate to the protection of the sizeable investments that have to be made in finding, producing, transporting and refining petroleum. This principle carries the Law far beyond technical

petroleum rules and into the areas of basic national protection, basic administrative rules, basic rights to land and water, basic guide posts for taxation and revenue, fundamental assurances on imports and exports, appropriate guaranties with respect to currency and foreign exchange and the fundamental relationships which must exist with respect to employees and personnel training. In other words, the Law must go beyond mere technology and deal with those things that make the exercise of technology possible — the four "Ms" as we can identify them in English : money, materials, man-power and methods.

Without these means, these four "Ms" readily at hand in adequate quantity to do the job, all of the technology in the world will not get the job accomplished.

Now, these means have been expressed in the basic rules of the Law, and in a fashion appropriate to the economics of the petroleum industry, to the risks inherent in that industrial endeavor and to the peculiar and particular needs of Turkey. As an example, while it is imperative to establish sound rules with respect to currency and exchange, the rules cannot ignore completely Turkey's overall exchange situation or so carve out a system unique to petroleum as to destroy Turkish objectives in other lines of industrial endeavor.

Let us look at the exchange rules for a moment : Certain fundamental guaranties have been provided. Among these are :

- (1) An operator may export from Turkey his cash accumulations, whether these be derived from profits, from loans or from depreciation or to the extent the tax savings on the depletion allowance has been re-invested once, from the depletion allowance itself.
- (2) An operator is guaranteed with respect to his imported capital that the export in foreign currency can be appropriate to his national identity and will be at the rate of exchange prevailing at the time he imported the capital. In other words, if an operator brought in cash funds at a rate of 2.8 lira to the dollar, he would be able to take out his imported capital at the same rate, regardless of

what happened to the value of the Turkish currency during the intervening period.

- (3) An operator is guaranteed that he can retain abroad proceeds from the sales of his petroleum, except to the extent that a portion of such proceeds are needed to defray his tax obligations and operating expenses in Turkey.

All of these guaranties are exceptions to one or another of the currency laws of the State, but all are appropriate and necessary and fair in the interests of inducing those substantial investments needed by Turkey for the development of her petroleum industry. The one critical matter which the Turkish Government has not firmly and completely guaranteed in its enactment of the Law has been an application of the principle that the rate of exchange officially established in Turkey for any purpose, which yield the largest number of units of Turkish currency per unit of foreign currency, in the rate of exchange to be applied to petroleum operations. And the reason the Turkish Government has not clearly incorporated this point into the Law, is because of its fundamental relationship to the total economic endeavor of the nation. In other words, Turkey believes that this aspect of the exchange problem is of such importance as to prevent it from establishing at the moment a final policy for petroleum, placing that industry in all respects in a unique and exceptional position with respect to other industrial activities.

Even in this connection, however, attention is called to the fact that the Law, in the language which it uses, is sufficiently flexible to enable the Turkish Government by regulation to accord to petroleum activities covered by the Law, the highest official rate of exchange prevailing in Turkey, if it so desires, and without further amendment to the basic Law itself. Turkey, while not yet applying in full the mechanisms of the Law, has nevertheless established the principles under which application at an appropriate moment can be promptly made.

This latter point illustrates another principle of the Law. It is essentially a flexible instrument. By amendment to the Law, existing rules and regulations can be modified to fit changing cir-

cumstances without a revolutionary abrogation of the previous rules under which original investment has been made. Thus, all rights issued to an operator at a given time enjoy certain guaranties with respect to operations, finance, taxation and the rest which cannot latter be modified by changes in the regulations adverse to the operator. On the other hand, if and when the economics warrant, the rules of the Law can be altered by Turkey to provide, for example, for a greater revenue to the nation with respect to all rights granted after that change has come in to effect. The Law recognizes as a basic principle, then, the inevitability of change but at the same time recognizes that assurance originally granted in a particular basis will be sustained for the life of the grants with respect to which they were granted.

Previously, I have indicated that law essentially, must be an orderly governing of human relations and that there need exist for these human relationships, changing as an economy changes, a mechanism for the orderly transition from the past to the present and from the present to the future. This concept, if properly embodied in law, makes that law a living instrument, suitable to the present and adaptable to tomorrow. The Turkish Petroleum Law has embodied it in several respects.

There is one particular example of this living aspect of the Law which is also illustrative of another fundamental principle. This second fundamental principle is : That the economics and technical requirements are closely inter-related. In other words, the Law in all of its several aspects must be so balanced that in single aspect such as taxation, currency, technology, or operating requirements is disproportionate to and other.

This balancing principle exists throughout the Law and requires the reading of each single article in terms of the Law as a whole.

Let me illustrate the two principles just mentioned by a specific example. A certain tariff formula is provided in Article 84 of the Law. This tariff formula guaranties to a pipeline operator a revenue adequate to recover all of his costs and to assure to him a reasonable profit on his investment. Thus, while the Law contains

a guaranty, it does not specify precisely when this tariff must be revised to reach a fair total economic result. The Law is flexible on this point and the tariff can be revised from time to time by the operator, just so long as a balance principle between the revenue needs of the operator and the payment obligation of the shipper are preserved. Flexibility and balance are the essential ingredients of the tariff provision.

There is yet another balance embodied in the tariff principle: This is the balance between transportation cost and an adequate and fair wellhead price. The price formulae and the royalty calculations of this Law are based upon market price less cost of transportation. This is the typical relationship employed by the petroleum industry in economic evaluations throughout the world.

Obviously, under the Law if the cost of transportation is high, the wellhead price is low, with the attendant result that there is less incentive to the producer to look for, discover, and produce oil. On the other hand, the transporter who has his own production and who establishes a disproportionately high tariff, will lose economically simply because he will be shifting production profit subject to a depletion allowance into a transportation profit which is not subject to the depletion allowance with a higher tax revenue to Turkey as the sole result. In other words, the Law itself contains the basic balancing formulae between production, royalty, price, transportation and taxation which makes it economically impractical for an operator to attempt to charge a disproportionately high tariff for transportation on the one hand, and on the other hand prevents him from charging such a low tariff as would shift transportation profit into production profit, depriving Turkey of legitimate revenue through an increase in the depletion allowance. One other point in this connection should be stated: Any low transportation tariff which increases wellhead price also increases the royalty payable to the Turkish Government.

There are countless other examples throughout the law of these balancing arrangements. Thus an operator utilizing the principles of transferring rights under Articles 34 and 36 of the Law, can establish an undivided ownership in a petroleum right or in a portion of that right. Through this undivided ownership, he can

get in certain cases additional tax benefits from the United States without loss of revenue to Turkey. He can also shift his position, from time to time, to keep pace with changes in the Turkish national situation as well as shifts in the world picture. He can establish the best mechanism for assuring his national identity and the type of currency that he wishes to have recorded under his national identity ; and he can perhaps, through this joint ownership device, take advantage of the consolidation provisions embodied in the taxation portions of the Law. These substantial profits to an operator exist in the same degree and to the same extent no where else in the laws of Turkey.

But for these benefits accorded to the operator, Turkey also gains, directly and immediately - another aspect of the balance about which I am talking. If an operator utilizes consolidation, it means that profits from one type of petroleum endeavor are being plowed back into another type of petroleum endeavor in Turkey. The inevitable result of this is accelerated investment in Turkey's petroleum activities and a diminution in the rate at which Turkey must exchange liras into foreign currency. These ownership provisions also enable an operator to take advantage of certain maximum benefits in the United States tax laws, such as the U.S. depletion allowance or the foreign tax credit provisions. This advantage makes a portion of United States tax dollars available for investment in Turkey, without additional expense to the operator and with added benefit to Turkey. The chance to use undivided ownership is of special benefit in including smaller and middle size companies to invest in Turkey, with Turkey receiving the tremendous benefits which derive from an attendant greater diversity of geological and technical knowledge and judgement brought to bear in the finding of oil.

There are so many phases to the development of these basic principles which have been enumerated that it is impossible to record them all in the short time allotted. It would be inappropriate, however, to close this discussion without a re-emphasis, in personal terms, of the vital and living aspects of this piece of legislation.



This Law is a tribute to the life work and endeavor of a number of men known to you. It represents, for example, the culmination of a dream of a friend of many of you, Cevat Taşman, who felt that for Turkey, a free enterprise law was the only answer to securing exploration and development in the shortest possible time to the greatest benefit of his country. It is a tribute to Necdet Egeran who worked so long and so hard to bring about and translate into reality the ideals of Cevat Bey; and to Emin İplikçi without whose tenacity of purpose and overall guidance, this Law could never have been brought into being and without whose devoted attention to its practical administration, Turkey could not have achieved the investment she now has.

It is a tribute to a great American, Max Ball, who although ill and under severe medical restrictions, forewent the limitations placed upon him to give to Turkey his best in the preparation of a Law embodying competitive, free enterprise relationships under fair, sound, and attractive rules. It is a tribute to a host of others who have had a part to play in the Law's birth and development ; and to the far-sighted wisdom of the Government which in late 1952 established the basic policy of free enterprise under the aegis of which this Law came into being.

It has been amended, it will be amended again, and yet again as the times change and the circumstances require, but its basic principles have never been violated. For such assurances and protections you can thank especially a confrere of yours in this Faculty, Muvaffak Akbay, and a most important personage to the present administration of the Law, Safi Teziç. Even in the area of company participation, the Law illustrates its principle of adaptability to change. Of the many foreign petroleum people who have been in Turkey and have participated in this activity, I can think of only two families, the Paul Taylors and the Gordon Whites, who are still present and who also were here at the time of the momentous conferences of December 1954.

The Law is a living instrument ; it contains those principles which permit future growth consistent with accomodation to present circumstances. It is perhaps paradoxical that in giving life and

vibrancy to the Law, three of that small group which developed the original draft in 1953, have also given their lives : Taşman, Ball and Akbay. It is devoutly to be hoped that the principles of the Law, for which so much in life has already been given, can be developed and preserved in a way which will do credit to the ideals of the men who strove so valiantly to bring it into being.

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