

**Annex 1:
The Parties' Representatives**

REPRESENTATIVES OF THE PARTIES

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

AGENT

H.E. Hermenegildo Pereira
Deputy Minister to the Prime Minister for the
Delimitation of Boundaries

DEPUTY AGENT

Ms. Elizabeth Exposto
Chief Executive Officer
Maritime Boundary Office

PRINCIPAL REPRESENTATIVES

H.E. Kay Rala Xanana Gusmão
Chief Negotiator for Maritime Boundaries

Mr. Alfredo Pires
Former Minister of Petroleum and South Coast
Development

H.E. Santana Viegas Cardoso
Minister of Finance
(until 15 September 2017)

H.E. Joaquim da Fonseca
Ambassador to the United Kingdom and the
Netherlands

H.E. Abel Guterres
Ambassador to the Commonwealth of Australia

H.E. Milena Pires
Ambassador to the United States
Permanent Representative to the United Nations

Mr. Gualdino do Carmo da Silva
President of the National Petroleum and
Minerals Authority

Mr. Francisco da Costa Monteiro
President and CEO of TIMOR GAP

COMMONWEALTH OF AUSTRALIA

AGENT

Mr. John Reid PSM
First Assistant Secretary
Office of International Law
Attorney-General's Department

CO-AGENT

Ms. Katrina Cooper
Senior Legal Adviser
Department of Foreign Affairs and Trade
(until 1 November 2017)

Mr. James Larsen
Senior Legal Adviser
Department of Foreign Affairs and Trade
(from 1 November 2017)

PRINCIPAL REPRESENTATIVES

The Honourable Julie Bishop MP
Minister for Foreign Affairs of Australia

The Honourable George Brandis QC
Attorney-General for Australia
(until 20 December 2017)

Mr. Gary Quinlan AO
Deputy Secretary
Department of Foreign Affairs and Trade

H.E. Brett Mason
Ambassador to the Kingdom of the Netherlands

Mr. Bruce Wilson
Department of Industry and Natural Resources

Ms. Lisa Schofield
Department of Industry and Natural Resources

COUNSEL AND ADVOCATES

Professor Vaughan Lowe QC
Essex Court Chambers

Sir Michael Wood KCMG
20 Essex Street Chambers

Mr. Eran Sthoeger

Ms. Janet Legrand QC (Hon)

Mr. Stephen Webb

Ms. Gitanjali Bajaj

DLA Piper

REPRESENTATIVES AND ADVISORS

Mr. Simon Fenby

Ms. Sathie Abayasekara

Ms. Adelsia Coelho da Silva

Ms. Fiona Macrae

Ms. Felismina Carvalho dos Reis

Maritime Boundary Office

Ms. Iriana Ximenes

Office of the Deputy Minister to the Prime
Minister for the Delimitation of Boundaries

Mr. Amado Hei

Mr. Florentino Soares Ferreira

Mr. Carlos Alves

Mr. Angelo Lay

Mr. Agus Maradona Tilman

Mr. Mateus da Costa

Mr. Ernesto Pinto

National Petroleum and Minerals Authority

Mr. Rod McKellar

Mr. Sivakumar Muniappan

Mr. Nuno Delicado

Mr. Ricardo Alves Silva

Mr. João Leite

Mr. David Lawson

Mr. Paul Hayward

TIMOR GAP

Dr. Robin Cleverly

Marbdy Consulting

COUNSEL AND ADVOCATES

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20 Essex Street Chambers

Mr. Justin Gleeson SC
Solicitor-General of Australia
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Mr. Bill Campbell QC PSM
General Counsel (International Law)
Attorney-General's Department
(until 20 January 2017)

Professor Chester Brown
7 Wentworth Selborne Chambers
(until 19 September 2016)

REPRESENTATIVES AND ADVISORS

Ms. Angela Robinson

Ms. Vrinda Tiwari

Australian Embassy to Timor-Leste

Ms. Amelia Telec

Mr. Benjamin Huntley

Ms. Anna Rangott

Ms. Holly Matley

Attorney-General's Department

Mr. Justin Whyatt

Mr. Todd Quinn

Ms. Hailee Adams

Mr. Ben O'Sullivan

Mr. Michael Googan

Ms. Rebecca Curtis

Mr. Patrick Mullins

Mr. Jeremy Noye

Ms. Rori Moyo

Ms. Megan Jones

Ms. Diana Nelson

Ms. Katherine Ruiz-Avila

Department of Foreign Affairs and Trade

Ms. Esther Harvey

Dr. Evan Hynd

Ms. Bernadette Shanahan

Mr. Peter Carter

Mr. Steven Taylor

Department of Industry

Ms. Greta Bridge
Ms. Efthimia Goudakis
Mr. Jack Brumpton
Ms. Lena Chapple
Mr. Jeffrey Sheehy
Ms. Emilie Barton
Ms. Emily Chalk
DLA Piper

Mr. Geoffrey Francis
Mr. Simon Winkler
Ms. Anastasia Phylactou
The Treasury

Mr. Mark Alcock
Dr. Thomas Bernecker
Ms. Natalie Taffs
Geoscience Australia

Ms. Indra McCormick
Mr. Will Underwood
Ms. Christina Hey-Nguyen
Embassy of Australia to the Netherlands

Annex 2:
Part XV and Annex V of the United Nations Convention on the Law
of the Sea

PART XV
SETTLEMENT OF DISPUTES
SECTION 1. GENERAL PROVISIONS

Article 279

Obligation to settle disputes by peaceful means

States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter.

Article 280

Settlement of disputes by any peaceful means chosen by the parties

Nothing in this Part impairs the right of any States Parties to agree at any time to settle a dispute between them concerning the interpretation or application of this Convention by any peaceful means of their own choice.

Article 281

Procedure where no settlement has been reached by the parties

1. If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed to seek settlement of the dispute by a peaceful means of their own choice, the procedures provided for in this Part apply only where no settlement has been reached by recourse to such means and the agreement between the parties does not exclude any further procedure.

2. If the parties have also agreed on a time-limit, paragraph 1 applies only upon the expiration of that time-limit.

Article 282
Obligations under general, regional or bilateral agreements

If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute otherwise agree.

Article 283
Obligation to exchange views

1. When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.

2. The parties shall also proceed expeditiously to an exchange of views where a procedure for the settlement of such a dispute has been terminated without a settlement or where a settlement has been reached and the circumstances require consultation regarding the manner of implementing the settlement.

Article 284
Conciliation

1. A State Party which is a party to a dispute concerning the interpretation or application of this Convention may invite the other party or parties to submit the dispute to conciliation in accordance with the procedure under Annex V, section 1, or another conciliation procedure.

2. If the invitation is accepted and if the parties agree upon the conciliation procedure to be applied, any party may submit the dispute to that procedure.

3. If the invitation is not accepted or the parties do not agree upon the procedure, the conciliation proceedings shall be deemed to be terminated.

4. Unless the parties otherwise agree, when a dispute has been submitted to conciliation, the proceedings may be terminated only in accordance with the agreed conciliation procedure.

Article 285
Application of this section to disputes submitted pursuant to Part XI

This section applies to any dispute which pursuant to Part XI, section 5, is to be settled in accordance with procedures provided for in this Part. If an entity other than a State Party is a party to such a dispute, this section applies *mutatis mutandis*.

SECTION 2. COMPULSORY PROCEDURES ENTAILING BINDING DECISIONS

Article 286

Application of procedures under this section

Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.

Article 287

Choice of procedure

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

- (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;
- (b) the International Court of Justice;
- (c) an arbitral tribunal constituted in accordance with Annex VII;
- (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

2. A declaration made under paragraph 1 shall not affect or be affected by the obligation of a State Party to accept the jurisdiction of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea to the extent and in the manner provided for in Part XI, section 5.

3. A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII.

4. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.

5. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree.

6. A declaration made under paragraph 1 shall remain in force until three months after notice of revocation has been deposited with the Secretary-General of the United Nations.

7. A new declaration, a notice of revocation or the expiry of a declaration does not in any way affect proceedings pending before a court or tribunal having jurisdiction under this article, unless the parties otherwise agree.

8. Declarations and notices referred to in this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.

Article 288
Jurisdiction

1. A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part.

2. A court or tribunal referred to in article 287 shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement.

3. The Seabed Disputes Chamber of the International Tribunal for the Law of the Sea established in accordance with Annex VI, and any other chamber or arbitral tribunal referred to in Part XI, section 5, shall have jurisdiction in any matter which is submitted to it in accordance therewith.

4. In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal.

Article 289
Experts

In any dispute involving scientific or technical matters, a court or tribunal exercising jurisdiction under this section may, at the request of a party or *proprio motu*, select in consultation with the parties no fewer than two scientific or technical experts chosen preferably from the relevant list prepared in accordance with Annex VIII, article 2, to sit with the court or tribunal but without the right to vote.

Article 290
Provisional measures

1. If a dispute has been duly submitted to a court or tribunal which considers that *prima facie* it has jurisdiction under this Part or Part XI, section 5, the court or tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision.

2. Provisional measures may be modified or revoked as soon as the circumstances justifying them have changed or ceased to exist.

3. Provisional measures may be prescribed, modified or revoked under this article only at the request of a party to the dispute and after the parties have been given an opportunity to be heard.

4. The court or tribunal shall forthwith give notice to the parties to the dispute, and to such other States Parties as it considers appropriate, of the prescription, modification or revocation of provisional measures.

5. Pending the constitution of an arbitral tribunal to which a dispute is being submitted under this section, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea or, with respect to activities in the Area, the Seabed Disputes Chamber, may prescribe, modify or revoke provisional measures in accordance with this article if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires. Once constituted, the tribunal to which the dispute has been submitted may

modify, revoke or affirm those provisional measures, acting in conformity with paragraphs 1 to 4.

6. The parties to the dispute shall comply promptly with any provisional measures prescribed under this article.

Article 291
Access

1. All the dispute settlement procedures specified in this Part shall be open to States Parties.

2. The dispute settlement procedures specified in this Part shall be open to entities other than States Parties only as specifically provided for in this Convention.

Article 292
Prompt release of vessels and crews

1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.

2. The application for release may be made only by or on behalf of the flag State of the vessel.

3. The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.

4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.

Article 293
Applicable law

1. A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.

2. Paragraph 1 does not prejudice the power of the court or tribunal having jurisdiction under this section to decide a case *ex aequo et bono*, if the parties so agree.

Article 294
Preliminary proceedings

1. A court or tribunal provided for in article 287 to which an application is made in respect of a dispute referred to in article 297 shall

determine at the request of a party, or may determine *proprio motu*, whether the claim constitutes an abuse of legal process or whether *prima facie* it is well founded. If the court or tribunal determines that the claim constitutes an abuse of legal process or is *prima facie* unfounded, it shall take no further action in the case.

2. Upon receipt of the application, the court or tribunal shall immediately notify the other party or parties of the application, and shall fix a reasonable time-limit within which they may request it to make a determination in accordance with paragraph 1.

3. Nothing in this article affects the right of any party to a dispute to make preliminary objections in accordance with the applicable rules of procedure.

Article 295
Exhaustion of local remedies

Any dispute between States Parties concerning the interpretation or application of this Convention may be submitted to the procedures provided for in this section only after local remedies have been exhausted where this is required by international law.

Article 296
Finality and binding force of decisions

1. Any decision rendered by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute.

2. Any such decision shall have no binding force except between the parties and in respect of that particular dispute.

**SECTION 3. LIMITATIONS AND EXCEPTIONS
TO APPLICABILITY OF SECTION 2**

Article 297
Limitations on applicability of section 2

1. Disputes concerning the interpretation or application of this Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention shall be subject to the procedures provided for in section 2 in the following cases:

- (a) when it is alleged that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines, or in regard to other internationally lawful uses of the sea specified in article 58;
- (b) when it is alleged that a State in exercising the aforementioned freedoms, rights or uses has acted in contravention of this Convention or of laws or regulations adopted by the coastal State in conformity with this Convention and other rules of international law not incompatible with this Convention; or
- (c) when it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are

applicable to the coastal State and which have been established by this Convention or through a competent international organization or diplomatic conference in accordance with this Convention.

2. (a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to marine scientific research shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute arising out of:
 - (i) the exercise by the coastal State of a right or discretion in accordance with article 246; or
 - (ii) a decision by the coastal State to order suspension or cessation of a research project in accordance with article 253.
- (b) A dispute arising from an allegation by the researching State that with respect to a specific project the coastal State is not exercising its rights under articles 246 and 253 in a manner compatible with this Convention shall be submitted, at the request of either party, to conciliation under Annex V, section 2, provided that the conciliation commission shall not call in question the exercise by the coastal State of its discretion to designate specific areas as referred to in article 246, paragraph 6, or of its discretion to withhold consent in accordance with article 246, paragraph 5.
3. (a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to fisheries shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulations.
- (b) Where no settlement has been reached by recourse to section 1 of this Part, a dispute shall be submitted to conciliation under Annex V, section 2, at the request of any party to the dispute, when it is alleged that:
 - (i) a coastal State has manifestly failed to comply with its obligations to ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not seriously endangered;
 - (ii) a coastal State has arbitrarily refused to determine, at the request of another State, the allowable catch and its capacity to harvest living resources with respect to stocks which that other State is interested in fishing; or
 - (iii) a coastal State has arbitrarily refused to allocate to any State, under articles 62, 69 and 70 and under the terms and conditions established by the coastal State consistent with this Convention, the whole or part of the surplus it has declared to exist.

- (c) In no case shall the conciliation commission substitute its discretion for that of the coastal State.
- (d) The report of the conciliation commission shall be communicated to the appropriate international organizations.
- (e) In negotiating agreements pursuant to articles 69 and 70, States Parties, unless they otherwise agree, shall include a clause on measures which they shall take in order to minimize the possibility of a disagreement concerning the interpretation or application of the agreement, and on how they should proceed if a disagreement nevertheless arises.

Article 298

Optional exceptions to applicability of section 2

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to one or more of the following categories of disputes:

- (a) (i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2; and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;
- (ii) after the conciliation commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2, unless the parties otherwise agree;
- (iii) this subparagraph does not apply to any sea boundary dispute finally settled by an arrangement between the parties, or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon those parties;
- (b) disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3;

(c) disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council decides to remove the matter from its agenda or calls upon the parties to settle it by the means provided for in this Convention.

2. A State Party which has made a declaration under paragraph 1 may at any time withdraw it, or agree to submit a dispute excluded by such declaration to any procedure specified in this Convention.

3. A State Party which has made a declaration under paragraph 1 shall not be entitled to submit any dispute falling within the excepted category of disputes to any procedure in this Convention as against another State Party, without the consent of that party.

4. If one of the States Parties has made a declaration under paragraph 1(a), any other State Party may submit any dispute falling within an excepted category against the declarant party to the procedure specified in such declaration.

5. A new declaration, or the withdrawal of a declaration, does not in any way affect proceedings pending before a court or tribunal in accordance with this article, unless the parties otherwise agree.

6. Declarations and notices of withdrawal of declarations under this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.

Article 299

Right of the parties to agree upon a procedure

1. A dispute excluded under article 297 or excepted by a declaration made under article 298 from the dispute settlement procedures provided for in section 2 may be submitted to such procedures only by agreement of the parties to the dispute.

2. Nothing in this section impairs the right of the parties to the dispute to agree to some other procedure for the settlement of such dispute or to reach an amicable settlement.

ANNEX V. CONCILIATION

SECTION 1. CONCILIATION PROCEDURE PURSUANT TO SECTION 1 OF PART XV

Article 1

Institution of proceedings

If the parties to a dispute have agreed, in accordance with article 284, to submit it to conciliation under this section, any such party may institute the proceedings by written notification addressed to the other party or parties to the dispute.

Article 2

List of conciliators

A list of conciliators shall be drawn up and maintained by the Secretary-General of the United Nations. Every State Party shall be entitled to nominate four conciliators, each of whom shall be a person enjoying the

highest reputation for fairness, competence and integrity. The names of the persons so nominated shall constitute the list. If at any time the conciliators nominated by a State Party in the list so constituted shall be fewer than four, that State Party shall be entitled to make further nominations as necessary. The name of a conciliator shall remain on the list until withdrawn by the State Party which made the nomination, provided that such conciliator shall continue to serve on any conciliation commission to which that conciliator has been appointed until the completion of the proceedings before that commission.

Article 3
Constitution of conciliation commission

The conciliation commission shall, unless the parties otherwise agree, be constituted as follows:

- (a) Subject to subparagraph (g), the conciliation commission shall consist of five members.
- (b) The party instituting the proceedings shall appoint two conciliators to be chosen preferably from the list referred to in article 2 of this Annex, one of whom may be its national, unless the parties otherwise agree. Such appointments shall be included in the notification referred to in article 1 of this Annex.
- (c) The other party to the dispute shall appoint two conciliators in the manner set forth in subparagraph (b) within 21 days of receipt of the notification referred to in article 1 of this Annex. If the appointments are not made within that period, the party instituting the proceedings may, within one week of the expiration of that period, either terminate the proceedings by notification addressed to the other party or request the Secretary-General of the United Nations to make the appointments in accordance with subparagraph (e).
- (d) Within 30 days after all four conciliators have been appointed, they shall appoint a fifth conciliator chosen from the list referred to in article 2 of this Annex, who shall be chairman. If the appointment is not made within that period, either party may, within one week of the expiration of that period, request the Secretary-General of the United Nations to make the appointment in accordance with subparagraph (e).
- (e) Within 30 days of the receipt of a request under subparagraph (c) or (d), the Secretary-General of the United Nations shall make the necessary appointments from the list referred to in article 2 of this Annex in consultation with the parties to the dispute.
- (f) Any vacancy shall be filled in the manner prescribed for the initial appointment.
- (g) Two or more parties which determine by agreement that they are in the same interest shall appoint two conciliators jointly. Where two or more parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint conciliators separately.
- (h) In disputes involving more than two parties having separate interests, or where there is disagreement as to whether they are of the same interest, the parties shall apply subparagraphs (a) to (f) in so far as possible.

*Article 4
Procedure*

The conciliation commission shall, unless the parties otherwise agree, determine its own procedure. The commission may, with the consent of the parties to the dispute, invite any State Party to submit to it its views orally or in writing. Decisions of the commission regarding procedural matters, the report and recommendations shall be made by a majority vote of its members.

*Article 5
Amicable settlement*

The commission may draw the attention of the parties to any measures which might facilitate an amicable settlement of the dispute.

*Article 6
Functions of the commission*

The commission shall hear the parties, examine their claims and objections, and make proposals to the parties with a view to reaching an amicable settlement.

*Article 7
Report*

1. The commission shall report within 12 months of its constitution. Its report shall record any agreements reached and, failing agreement, its conclusions on all questions of fact or law relevant to the matter in dispute and such recommendations as the commission may deem appropriate for an amicable settlement. The report shall be deposited with the Secretary-General of the United Nations and shall immediately be transmitted by him to the parties to the dispute.

2. The report of the commission, including its conclusions or recommendations, shall not be binding upon the parties.

*Article 8
Termination*

The conciliation proceedings are terminated when a settlement has been reached, when the parties have accepted or one party has rejected the recommendations of the report by written notification addressed to the Secretary-General of the United Nations, or when a period of three months has expired from the date of transmission of the report to the parties.

*Article 9
Fees and expenses*

The fees and expenses of the commission shall be borne by the parties to the dispute.

Article 10
Right of parties to modify procedure

The parties to the dispute may by agreement applicable solely to that dispute modify any provision of this Annex.

**SECTION 2. COMPULSORY SUBMISSION
TO CONCILIATION PROCEDURE
PURSUANT TO SECTION 3 OF PART XV**

Article 11
Institution of proceedings

1. Any party to a dispute which, in accordance with Part XV, section 3, may be submitted to conciliation under this section, may institute the proceedings by written notification addressed to the other party or parties to the dispute.

2. Any party to the dispute, notified under paragraph 1, shall be obliged to submit to such proceedings.

Article 12
Failure to reply or to submit to conciliation

The failure of a party or parties to the dispute to reply to notification of institution of proceedings or to submit to such proceedings shall not constitute a bar to the proceedings.

Article 13
Competence

A disagreement as to whether a conciliation commission acting under this section has competence shall be decided by the commission.

Article 14
Application of section 1

Articles 2 to 10 of section 1 of this Annex apply subject to this section.

**Annex 3:
Notice of Conciliation**

**1982 UNITED NATIONS CONVENTION
ON THE LAW OF THE SEA**

**IN THE DISPUTE CONCERNING
MARITIME DELIMITATION BETWEEN
THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE AND
THE COMMONWEALTH OF AUSTRALIA
IN THE TIMOR SEA**



**NOTIFICATION INSTITUTING CONCILIATION
UNDER SECTION 2 OF ANNEX V OF UNCLOS**

11 APRIL 2016

1. Pursuant to Article 298 and Annex V of the United Nations Convention on the Law of the Sea ("UNCLOS"), the undersigned, being duly authorised by the Government of the Democratic Republic of Timor-Leste ("**Timor-Leste**"), hereby transmits to the Government of the Commonwealth of Australia ("**Australia**") this notification instituting compulsory conciliation.
2. As Australia is aware, Timor-Leste and Australia are neighbouring States lying less than 400 nautical miles apart across the Timor Sea, with broadly parallel opposing coastlines. As States Parties to UNCLOS, they are obliged to negotiate the maritime boundaries between them.
3. Timor-Leste and Australia have not yet delimited their maritime boundaries in the Timor Sea. There have been various instruments, whose legal validity is disputed, that have set out provisional arrangements; but none of them purports to establish permanent maritime boundaries or impedes the conduct of these compulsory conciliation proceedings.
4. Timor-Leste's exercise of its sovereign rights within its maritime boundaries in the Timor Sea is frustrated by Australia's continuing refusals either to negotiate a permanent maritime delimitation agreement or to settle the dispute through other peaceful means such as arbitration or judicial settlement. Hence Timor-Leste has initiated compulsory conciliation as the only procedure available to it for the settlement of the dispute over its permanent maritime boundaries with Australia.
5. The dispute submitted for conciliation concerns the interpretation and application of Articles 74 and 83 of UNCLOS for the delimitation of the exclusive economic zone and the continental shelf between Timor-Leste and Australia including the establishment of the permanent maritime boundaries between the two States.

6. Timor-Leste has the right to permanent maritime boundaries with Australia, to be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to reach an equitable solution to the delimitation of its maritime zones with Australia; and Australia is obliged to negotiate such boundaries in good faith. Timor-Leste will set out its position in detail at the appropriate stage in the proceedings.
7. Timor-Leste's goal in these proceedings is to conclude, with the assistance of the Conciliation Commission and in accordance with UNCLOS, an agreement with Australia that delimits Timor-Leste and Australia's permanent maritime boundaries in the Timor Sea. Timor-Leste is also prepared to agree upon and establish appropriate transitional arrangements in consequence of the agreement.
8. The Conciliation Commission is requested to assist Timor-Leste and Australia in reaching an amicable settlement of their dispute relating to the delimitation of their permanent maritime boundaries in the Timor Sea.
9. In accordance with the requirements of Annex V, Article 3(b) of UNCLOS, Timor-Leste hereby appoints Judge Abdul Koroma and Judge Rüdiger Wolfrum as Timor-Leste's party-appointed conciliators. Timor-Leste proposes that the Permanent Court of Arbitration be invited to act as the Registry for these conciliation proceedings.
10. Timor-Leste has appointed the Minister of State and of the Presidency of the Council of Ministers, His Excellency Hermenegildo Pereira, as Agent for these conciliation proceedings. The Chief Executive Officer of Timor-Leste's Maritime Boundary Office, Ms Elizabeth Exposto, has been appointed as Deputy Agent.

11. All communications concerning these conciliation proceedings should be notified to the Agent at the following address:

His Excellency Hermenegildo Pereira

Ministerio de Estado e da Presidência do Conselho de Ministros

Edifício 1, R/C Esquerda

Palácio do Governo

Avenida Marginal

Díli, Timor-Leste

By email c/o: elizabeth.baptista@pcm.gov.tl

and also to the Deputy Agent at the following address:

Ms Elizabeth Exposto

Conselho para a Delimitação Definitiva das Fronteiras Marítimas

Gabinete das Fronteiras Marítimas

1º Andar, Ala Ocidental do Edifício

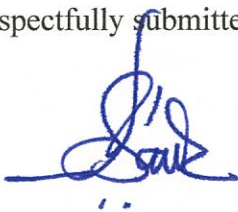
Palácio do Governo

Avenida Marginal

Díli, Timor-Leste

By email: e.exposto@gfm.tl

Respectfully submitted,



Dr Rui Maria de Araújo

Prime Minister of the Democratic Republic of Timor-Leste

Díli, 11 April 2016

Annex 4:
Response to Notice

THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE

and

THE COMMONWEALTH OF AUSTRALIA

**AUSTRALIA'S RESPONSE TO THE
NOTICE OF CONCILIATION**

2 MAY 2016

1. In accordance with Annex V, Article 3(c) of the 1982 *United Nations Convention on the Law of the Sea* (“UNCLOS”), the Commonwealth of Australia (“Australia”) provides this Response to the Notice of Conciliation received from the Democratic Republic of Timor-Leste (“Timor-Leste”) on 11 April 2016.
2. Australia will engage in this process in good faith, in accordance with its international obligations including those under UNCLOS. To this end, and in exercise of its rights, Australia appoints Dr Rosalie Balkin of Australian nationality and Professor Donald McRae of Canadian and New Zealand nationality as conciliators.
3. Australia takes this opportunity to note that once the Commission is constituted, Australia will make an immediate challenge to the competence of the Commission on a number of grounds, including on the basis that such competence is precluded by a bilateral treaty between the Parties, namely the 2006 *Certain Maritime Arrangements in the Timor Sea Treaty* (‘CMATS Treaty’), which entered into force on 23 February 2007. Article 4 of the CMATS Treaty precludes recourse to any form of dispute settlement in relation to maritime boundary delimitation between Australia and Timor-Leste for the life of that treaty.
4. Annex V, Article 13 of UNCLOS provides that “[a] disagreement as to whether a conciliation commission ... has competence shall be decided by the commission”. The question of the Commission’s competence in these proceedings should be resolved as a preliminary matter once the Commission is constituted. To allow for the preliminary determination of the Commission’s competence, Australia would be willing, with Timor-Leste’s agreement, to extend the timeframe given to the Commission to issue its report.
5. Australia agrees to Timor-Leste’s proposal that the Permanent Court of Arbitration (‘PCA’) be invited to act as the Registry for these proceedings. With regard to location, in Australia’s view it would be most appropriate to select a regional location for these proceedings, such as Singapore, where the facilities of the PCA will be available to the Parties free of charge.
6. Australia has appointed Mr John Reid as Agent and Ms Katrina Cooper as Co-Agent in this matter.

7. All communications concerning these conciliation proceedings should be notified to the Agent at the following address:

John Reid

First Assistant Secretary, Office of International Law
Attorney-General's Department
3-5 National Circuit
Barton, Australian Capital Territory 2600
AUSTRALIA

Telephone: +61 2 6141 3554

Email: John.Reid@ag.gov.au

and also to the Co-Agent at the following address:

Katrina Cooper

Senior Legal Adviser
Department of Foreign Affairs and Trade
R.G. Casey Building, John McEwen Crescent
Barton, Australian Capital Territory 0221
AUSTRALIA

Telephone: +61 2 6261 3103

Email: Katrina.Cooper@dfat.gov.au

8. Australia's Response is without prejudice to any position or argument Australia may wish to take before the Conciliation Commission, once constituted, on the issues raised by Timor-Leste, including in relation to competence. In this regard, Australia expressly reserves all its rights.

Canberra, Australia, 2 May 2016

Commonwealth of Australia

Annex 5:
Letter from the Parties to the Permanent Court of Arbitration of
11 May 2016

Mr Hugo Hans Siblesz
Secretary-General
Permanent Court of Arbitration
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

11 May 2016

Dear Secretary-General

**CONCILIATION PROCEEDINGS BETWEEN THE GOVERNMENT OF THE
DEMOCRATIC REPUBLIC OF TIMOR-LESTE AND THE GOVERNMENT OF THE
COMMONWEALTH OF AUSTRALIA PURSUANT TO ARTICLE 298 AND ANNEX V OF
UNCLOS**

We write to inform you that on 11 April 2016, pursuant to Article 298 and Annex V of the United Nations Convention on the Law of the Sea ("UNCLOS"), the Government of the Democratic Republic of Timor-Leste ("**Timor-Leste**") initiated compulsory conciliation proceedings against the Government of the Commonwealth of Australia ("**Australia**") ("**Conciliation Proceedings**").

Both parties hereby invite the Permanent Court of Arbitration ("**PCA**") to act as the Registry for the Conciliation Proceedings.

In accordance with the requirements of Annex V, Articles 3(b) and 3(c) of UNCLOS, the parties have appointed the following conciliators:

Timor-Leste: Judge Abdul Koroma and Judge Rüdiger Wolfrum.

Australia: Dr Rosalie Balkin and Professor Donald McRae.

By a letter of today's date, copied to the PCA, we have informed the party-appointed conciliators that we have agreed to invite the PCA to act as the Registry for the Conciliation Proceedings. We have also reminded them of the next steps in the Conciliation Proceedings.

For the avoidance of doubt, the next steps are as follows:

- a) in accordance with Annex V, Article 3(d) of UNCLOS, the party-appointed conciliators shall within 30 days after they have all been appointed, appoint a fifth conciliator from the list of conciliators maintained by the Secretary-General of the United Nations ("**List of Conciliators**"), who shall be chair; and
- b) in accordance with Annex V, Article 3(d) - (e) of UNCLOS, if the appointment is not made within the 30-day period referred to above, either party may, within one week of the expiration of that period, request the Secretary-General of the United Nations to make the appointment of the fifth conciliator from the List of Conciliators, in consultation with the parties to the dispute. Such appointment shall be made within 30 days of receipt of a request by a party.

For ease of reference, we **enclose** a copy of Article 298 and Annex V of UNCLOS.

We look forward to receiving confirmation from the PCA that it accepts our invitation to act as Registry for the Conciliation Proceedings.

Yours faithfully

Agent for Timor-Leste:



Mr Hermenegildo Pereira
Minister of State and of the Presidency of the
Council of Ministers

Agent for Australia:



Mr John Reid
First Assistant Secretary, Office of International
Law, Attorney-General's Department

Copy to:

Ms Elizabeth Exposto
Deputy Agent for Timor-Leste
Chief Executive Officer
Maritime Boundary Office

Ms Katrina Cooper
Co-Agent for Australia
Senior Legal Advisor
Department of Foreign Affairs and Trade

Encl.

Article 298 and Annex V, UNCLOS

Annex 6:
Letter from the Parties to the Commissioners of 11 May 2016

Judge Abdul Koroma
KORNALIINHORST 48
2592HX The Hague
Netherlands

Email: koroma.a.g@gmail.com

Judge Rüdiger Wolfrum
Max Planck Institute for Comparative Public Law
and International Law
Im Neuenheimer Feld 535
69120 Heidelberg
Germany

Email: wolfrum@mpil.de

Dr Rosalie Balkin
57 Stane Grove
Stockwell, London
SW9 9AL, United Kingdom

Email: rosaliebalkin1@gmail.com

Professor Donald McRae
Faculty of Law, Common Law Section
University of Ottawa
57 Louis Pasteur
Ottawa, Ontario, K1N 6N5
Canada

Email: dmcr@uottawa.ca

Copy to:

Mr Hugo Hans Siblesz
Secretary-General
Permanent Court of Arbitration
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

11 May 2016

Dear Madam and Sirs

**CONCILIATION PROCEEDINGS BETWEEN THE GOVERNMENT OF THE
DEMOCRATIC REPUBLIC OF TIMOR-LESTE AND THE GOVERNMENT OF THE
COMMONWEALTH OF AUSTRALIA PURSUANT TO ARTICLE 298 AND ANNEX V OF
UNCLOS**

As you are aware, on 11 April 2016, pursuant to Article 298 and Annex V of the United Nations Convention on the Law of the Sea ("UNCLOS"), the Government of the Democratic Republic of Timor-Leste ("**Timor-Leste**") initiated compulsory conciliation proceedings against the Government of the Commonwealth of Australia ("**Australia**") ("**Conciliation Proceedings**").

In accordance with Annex V, Articles 3(b) and 3(c) of UNCLOS, the parties have appointed each of you to act as conciliators in these Conciliation Proceedings.

The parties have invited the Permanent Court of Arbitration ("**PCA**") to act as the Registry for the Conciliation Proceedings. Assuming the PCA accepts, it will undoubtedly be in touch with you concerning the conduct of the Conciliation Proceedings.

By way of reminder, the next steps in the Conciliation Proceedings are as follows:

- a) in accordance with Annex V, Article 3(d) of UNCLOS, the party-appointed conciliators shall within 30 days after they have all been appointed, appoint a fifth conciliator from the list of

conciliators maintained by the Secretary-General of the United Nations ("**List of Conciliators**"), who shall be chair; and

- b) in accordance with Annex V, Article 3(d) - (e) of UNCLOS, if the appointment is not made within the 30-day period referred to above, either party may, within one week of the expiration of that period, request the Secretary-General of the United Nations to make the appointment of the fifth conciliator from the List of Conciliators, in consultation with the parties to the dispute. Such appointment shall be made within 30 days of receipt of a request by a party.

For ease of reference, we **enclose** a copy of Article 298 and Annex V of UNCLOS.

In accordance with the usual practice, and recognising the intention for this process to be conducted amicably, the parties record their wish to be invited to provide their views to you on the selection and appointment of the Chairperson in these Conciliation Proceedings.

Yours faithfully

Agent for Timor-Leste:

Agent for Australia:



Mr Hermenegildo Pereira
Minister of State and of the Presidency of the
Council of Ministers



Mr John Reid
First Assistant Secretary, Office of International
Law, Attorney-General's Department

Copy to:

Ms Elizabeth Exposto
Deputy Agent for Timor-Leste
Chief Executive Officer
Maritime Boundary Office

Ms Katrina Cooper
Co-Agent for Australia
Senior Legal Advisor
Department of Foreign Affairs and Trade

Encl.

Article 298 and Annex V, UNCLOS

Annex 7:
Press Releases Nos. 1 to 3



PRESS RELEASE

Conciliation between The Democratic Republic of Timor-Leste and The Commonwealth of Australia

THE HAGUE, 29 July 2016

The Conciliation Commission Concludes First Procedural Meeting

On Thursday, 28 July 2016, the Conciliation Commission held a Procedural Meeting in the compulsory conciliation initiated between The Democratic Republic of Timor-Leste (“**Timor-Leste**”) and the Commonwealth of Australia (“**Australia**”) under [Annex V](#) of the United Nations Convention on the Law of the Sea (the “**Convention**”).

The meeting took place at the Peace Palace, the headquarters of the Permanent Court of Arbitration (the “**PCA**”) in The Hague, the Netherlands.

Timor-Leste is represented by H.E. Minister Hermenegildo Pereira as Agent and Ms. Elizabeth Exposto as Deputy Agent, by Professor Vaughan Lowe QC, Sir Michael Wood KCMG and Mr. Eran Sthoeger as Counsel, and by Ms. Janet Legrand, Mr. Stephen Webb, and Ms. Gitanjali Bajaj as Legal Representatives. Additionally, H.E. Minister Kay Rala Xanana Gusmão, H.E. Ambassador Joaquim da Fonseca, H.E. Ambassador Milena Pires, Mr. Simon Fenby, and Ms. Sadhie Abayasekara participated in the meeting on behalf of Timor-Leste.

Australia is represented by Mr. John Reid as Agent and Ms. Katrina Cooper as Co-Agent, and by Solicitor-General Justin Gleeson SC, Sir Daniel Bethlehem KCMG QC, and Mr. Bill Campbell QC as Counsel. Additionally, H.E. Ambassador Brett Mason, Ms. Amelia Telec, Mr. Justin Whyatt, Ms. Indra McCormick, and Mr. Will Underwood participated in the meeting on behalf of Australia.

Commencement of the Conciliation

The conciliation was initiated by Timor-Leste on 11 April 2016 by way of a “Notification Instituting Conciliation Under Section 2 of Annex V of UNCLOS” addressed to Australia pursuant to Article 298 and Annex V of the Convention.

On 2 May 2016, Australia submitted “Australia’s Response to the Notice of Conciliation”.

The five-member Conciliation Commission was constituted on 25 June 2016 and is chaired by H.E. Ambassador Peter Taksøe-Jensen (Denmark). The other members of the Commission are Dr. Rosalie Balkin (Australia), Judge Abdul G. Koroma (Sierra Leone), Professor Donald McRae (Canada and New Zealand), and Judge Rüdiger Wolfrum (Germany).

With the agreement of the Parties, the Permanent Court of Arbitration acts as Registry in the proceedings.

Next Steps

The next step in the proceedings will be a hearing from 29 to 31 August 2016 at which the Parties will address the background to the conciliation and certain questions concerning the competence of the Commission.

The **Permanent Court of Arbitration** is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 121 Member States. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding, and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties. The PCA’s International Bureau is currently administering 8 interstate disputes, 75 investor-State arbitrations, and 34 cases arising under contracts involving a State or other public entity. More information about the PCA can be found at www.pca-cpa.org.

Contact: Permanent Court of Arbitration
E-mail: bureau@pca-cpa.org



Members of the Conciliation Commission, Representatives of Timor-Leste and Australia, and Representatives of the Permanent Court of Arbitration following the first procedural meeting.



PRESS RELEASE

Conciliation between The Democratic Republic of Timor-Leste and The Commonwealth of Australia

THE HAGUE, 22 August 2016

Commission to hold public opening session followed by hearing on competence

On 29 August 2016, the Conciliation Commission will hold an opening session in the conciliation proceedings between The Democratic Republic of Timor-Leste (“**Timor-Leste**”) and the Commonwealth of Australia (“**Australia**”) under [Annex V](#) of the United Nations Convention on the Law of the Sea (the “**Convention**”) at the Peace Palace in The Hague, the Netherlands.

The Commission has decided, with the agreement of the Parties, that the opening session of the hearing will be webcast live on the website of the Permanent Court of Arbitration. During the opening session, the Parties are invited to address the background to the conciliation and the competence of the Commission.

The opening session will be followed by a hearing on certain objections to the competence of the Commission raised by Australia. This hearing will continue through 31 August 2016 and will not be webcast or open to the public. After having heard the Parties on the objections raised by Australia, the Commission will decide whether to rule on Australia’s objections as a preliminary matter or to continue with the conciliation proceedings and defer the question of competence for later decision.

Webcast of Opening Session

The live webcast will be made available on a dedicated webpage hosted on the PCA website via the following link: <https://pca-cpa.org/en/news/timor-leste-australia/>. No accreditation or password will be required to access the live webcast.

Video of the opening session and transcripts will also be posted to the PCA website following the session.

The schedule for the opening session of the hearing will be as follows:

	Hague Time (CEST)	Dili Time (TLT)	Canberra Time (AEST)
Introduction	9:30 – 9:45	16:30 – 16:45	17:30 – 17:45
Timor-Leste’s Opening	9:45 – 11:15	16:45 – 18:15	17:45 – 19:15
Break	11:15 – 11:30	18:15 – 18:30	19:15 – 19:30
Australia’s Opening	11:30 – 13:00	18:30 – 20:00	19:30 – 21:00

Background on the Proceedings

These conciliation proceedings concern the maritime boundary between Timor-Leste and Australia and were initiated by Timor-Leste on 11 April 2016 by way of a “Notification Instituting Conciliation Under

Section 2 of Annex V of UNCLOS” addressed to Australia pursuant to Article 298 and Annex V of the Convention.

On 2 May 2016, Australia submitted “Australia’s Response to the Notice of Conciliation”.

The five-member Conciliation Commission was constituted on 25 June 2016 and is chaired by H.E. Ambassador Peter Taksøe-Jensen (Denmark). The other members of the Commission are Dr. Rosalie Balkin (Australia), Judge Abdul G. Koroma (Sierra Leone), Professor Donald McRae (Canada and New Zealand), and Judge Rüdiger Wolfrum (Germany).

On 28 July 2016, the Conciliation Commission held a procedural meeting with the Parties at the Peace Palace in The Hague, the Netherlands.

With the agreement of the Parties, the Permanent Court of Arbitration acts as Registry in the proceedings.

* * *

The **Permanent Court of Arbitration** is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 121 Member States. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding, and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties. The PCA’s International Bureau is currently administering 8 interstate disputes, 75 investor-State arbitrations, and 34 cases arising under contracts involving a State or other public entity. More information about the PCA can be found at www.pca-cpa.org.

Contact: Permanent Court of Arbitration
E-mail: bureau@pca-cpa.org



PRESS RELEASE

Conciliation between The Democratic Republic of Timor-Leste and The Commonwealth of Australia

THE HAGUE, 31 August 2016

Commission Holds Public Opening Session in Conciliation Proceedings

On Monday, 29 August 2016, the Conciliation Commission held an opening session of the compulsory conciliation initiated between the Democratic Republic of Timor-Leste (“**Timor-Leste**”) and the Commonwealth of Australia (“**Australia**”) under [Annex V](#) of the United Nations Convention on the Law of the Sea (the “**Convention**”), which is being conducted under the auspices of the Permanent Court of Arbitration (the “**PCA**”). Pursuant to a decision of the Commission, with the agreement of the Parties, the opening session was webcast live and made public on the PCA website.

During the opening session, the Parties addressed the background to the Parties’ dispute and the context of the conciliation proceedings.

Timor-Leste’s submissions were made by Ms. Elizabeth Exposto (Timor-Leste’s Deputy Agent), H.E. Minister Kay Rala Xanana Gusmão, Professor Vaughan Lowe QC, Sir Michael Wood KCMG, and H.E. Minister Hermenegildo Pereira (Timor-Leste’s Agent).

Australia’s submissions were made by Mr. John Reid (Australia’s Agent), Mr. Gary Quinlan AO, and Solicitor-General Justin Gleeson SC.

The opening session was held at the Peace Palace, the headquarters of the PCA in The Hague, the Netherlands.

The Commission will proceed to hear, *in camera*, the Parties’ oral submissions on the competence of the Commission through 31 August 2016.

A video of the opening session, the hearing transcript for the opening session, and the maps and illustrative images used during the Parties’ presentations, are available at <https://pcacases.com/web/view/132>.

Background to the Conciliation

These conciliation proceedings concern the maritime boundary between Timor-Leste and Australia and were initiated by Timor-Leste on 11 April 2016 by way of a “Notification Instituting Conciliation Under Section 2 of Annex V of UNCLOS” addressed to Australia pursuant to Article 298 and Annex V of the Convention.

On 2 May 2016, Australia submitted “Australia’s Response to the Notice of Conciliation”.

The five-member Conciliation Commission was constituted on 25 June 2016 and is chaired by H.E. Ambassador Peter Taksøe-Jensen (Denmark). The other members of the Commission are Dr. Rosalie Balkin (Australia), Judge Abdul G. Koroma (Sierra Leone), Professor Donald McRae (Canada and New Zealand), and Judge Rüdiger Wolfrum (Germany).

On 28 July 2016, the Conciliation Commission held a procedural meeting with the Parties at the Peace Palace in The Hague, the Netherlands.

On 12 and 25 August 2016, the Parties provided the Commission with written submissions on the question of the Commission's competence.

With the agreement of the Parties, the Permanent Court of Arbitration acts as Registry in the proceedings.

* * *

The **Permanent Court of Arbitration** is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 121 Member States. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding, and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties. The PCA's International Bureau is currently administering 8 interstate disputes, 75 investor-State arbitrations, and 34 cases arising under contracts involving a State or other public entity. More information about the PCA can be found at www.pca-cpa.org.

Contact: Permanent Court of Arbitration
E-mail: bureau@pca-cpa.org

Annex 8:
Rules of Procedure

PCA Case N° 2016-10

IN THE MATTER OF A CONCILIATION

- before -

**A CONCILIATION COMMISSION CONSTITUTED UNDER ANNEX V TO THE
1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

- between -

THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE

- and -

THE COMMONWEALTH OF AUSTRALIA

RULES OF PROCEDURE

CONCILIATION COMMISSION:

H.E. Ambassador Peter Taksøe-Jensen (Chairman)
Dr. Rosalie Balkin
Judge Abdul G. Koroma
Professor Donald McRae
Judge Rüdiger Wolfrum

REGISTRY:

Permanent Court of Arbitration

22 August 2016

WHEREAS the Democratic Republic of Timor-Leste and the Commonwealth of Australia are parties to the United Nations Convention on the Law of the Sea (the “**Convention**”).

WHEREAS Article 298(1) of the Convention provides that “[w]hen signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to . . . disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, . . .”;

WHEREAS Article 298(1) further provides that “a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2”;

WHEREAS Article 11(1) of Annex V to the Convention provides that “[a]ny party to a dispute which, in accordance with Part XV, section 3, may be submitted to conciliation under this section, may institute the proceedings by written notification addressed to the other party or parties to the dispute”;

WHEREAS on 22 March 2002, Australia issued a declaration stating, inter alia, “that it does not accept any of the procedures provided for in section 2 of Part XV . . . with respect to disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations as well as those involving historic bays or titles”;

WHEREAS Timor-Leste has invoked Article 298 and Annex V to the Convention with respect to a dispute concerning “the interpretation and application of Articles 74 and 83 of UNCLOS for the delimitation of the exclusive economic zone and the continental shelf between Timor-Leste and Australia including the establishment of the permanent maritime boundaries between the two States,” as set out in Timor-Leste’s Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS dated 11 April 2016;

WHEREAS in accordance with Article 3 of Annex V to the Convention, on 25 June 2016, the Conciliation Commission composed of H.E. Mr. Peter Taksøe-Jensen (Chairman), Dr Rosalie Balkin, Judge Abdul G. Koroma, Professor Donald McRae, and Judge Rüdiger Wolfrum was constituted (the “**Commission**”);

WHEREAS Article 4 of Annex V to the Convention provides that “[t]he conciliation commission shall, unless the parties otherwise agree, determine its own procedure”;

WHEREAS the Commission met with the Parties regarding the organization of these proceedings at the headquarters of the Permanent Court of Arbitration at the Peace Palace in The Hague, the Netherlands on 28 July 2016;

THE CONCILIATION COMMISSION, after having sought the views of the Parties, adopts the following Rules of Procedure. These Rules of Procedure supplement those contained in Annex V to the Convention.

SECTION I. INTRODUCTION

Scope of Application

Article 1

1. The Commission shall function in accordance with these Rules, subject to Annex V to the Convention and other relevant provisions of the Convention. The Commission shall have the power to interpret the provisions of Annex V to the Convention and other relevant provisions of the Convention insofar as necessary.
2. In accordance with Articles 4 and 10 of Annex V to the Convention, the Parties may agree to exclude or vary any of these Rules, or to modify any provision of Annex V, at any time. These Rules are also subject to such modifications or additions as the Commission may find appropriate after seeking the views of the Parties.
3. To the extent that any issue arising is not expressly governed by these Rules or by Annex V or other relevant provisions of the Convention, and the Parties have not otherwise agreed, the issue shall be determined by the Commission, in consultation with the Parties.

Notice, Calculation of Periods of Time

Article 2

1. A notice, including a notification, communication, or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.
2. If an address has been designated by a Party specifically for this purpose, any notice shall be delivered to that Party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated.
3. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraph 2. A notice transmitted by electronic means is deemed to have been received on the day it is sent.
4. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day in the State of the Party concerned, the period is extended until the first business day that follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.
5. Unless otherwise provided, all time limits expire at midnight in The Hague on the relevant date.

Representation and Assistance

Article 3

1. Each Party shall appoint an agent and, if it so decides, one or more deputy agents or co-agents. Each Party may also be assisted by persons of their choice.
2. The names and addresses of agents, Party representatives, and other persons assisting the Parties, as well as any change by a Party of its agents or other representatives or of the contact details of any of its agents or other representatives, shall be communicated promptly to all Parties, to the

Commission, and to the International Bureau of the Permanent Court of Arbitration. Such communication shall specify whether the appointment is being made for purposes of representation or assistance.

Administration

Article 4

The International Bureau of the Permanent Court of Arbitration at The Hague shall serve as the Registry for the proceedings (the “**Registry**”). In order to facilitate the conduct of the conciliation proceedings, the Registry will provide administrative assistance and registry services as directed by the Commission.

SECTION II. COMPOSITION OF THE CONCILIATION COMMISSION

Number and Appointment of Conciliators

Article 5

The Commission consists of five Conciliators appointed in accordance with Article 3 of Annex V to the Convention.

Challenge of a Conciliator

Article 6

A Conciliator, once appointed or chosen, shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence unless the Parties have previously been informed by him or her of these circumstances.

Article 7

1. Any Conciliator may be challenged if circumstances exist that give rise to justifiable doubts as to the Conciliator’s impartiality or independence.
2. A Party may challenge the Conciliator appointed by it only for reasons of which it becomes aware after the appointment has been made.
3. In the event that a Conciliator fails to act or in the event of the *de jure* or *de facto* impossibility of his or her performing his or her functions, the procedure in respect of the challenge of a Conciliator as provided in Article 8 shall apply.

Article 8

1. A Party that intends to challenge a Conciliator shall send notice of its challenge within 30 days after the appointment of the challenged Conciliator has been notified to the challenging party or within 30 days after the circumstances mentioned in Articles 6 and 7 became known to that Party.
2. The notice of challenge shall be communicated to the other Party, to the Conciliator who is challenged, to the other Conciliators, and to the Registry. The notice of challenge shall be in writing and shall state the reasons for the challenge.

3. When a Conciliator has been challenged by a Party, the other Party may agree to the challenge. The Conciliator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
4. In the event that the Party making the challenge elects to pursue it, the Commission may order that the proceedings be suspended during the pendency of the challenge.
5. If, within 15 days from the date of the notice of challenge, the Parties do not agree to the challenge or the challenged arbitrator does not withdraw, the decision on the challenge will be made by the Secretary-General of the Permanent Court of Arbitration.

Replacement of a Conciliator

Article 9

1. If a challenge to the appointment of a Conciliator is sustained, or in any other event where a Conciliator has to be replaced during the course of the proceedings, a substitute Conciliator shall be appointed in the manner prescribed for the initial appointment. In all cases, the procedure provided in Article 3 of Annex V to the Convention shall be used in full for the appointment of the substitute Conciliator even if during the process of appointing the Conciliator to be replaced a Party had failed to exercise his or her right to appoint or to participate in the appointment.
2. In such an event, the Commission shall decide, after consulting with the Parties, whether to revisit any aspect of the conciliation proceedings conducted previously.

SECTION III. THE PROCEEDINGS

General Provisions

Article 10

1. Subject to these Rules, Annex V or other relevant provisions of the Convention, and any agreement between the Parties, the Commission may conduct the conciliation in such manner as it considers appropriate, taking into account the circumstances of the case and the wishes the Parties may express.
2. The Parties will in good faith co-operate with the Commission and, in particular, will endeavour to comply with requests by the Commission to submit written materials, provide evidence or documents, and attend meetings.
3. The Parties shall refrain during the conciliation proceedings from any measure which might aggravate or widen the dispute. They shall, in particular, refrain from any measures which might have an adverse effect on proposals which are or may reasonably be made by the Commission, so long as those proposals have not been explicitly rejected by either of the Parties.

Decisions

Article 11

Decisions of the Commission regarding procedural matters (including competence), the report and recommendations shall be made by a majority vote of its members, except that questions of administration or routine procedure may be decided by the Chairman alone, subject to revision, if any, by the full Commission.

Communications

Article 12

1. Written communication between the Parties and the Commission shall take place in accordance with paragraph 6 of the Commission's Terms of Appointment as supplemented by these Rules.
2. The Commission may invite the Parties to meet with it or may communicate with them orally or in writing. The Commission or any of its members may meet or communicate with the Parties together, or with each of them separately in accordance with Article 18.

Written Submissions

Article 13

1. The Commission may invite the Parties to make written submissions setting out their position with respect to one or more aspects of the Parties' dispute.
2. The Commission will determine the scope and timing of any written submissions in consultation with the Parties. At the request of either Party, and after having sought the views of the other Party, the Commission may extend the time for such written submissions.
3. Where the Parties are called upon to make written submissions, such submissions shall be accompanied by copies of any documentary or other evidence or legal authorities cited in their submissions. Submissions shall be transmitted in the following manner:
 - (a) The submitting Party shall transmit an electronic copy of its submission by e-mail, with accompanying documentary evidence and legal authorities to the other Party and the Registry, for onward transmission to the Commission.
 - (b) On the same day, the submitting party shall dispatch by courier to the opposing Party and the Registry, for onward transmission to the Commission, hard copies of the same materials sent electronically, together with hard copies of any accompanying documentary exhibits. Legal authorities shall not ordinarily be provided in hard copy unless specifically requested by the Commission.
 - (c) The submitting party shall dispatch two copies of its submission to the opposing Party and seven copies to the Registry.
 - (d) Along with every hard-copy submission, the submitting party shall dispatch a complete electronic copy (including accompanying documents and legal authorities) on USB flash drive or other electronic device, if possible in searchable Adobe PDF.
4. Documents and legal authorities appended to any written submissions shall be organised as follows:
 - (a) Documents submitted to the Commission shall be numbered consecutively throughout the conciliation and shall clearly distinguish between different types of documents (e.g., exhibits, witness statements, expert reports, legal authorities). The parties shall agree on a method of numbering and labelling of documents that is consistent between them.
 - (b) Hard copies of documents shall be submitted in an appropriate order in files or volumes.

- (c) Written submissions shall be accompanied by a detailed table of contents describing all documents appended to them by exhibit number, date, type of document, and author or recipient, if and as applicable.

Location of Meetings

Article 14

1. The Commission shall determine the location of any hearings or meetings between the Commission and the Parties on a case-by-case basis, in consultation with the Parties.
2. The Commission shall determine the location of any meetings between the Commission and any Party separately on a case-by-case basis, in consultation with one or both Parties as appropriate.
3. The Commission may meet at any location it considers appropriate for deliberations or any other purpose.

Language of the Proceedings

Article 15

1. The language of the conciliation shall be English.
2. Any document submitted to the Commission that is written in a language other than English shall be accompanied by a translation into English. Informal translations will be acceptable unless either the Commission or the other Party request a certified translation.

Transparency and Confidentiality

Article 16

1. The existence of this conciliation shall be public. The Registry shall identify on its website the names of the Parties, the Commission, and the agents and counsel for the Parties, and will publish such further information and documents as provided in these Rules or as may be directed by the Commission.
2. The Commission may, in consultation with the Parties, designate any hearing, or any portion thereof, as a public hearing or meeting. The Registry shall make appropriate arrangements for any public hearing or meeting as directed by the Commission.
3. The Commission may, from time to time, at its own initiative or upon request of a Party, direct the Registry to issue press releases concerning the status of the proceedings. The Commission may, in its discretion and in consultation with the Parties, attach summaries or statements made by the Parties, transcripts of proceedings, and other documents forming part of the record of the proceedings to press releases issued by the Registry. In deciding when and whether to make public information or documents concerning the proceedings, the Commission shall bear in mind the purpose of the proceedings to assist the Parties in reaching an amicable settlement.
4. Any decision of the Commission on whether it has competence shall be made public.
5. The Commission shall decide, in consultation with the Parties, whether to make the Commission's Report or any portion thereof public.

6. Either Party may designate certain information or materials it submits to the Commission as confidential. Information or materials so designated shall not be made public or referred to in press releases issued by the Registry or in any other documents made public by the Commission except with the agreement of the Parties. Insofar as necessary, the Commission shall make appropriate arrangements in consultation with the Parties for the redaction of confidential information from any document made public.
7. Except as otherwise provided in this Article or agreed by the Parties, or except to the extent that the disclosure is required in connection with arbitral or judicial proceedings pursuant to Article 23 hereof, the Commission, the Registry, and the Parties shall keep confidential all matters relating to the conciliation proceedings.

Objections to Competence

Article 17

1. The Commission shall have the power to rule on any disagreement as to whether the Commission has competence under Section 2 of Annex V to the Convention.
2. Any objection that the Commission lacks competence shall be raised no later than in the Parties' first written submission to the Commission. A Party is not precluded from raising such an objection by the fact that it has appointed, or participated in the constitution of the Commission. Any objection that the Commission is exceeding the scope of its competence shall be raised as soon as the matter alleged to be beyond the scope of its competence is raised during the conciliation proceedings. The Commission may, in either case, admit a later plea if it considers the delay justified.
3. Where an objection to the competence of the Commission is raised, the Commission shall decide whether or not to rule on its competence as a preliminary question or in conjunction with the proceedings on the substance of the Parties' dispute. The decision whether or not to rule on its competence as a preliminary question need not contain reasons.
4. If at an appropriate stage of the proceedings any Party so requests, the Commission shall hold hearings on the question of its competence. In the absence of such a request, the Commission shall decide whether to hold such hearings or whether its decision on competence will be made on the basis of documents and other materials.
5. Any ruling by the Commission on its competence shall be accompanied by reasons.

Conciliation Proceedings on the Substance of the Dispute

Article 18

1. The procedure set out in this Article shall apply to all matters relevant to the conciliation, with the exception of disagreements as to whether a Commission has competence under Section 2 of Annex V to the Convention which shall be addressed in accordance with the other provisions of these Rules.
2. The Commission shall hear the parties, examine their claims and objections, make proposals to the Parties, and otherwise assist the Parties in an independent and impartial manner with a view to reaching an amicable settlement. The Commission will be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the Parties and the circumstances surrounding the dispute, including any previous practices between the Parties.

3. The Commission may, at any stage of the proceedings, draw to the attention of the Parties any measure which the Commission considers might facilitate an amicable settlement of the dispute. In particular, when it appears to the Commission that there exist elements of a settlement which would be acceptable to the Parties, the Commission may formulate the terms of a possible settlement and submit them to the Parties for their observations. Each Party may also, on its own initiative or at the invitation of the Commission, submit to the Commission suggestions for the settlement of the dispute.
4. The Commission may meet or communicate with the Parties together or with each of them separately, whether orally or in writing. The Commission may request each Party to make such written submissions as it deems appropriate in accordance with Article 13.
5. Separate meetings with either Party may be conducted in conjunction with a joint meeting between the Commission and the Parties or as a distinct phase of the proceedings. The Commission may also, for reasons of efficiency, authorize the Chairman with or without any of the other members of the Commission to meet separately with either Party at any appropriate point in the conciliation process. In such event, the Chairman shall keep the Commission regularly informed with respect to the content and prospects of any separate meetings with either Party.
6. When a Party gives any information or documents to the Commission subject to a specific condition that it not be disclosed to the other Party, the Commission shall not disclose such information or documents to the other Party.

Termination of Conciliation Proceedings

Article 19

The conciliation proceedings are terminated:

- (a) when a settlement has been reached;
- (b) when the parties have accepted or one party has rejected the recommendations of the report by written notification addressed to the Secretary-General of the United Nations;
- (c) when a period of three months has expired from the date of transmission of the report to the Parties; or
- (d) by a written declaration signed by both Parties addressed to the Commission to the effect that the conciliation proceedings are terminated as of the date of the declaration or any other date specified in the declaration.

SECTION IV. THE REPORT

Form and Effect of the Report

Article 20

1. The Commission shall, during the course of the conciliation phase, at its discretion, discuss with each Party and with the Parties jointly the appropriate scope and form of the Report.
2. The Commission, at its discretion, may supplement its Report to the Parties with confidential reports to each Party separately recommending to each Party steps that the Commission recommends might usefully be taken by the Party in question.

3. The Commission, at its discretion, may issue a confidential draft Report to the Parties prior to finalising its Report for the purposes of discussions with the Parties or information.
4. The Commission may, with the agreement of both Parties, extend the timeframe for completion of the report as set out in Article 7 of Annex V to the Convention.
5. The Commission may undertake a limited post-Report consultation with the Parties during the period prior to the termination of the proceedings.

SECTION V. COSTS

Costs

Article 21

1. Upon termination of the conciliation proceedings, the Commission shall fix the costs of the conciliation and give written notice thereof to the Parties. The term 'costs' includes only:
 - (a) The fees of the Commission in accordance with the Commission's Terms of Appointment;
 - (b) The travel and other expenses of the Commission in accordance with the Commission's Terms of Appointment;
 - (c) The costs of any expert advice requested by the Commission with the consent of the Parties;
 - (d) The fees and expenses of the Registry appointed pursuant to Article 4 of these Rules.
 - (e) The costs of any services of the PCA Secretary-General and the Bureau.
2. The fees and expenses of the Commission shall be reasonable in amount, taking into account the complexity of the subject-matter, the time spent by the Conciliators, and any other relevant circumstances of the case.
3. Unless the Parties otherwise agree, the costs of the proceedings, including the fees and expenses of the Commission, shall be borne by the Parties in equal shares.

Deposit for Costs

Article 22

1. The Registry may request each Party to deposit an equal amount as an advance for the costs referred to in Article 21.
2. During the course of the proceedings, the Registry may request supplementary deposits from the Parties.
3. If the requested deposits are not paid in full within 30 days after the receipt of the request, the Commission shall so inform the Parties in order that one of them may make the required payment. If such payment is not made, the Commission may order the suspension or termination of the proceedings.
4. Upon termination of the conciliation proceedings, the Registry shall render an accounting to the Parties of the deposits received and return any unexpended balance to the Parties in proportion to the amounts received from each Party.

SECTION VI. MISCELLANEOUS PROVISIONS

Resort to Arbitral or Judicial Proceedings

Article 23

The Parties undertake not to initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings, except that a Party may initiate arbitral or judicial proceedings where, in its opinion, such proceedings are necessary for preserving its rights.

Other Relevant Proceedings

Article 24

The Parties shall keep the Commission informed of the status and developments in any other proceedings involving the Parties which may be relevant to the dispute that is the subject of the conciliation proceedings.

Role of Commission in Other Proceedings

Article 25

The Parties and the Commission undertake that, unless the Parties agree otherwise, none of the members of the Commission shall act as an arbitrator or as a representative or counsel of a Party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings. The Parties also undertake that they will not present any Conciliator as a witness in any such proceedings.

Preservation of the Legal Position of the Parties

Article 26

1. The Parties undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings:
 - (a) Views expressed or suggestions made by the other Party in respect of a possible settlement of the dispute;
 - (b) Admissions made by the other Party in the course of the conciliation proceedings;
 - (c) Proposals made by the Commission or individual Conciliators;
 - (d) The fact that the other Party had indicated its willingness to accept a proposal for settlement made by the Conciliators;
 - (e) Any information or materials designated as confidential by either Party in accordance with Article 16; or
 - (f) Any information or materials relating to the conciliation proceedings which have not been made public by the Commission in accordance with Article 16.

2. Acceptance by a party of recommendations submitted by the commission in no way implies any admission by it of the considerations of law or of fact which may have inspired the recommendations.

Annex 9:
Decision on Competence

PCA Case N° 2016-10

IN THE MATTER OF A CONCILIATION

- before -

**A CONCILIATION COMMISSION CONSTITUTED UNDER ANNEX V TO THE
1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

- between -

THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE

- and -

THE COMMONWEALTH OF AUSTRALIA

**DECISION ON
AUSTRALIA'S OBJECTIONS TO COMPETENCE**

CONCILIATION COMMISSION:

**H.E. Ambassador Peter Taksøe-Jensen (Chairman)
Dr. Rosalie Balkin
Judge Abdul G. Koroma
Professor Donald McRae
Judge Rüdiger Wolfrum**

REGISTRY:

Permanent Court of Arbitration

19 September 2016

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GLOSSARY OF DEFINED TERMS

<u>Term</u>	<u>Definition</u>
Australia	The Commonwealth of Australia
CMATS	Treaty between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea, 12 January 2006, 2438 UNTS 359
Commission	The Conciliation Commission constituted in the present matter, composed of H.E. Ambassador Peter Taksøe-Jensen (Chairman), Dr. Rosalie Balkin, Judge Abdul G. Koroma, Professor Donald McRae, and Judge Rüdiger Wolfrum
Convention	United Nations Convention on the Law of the Sea, 10 December 1982, 1833 UNTS 3
JPDA	The Joint Petroleum Development Area established pursuant to the Timor Sea Treaty
Parties	Timor-Leste and Australia
PCA	The Permanent Court of Arbitration
Third UN Conference	Third United Nations Conference on the Law of the Sea
Timor Sea Treaty	Timor Sea Treaty between the Government of East Timor and the Government of Australia, 20 May 2002, 2258 UNTS 3
Timor-Leste	The Democratic Republic of Timor-Leste
UNCLOS	United Nations Convention on the Law of the Sea, 10 December 1982, 1833 UNTS 3
Unitisation Agreement	Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to the Unitisation of the Sunrise and Troubadour Fields, 6 March 2003, 2483 UNTS 317

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I. INTRODUCTION

1. The Parties to these conciliation proceedings are the Democratic Republic of Timor-Leste (“**Timor-Leste**”) and the Commonwealth of Australia (“**Australia**”) (together, the “**Parties**”). Both States are parties to the 1982 United Nations Convention on the Law of the Sea (the “**Convention**”) (“**UNCLOS**”),¹ Australia having ratified the Convention with effect from 16 November 1994, and Timor-Leste having acceded to the Convention with effect from 7 February 2013.
2. Timor-Leste and Australia are neighbouring States, separated by the Timor Sea at a distance of approximately 300 nautical miles. In these proceedings, Timor-Leste seeks compulsory conciliation, pursuant to Article 298(1)(a)(i) and Annex V, section 2 of the Convention, of a dispute concerning “the interpretation and application of Articles 74 and 83 of UNCLOS for the delimitation of the exclusive economic zone and the continental shelf between Timor-Leste and Australia including the establishment of the permanent maritime boundaries between the two States”.²
3. Australia objects to the competence of the Conciliation Commission in this matter on the grounds that, *inter alia*, compulsory conciliation pursuant to the Convention is precluded by other treaties entered into between the Parties. However, Australia has made clear that its objections to competence do not have implications for its participation in any further stage of the proceedings; indeed, Australia has committed that it “will abide by the Commission’s finding as to whether it has jurisdiction to hear matters on maritime boundaries”³ and that “if the decision is against us, [Australia] will engage in the conciliation in good faith.”⁴
4. The present Decision sets out the Commission’s reasoning on the question of its competence pursuant to the Convention. Nothing herein should be understood to prejudge the substance of the Parties’ dispute.

¹ United Nations Convention on the Law of the Sea, 10 December 1982, 1833 UNTS 3.

² Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS, para. 5.

³ Joint media release: Minister for Foreign Affairs, The Hon Julie Bishop MP; Leader of the Government in the Senate, Senator the Hon George Brandis QC (29 August 2016), *available at* <foreignminister.gov.au/releases/Pages/2016/jb_mr_160829c.aspx?w=tb1CaGpkPX%2FIS0K%2Bg9ZKEg%3D%3D>.

⁴ Procedural Meeting Tr. 125:5-6.

A. BACKGROUND TO THE PARTIES' DISPUTE

5. For the purpose of giving necessary context to this Decision on Competence, the Commission considers it useful to set out, briefly, its understanding of the history of the Parties' dispute and to recall the various international instruments that, in addition to the Convention, bear on the legal relationship between the Parties.
6. Although inhabited for thousands of years, the eastern half of the island of Timor entered the modern era as a colony of Portugal. During the colonial period, the remaining portion of Timor (*i.e.*, the western half of the island), as well as other neighbouring islands, formed part of the Dutch East Indies and, upon independence, became part of the Republic of Indonesia.
7. In 1975, the people of Timor-Leste declared their independence from Portugal, but promptly came under the control of Indonesia, which administered Timor-Leste as a province of Indonesia until 1999. During the period of Indonesian control, Australia entered into certain arrangements with Indonesia with respect to the allocation of seabed resources in the Timor Sea, but did not establish any permanent maritime boundary adjacent to the coast of what later became Timor-Leste.
8. In 1999, in a referendum supervised by the United Nations, the people of Timor-Leste voted in favour of independence from Indonesia. Following a period of temporary administration by the United Nations Transitional Administration in East Timor (UNTAET), Timor-Leste became an independent State on 20 May 2002.
9. On the same day that Timor-Leste regained its independence, Timor-Leste and Australia concluded the *Timor Sea Treaty between the Government of East Timor and the Government of Australia* (the "**Timor Sea Treaty**").⁵ In broad terms, the Timor Sea Treaty provided for the creation and management of a Joint Petroleum Development Area (the "**JPDA**") in the Timor Sea between Timor-Leste and Australia, pending the ultimate delimitation of a maritime boundary between them. Within the JPDA, 90 percent of the petroleum production belongs to Timor-Leste and 10 percent to Australia.
10. Thereafter, in 2003, Timor-Leste and Australia began negotiations on the establishment of a permanent maritime boundary. The focus of these negotiations changed, however, leading to the conclusion on 12 January 2006 of the *Treaty between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea* ("**CMATS**").⁶ In broad terms,

⁵ Timor Sea Treaty between the Government of East Timor and the Government of Australia, 20 May 2002, 2258 UNTS 3.

⁶ Treaty between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea, 12 January 2006, 2438 UNTS 359.

CMATS (a) extended the life of the Timor Sea Treaty until 50 years after the entry into force of CMATS; (b) provided for Timor-Leste to exercise jurisdiction over the water column in the JPDA; and (c) provided that revenues derived directly from the production of petroleum from the Greater Sunrise Field, an oil and gas field which straddles the eastern limit of the JPDA, would be shared equally between the two States. CMATS also includes in Article 4 a "moratorium" that addresses the issue of permanent maritime boundaries and the availability of dispute resolution with respect to maritime boundaries.

11. In parallel with the negotiation of CMATS, Timor-Leste and Australia also concluded an Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to the Unitisation of the Sunrise and Troubadour Fields (the "**Unitisation Agreement**"),⁷ with respect to the Greater Sunrise Field. The Unitisation Agreement was signed on 6 March 2003, but entered into force in parallel with CMATS on 23 February 2007. CMATS and the Unitisation Agreement thus predate the entry into force of the Convention as between the Parties, which occurred with Timor-Leste's accession on 7 February 2013.
12. The Commission notes that exploitation of the Greater Sunrise Field has not yet commenced.

A. AUSTRALIA'S OBJECTIONS TO COMPETENCE AND THE SCOPE OF THIS DECISION

13. As noted in paragraph 2 above, Timor-Leste has requested compulsory conciliation of a dispute concerning "the interpretation and application of Articles 74 and 83 of UNCLOS for the delimitation of the exclusive economic zone and the continental shelf between Timor-Leste and Australia including the establishment of the permanent maritime boundaries between the two States".⁸
14. Australia objects to the competence of the Commission on six distinct grounds.
15. First, Australia submits that "Article 4 of the CMATS Treaty precludes either Party . . . from initiating compulsory conciliation under Article 298 and Annex V of UNCLOS and . . . from engaging in the substantive matters in dispute in such proceedings."⁹

⁷ Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to the Unitisation of the Sunrise and Troubadour Fields, 6 March 2003, 2483 UNTS 317.

⁸ Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS, para. 5.

⁹ Competence Hearing Tr. (Final) 140:21 to 141:1.

16. Secondly, Australia argues that “the CMATS Treaty is something specifically envisaged by Articles 74 and 83 of UNCLOS, so it is specifically brought into the UNCLOS regime by Articles 74 and 83.”¹⁰ Because CMATS is a provisional arrangement of a practical nature contemplated by the Convention, Australia considers that the moratorium in CMATS was not displaced by the entry into force of the Convention.¹¹
17. Thirdly, Australia contends that:
- in 2003, the Parties agreed on a mechanism for resolution of that dispute which was negotiation. Australia's case is then that the CMATS Treaty built upon that agreement of the Parties, confirmed that negotiation was to be the method of dispute resolution, and added a time stipulation which was the negotiation was not to occur until a period in the future¹²
- Accordingly, Australia considers that the Commission's competence is precluded by Article 281 of the Convention, which “recognises the CMATS agreement as a relevant choice by the Parties that that is the way their dispute is to be determined.”¹³
18. Fourthly, Australia submits that that the Parties' dispute over maritime boundaries dates to 2002, prior to the entry into force of the Convention as between the Parties.¹⁴ Australia therefore contends that the first condition of Article 298—that the dispute arise “subsequent to the entry into force of this Convention”—is not met.¹⁵
19. Fifthly, Australia further contends that “[t]here have not been negotiations on the maritime line, which Article 298 contemplates will be necessary before one can resort to its provisions. The reason for that is that the Parties have observed the CMATS Treaty.”¹⁶ Accordingly, Australia considers that the second condition of Article 298 is not met.
20. Finally, Australia submits that the Parties dispute is “inadmissible” because Timor-Leste is seeking to “seize the Commission in breach of its treaty commitments to Australia.”¹⁷ Australia further submits that principles of comity compel the Commission to “at the very least stay the

¹⁰ Competence Hearing Tr. (Final) 183:8-11.

¹¹ Competence Hearing Tr. (Final) 203:10 to 210:7.

¹² Competence Hearing Tr. (Final) 244:19 to 245:2.

¹³ Competence Hearing Tr. (Final) 245:3-6.

¹⁴ Australia's Objection to Competence, para. 153.

¹⁵ Australia's Objection to Competence, para. 148.

¹⁶ Competence Hearing Tr. (Final) 258:5-9.

¹⁷ Competence Hearing Tr. (Final) 264:4-6; Australia's Objection to Competence, para. 173.

conciliation proceedings until the Tribunal constituted to hear [a related arbitration concerning the validity of CMATS] has reached a decision.”¹⁸

*

21. For its part, Timor-Leste contests each of Australia's objections and submits that the Commission is competent to proceed with the conciliation. More generally, Timor-Leste rejects the dichotomy Australia presents between dispute resolution under the Convention and CMATS. According to Timor-Leste:

A conciliation commission is a creature of UNCLOS: its competence is determined by UNCLOS, not by other treaties, unless they are incorporated by reference. Even if the institution of conciliation proceedings was a breach of some other commitment, under a separate treaty, for example, that would not deprive the UNCLOS Commission of its competence.¹⁹

22. Moreover, Timor-Leste does not “accept that the kind of considerations that constrain the exercise of the judicial function can be transported into conciliation”²⁰ and “do[es] not think that these proceedings should be conducted as if they are international litigation at all.”²¹ In responding to Australia's specific objections, Timor-Leste maintains as follows.
23. First, Timor-Leste disagrees with Australia regarding the scope and content of Article 4 of CMATS. Timor-Leste “does not consider that Article 4(1) was intended to or does oblige the Parties not to discuss, and if that is any different, negotiate with each other, on the issue of permanent maritime boundaries.”²² Furthermore, Timor-Leste does not “accept that Article 4(4) can bar the Parties from resort to the mechanisms to Part XV of UNCLOS” and “does not regard the UNCLOS conciliation procedure as a ‘dispute settlement mechanism’ within the meaning of Article 4(4) because this Commission cannot settle the dispute.”²³
24. Secondly, Timor-Leste submits that the mere fact that CMATS includes a provisional arrangement of a practical nature does not make it *per se* compatible with the Convention.²⁴ Timor-Leste considers CMATS, as interpreted by Australia, to be incompatible with the

¹⁸ Australia's Objection to Competence, para. 184.

¹⁹ Competence Hearing Tr. (Final) 446:16-23.

²⁰ Competence Hearing Tr. (Final) 348:8-10.

²¹ Competence Hearing Tr. (Final) 349:10-12.

²² Competence Hearing Tr. (Final) 435:14-18.

²³ Competence Hearing Tr. (Final) 436:5-15.

²⁴ Competence Hearing Tr. (Final) 345:21 to 347:1.

Convention under the terms of Article 311, which concerns the relationship between the Convention and other instruments.²⁵

25. Thirdly, with respect to Article 281, Timor-Leste submits that the Convention requires a binding agreement,²⁶ that the 2003 exchange of letters did not constitute a binding agreement,²⁷ and that:

CMATS is not an agreement within the meaning of Article 281. It is not an agreement to settle the maritime boundary dispute by a means that excludes a further procedure. On the contrary, it purports to freeze the maritime dispute for 50 years.²⁸

26. Fourthly, relying on the negotiating record of the Convention, Timor-Leste considers that the cut-off date for disputes that can be submitted to conciliation under Article 298(1)(a)(i) "is the entry into force of this Convention, which . . . means 16 November 1994."²⁹

27. Fifthly, with respect to the condition of prior negotiation in Article 298(1)(a)(i), Timor-Leste submits that "it is well established that a requirement such as this for a reasonable period of time to elapse before proceedings are initiated does not require a party to wait when there is no prospect of negotiations. . . . If one side refuses to negotiate, that cannot be a bar to the operation of Article 298(1)(a)(i)."³⁰

28. Finally, regarding Australia's objection on "admissibility", Timor-Leste emphasizes the non-binding nature of these conciliation proceedings and submits that the Commission will not therefore trespass onto matters that are properly before other fora, including an arbitration tribunal presently considering the validity of CMATS.³¹ Timor-Leste also indicates that, if necessary, it will soon terminate CMATS, such that CMATS would no longer be in place by the time the Commission is asked to render any report.³²

*

29. Article 13 of Annex V to the Convention provides that "[a] disagreement as to whether a conciliation commission acting under this section has competence shall be decided by the commission." The Parties likewise agree that the Commission is competent to evaluate and

²⁵ Competence Hearing Tr. (Final) 345:21 to 346:6; 436:1-10.

²⁶ Competence Hearing Tr. (Final) 354:8-17.

²⁷ Competence Hearing Tr. (Final) 355:2 to 356:3.

²⁸ Competence Hearing Tr. (Final) 356:10-15.

²⁹ Competence Hearing Tr. (Final) 358:8-10.

³⁰ Competence Hearing Tr. (Final) 370:11 to 371:4.

³¹ Competence Hearing Tr. (Final) 349:1-9.

³² Competence Hearing Tr. (Final) 35:11-18.

decide on its own competence.³³ Accordingly, in this Decision, the Commission will set out the issues that it considers to bear on its competence under the Convention, addressing Australia's objections and Timor-Leste's responses.

II. PROCEDURAL HISTORY

30. On 11 April 2016, Timor-Leste commenced these conciliation proceedings by way of a *Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS*. In its Notification, Timor-Leste appointed Judge Abdul G. Koroma and Judge Rüdiger Wolfrum as Timor-Leste's party-appointed conciliators.
31. On 2 May 2016, Australia submitted a *Response to the Notice of Conciliation*. In its Response, Australia appointed Dr. Rosalie Balkin and Professor Donald McRae as Australia's party-appointed conciliators.
32. On 11 May 2016, the Parties wrote jointly to the Permanent Court of Arbitration (the "PCA"), requesting that it act as the Registry for these conciliation proceedings.
33. On 25 June 2016, after consulting with the Parties, the party-appointed conciliators appointed H.E. Ambassador Peter Taksøe-Jensen to serve as Chairman of the Conciliation Commission (the "Commission"). Ambassador Taksøe-Jensen was selected from a shortlist of candidates acceptable to both Parties. The Commission was accordingly constituted with effect from 25 June 2016.
34. On 27 June 2016, Australia submitted an *Application for Bifurcation of the Proceedings*, briefly setting out Australia's challenge to the competence of the Commission and requesting the Commission to "bifurcate the conciliation to enable Australia's challenge to the competence of the Commission to be decided as a separate preliminary matter."
35. On 18 July 2016, Timor-Leste submitted its *Comments on Australia's Application for Bifurcation of the Proceedings*, requesting that the Commission "not accede to Australia's request for bifurcation."
36. On 28 July 2016, the Commission convened a procedural meeting with the Parties at the headquarters of the PCA at the Peace Palace in The Hague, the Netherlands. During the course of the procedural meeting, the Commission and the Parties concluded terms of appointment, discussed the rules of procedure and the organization of the proceedings, and agreed that,

³³ Australia's Objection to Competence, para. 52; Timor-Leste's Written Submission in Response to Australia's Objections to Competence, para. 5.

following written submissions on competence from the Parties, the Commission would convene a hearing on competence from 29 to 31 August 2016 at which the Parties would address both the question of the Commission's competence and whether the Commission should decide on its competence as a preliminary matter. The Parties also agreed that there would be a public opening session, prior to the hearing on competence, in which the Parties would address the background to the dispute.

37. On 12 August 2016, Australia submitted its *Objection to Competence*.
38. On 25 August 2016, Timor-Leste submitted its Written Submission in Response to Australia's Objection to Competence.
39. From 29 to 31 August 2016, the Commission convened a hearing on the issue of competence with the Parties at the Peace Palace in The Hague, the Netherlands. As agreed with the Parties, the hearing was preceded by an opening session on the background to the dispute, which was webcast live on the website of the PCA. The following participated in the opening session and the hearing on competence:

Commissioners

H.E. Mr. Peter Taksøe-Jensen (Chairman)
Dr. Rosalie Balkin
Judge Abdul G. Koroma
Professor Donald McRae
Judge Rüdiger Wolfrum

Timor-Leste

H.E. Minister Kay Rala Xanana Gusmão
H.E. Minister Hermenegildo Pereira
Ms. Elisabeth Exposto
H.E. Ambassador Joaquim da Fonseca
H.E. Ambassador Abel Guterres
H.E. Ambassador Milena Pires
Ms. Elizabeth Baptista
Mr. Simon Fenby
Ms. Sathie Abayasekara
Ms. Helena Araujo
Ms. Ermelinda Maria Calapes Da Costa
Professor Vaughan Lowe QC
Sir Michael Wood KCMG
Mr. Eran Sthoeger
Mr. Robin Cleverly
Ms. Janet Legrand
Mr. Stephen Webb
Ms. Gitanjali Bajaj
Ms. Harriet Foster
Ms. Amber Day
Mr. Olavio Mendes Ferreira Lopes

Australia

Mr. John Reid
Ms. Katrina Cooper
Solicitor-General Justin Gleeson SC
Sir Daniel Bethlehem KCMG QC
Mr. Bill Campbell QC
Professor Chester Brown
Mr. Gary Quinlan AO
H.E. Ambassador Brett Mason
Ms. Amelia Telec
Mr. Benjamin Huntley
Ms. Anna Rangott
Mr. Justin Whyatt
Mr. Todd Quinn
Mr. Mark Alcock
Ms. Angela Robinson
Ms. Indra McCormick
Ms. Christina Hey-Nguyen

Registry

Mr. Garth Schofield
Mr. Martin Doe
Ms. Pem Chhoden Tshering

Permanent Court of Arbitration

Court Reporter

Ms. Diana Burden

40. During the opening session and hearing on competence, H.E. Minister Kay Rala Xanana Gusmão; H.E. Minister Hermenegildo Pereira, Agent for Timor-Leste; Ms. Elisabeth Exposto, Deputy Agent for Timor-Leste; Professor Vaughan Lowe QC; and Sir Michael Wood KCMG made oral presentations for Timor-Leste. Mr. John Reid, Agent for Australia; Mr. Justin Gleeson SC, Solicitor General of Australia; Sir Daniel Bethlehem KCMG QC; Mr. Bill Campbell QC; Professor Chester Brown; and Mr. Gary Quinlan AO made oral presentations for Australia.
41. On 31 August and 9 September 2016, the Parties wrote to the Commission, providing supplemental written answers to questions posed by the Commission during the hearing. Additionally, on 13 September 2016, Australia provided a further supplemental answer to a question from the Commission concerning Article 9 of CMATS.

III. THE COMMISSION'S ANALYSIS

42. In this dispute, the Conciliation Commission was instituted pursuant to Article 298(1)(a)(i) of the Convention, which provides for compulsory conciliation where a State elects to exclude sea boundary delimitation from arbitral or judicial settlement. Annex V to the Convention provides the basis for the formation and procedure of the Commission itself.
43. Following the initiation of these conciliation proceedings, Australia has objected to the competence of the Commission, principally on the basis of CMATS, a bilateral agreement that, according to Australia, precludes access to the dispute resolution mechanisms of the Convention.
44. Australia begins its objections stating that Article 4 of CMATS precludes compulsory conciliation under the Convention. The Commission does not share this point of departure. In its view, the starting point for the Commission's analysis is not CMATS, but rather the Convention itself. The conciliation procedure was established pursuant to Article 298 and accordingly the competence of the Commission derives from the Convention and its Annex V. Agreements such as CMATS

are relevant to the question of the Commission's competence, but only within the framework and from the perspective of the Convention itself.

45. Furthermore, the Convention is a later treaty as between the Parties. Thus, CMATS could only affect the Commission's competence to the extent that such effect is provided for in the Convention.
46. Within the Convention, provisions for the resolution of disputes among the States Parties are concentrated in Part XV. Compulsory conciliation in respect of sea boundary delimitation arises from Article 298, which falls within Section 3 of Part XV, entitled "Limitations and Exceptions to Applicability of Section 2." Section 2, in turn, is concerned with "Compulsory Procedures Entailing Binding Decisions" and begins with Article 286, which limits access to a court or tribunal under Section 2 to situations "where no settlement has been reached by recourse to section 1." Thus, under the Convention, and in particular its Part XV, a party seeking to make use of the dispute resolution provisions of the Convention must first meet the requirements of Section 1 of Part XV to enable access to the binding procedures of Section 2 or the compulsory conciliation procedures provided in Section 3.
47. Article 281 in Section 1 of Part XV is relevant to the present proceedings, and it is to that provision that the Commission now turns. Thereafter, the Commission will address the conditions for compulsory conciliation to be invoked, as set out in Article 298.

A. ARTICLE 281 OF THE CONVENTION

48. Article 281 of the Convention provides as follows:
 1. If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed to seek settlement of the dispute by a peaceful means of their own choice, the procedures provided for in this Part apply only where no settlement has been reached by recourse to such means and the agreement between the parties does not exclude any further procedure.
 2. If the parties have also agreed on a time-limit, paragraph 1 applies only upon the expiration of that time-limit.
49. This article forms part of a compromise on dispute settlement that was carefully negotiated at the Third United Nations Conference on the Law of the Sea (the "**Third UN Conference**"), where some States favoured recourse to the compulsory settlement of disputes while others sought to exclude it entirely from the Convention.³⁴ As adopted, the Convention provides for the

³⁴ "Summary Records of Meetings of the Second Committee, 57th Meeting", UN Doc. A/CONF.62/C.2/SR.57, paras. 38-45 (24 April 1979), *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XI (Summary Records, Plenary, General Committee, First,*

compulsory settlement of disputes and restricts States Parties from entering reservations beyond those expressly provided for in the Convention. At the same time, the Convention makes its own procedures for dispute settlement subject to other procedures on which the parties may have agreed, providing that such other procedures will prevail over the mechanisms created by the Convention.

50. Article 281 has been considered as a potential bar to the jurisdiction of courts and tribunals acting under Part XV of the Convention.³⁵ On its own terms, Article 281 provides that “the procedures provided for *in this Part* apply only where no settlement has been reached by recourse to such means and the agreement between the parties does not exclude any further procedure.”³⁶ Article 281 thus extends to any procedure under Part XV of the Convention and is a precondition to the competence of a conciliation commission established pursuant to Article 298(1)(a)(i).
51. Australia has invoked two instruments that it considers together constitute an agreement within the meaning of Article 281. The first is an exchange of letters between the Prime Ministers of Timor-Leste and Australia in 2003, and the second is CMATS itself. The Commission will address each in turn.

1. The 2003 Exchange of Letters

52. On 4 March 2003, the then–Prime Minister of Timor-Leste, Mr. Mari Alkatiri, wrote to the then–Prime Minister of Australia, Mr. John Howard, in the following terms:

I refer to our correspondence of late last year regarding permanent maritime boundary discussions between our two countries.

As you know, a very large amount of work and effort has been dedicated by our respective Governments to the conclusion and implementation of the Timor Sea Treaty, and the conclusion of an International Unitisation Agreement for the Greater Sunrise field in the Timor Sea (IUA). I am particularly pleased that your Government is now in a position to ratify the Treaty, and I am pleased to report that I am submitting the IUA immediately to my Council of Ministers for its approval.

Second and Third Committees, as well as Documents of the Conference, Eighth Session), p. 60. See also “Summary records of meetings of the Plenary, 112th Plenary Meeting”, UN Doc. A/CONF.62/SR.112, paras. 17-51 (25 April 1979), *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XI (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Eighth Session)*, pp. 11-14.

³⁵ See, e.g., *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)*, *Provisional Measures, Order of 27 August 1999*, *ITLOS Reports 1999*, p. 280 at p. 294-295, paras. 56-60. The point was also discussed in *South China Sea Arbitration (Philippines v. China)*, Award on Jurisdiction of 29 October 2015, paras. 193-291.

³⁶ Emphasis added.

In your letter of 3 November last year, you indicated your view that Australia is willing to commence discussions on permanent maritime boundaries once the Treaty is in force and the IUA has been completed. Since those days are fast approaching, I would very much welcome your early indication of a date on which those discussions might begin and a date by which you consider those discussions might result in a permanent boundary delimitation.³⁷

53. On 25 July 2003, Prime Minister Howard responded as follows:

Thank you for your letter of 4 March 2003 seeking agreement on the commencement of maritime boundary discussions between our two countries. I apologise for the delay in responding.

Australia's first priorities have been finalising the implementation of the Timor Sea Treaty (TST) and the International Unitisation Agreement (IUA) for the Greater Sunrise field in the Timor Sea, and establishing the Designated Authority of the Joint Petroleum Development Area (JPDA). Australia looks forward to working together with East Timor under the TST and IUA to develop jointly the resources of the JPDA for the benefit of both our countries.

With the TST now in force, Australia is better placed to commence maritime boundary delimitation negotiations with East Timor through the formation of a joint maritime body. While the resources Australia can devote to the establishment of this body will initially be limited by our focus on completing the process of bringing the IUA into force, Australia considers that in time such a body should provide our two countries with a forum to consider not only maritime boundary delimitation, but also the range of other maritime issues facing us.

Given the complexity of the internal processes I imagine both our governments will need to undertake prior to these negotiations, I propose our governments aim to have a first formal meeting to discuss the formation of the joint body before the end of this year.

Australia's experience of concluding delimitation agreements with other countries is that the process can be prolonged. Therefore I do not feel able to nominate a date by which the negotiations should be concluded. However, I confirm Australia's willingness to proceed in good faith towards the objective of delimiting our maritime boundaries.

I would like to take this opportunity to reaffirm Australia's commitment to promoting the peaceful and prosperous development of East Timor.³⁸

54. Australia accepts that this exchange of letters did not constitute a binding agreement,³⁹ but considers that a binding agreement is not required for the purposes of Article 281.⁴⁰ In Australia's view, the exchange of letters was nonetheless an "agreement" to pursue the delimitation of the maritime boundary between Timor-Leste and Australia through negotiation. This agreement was, according to Australia, then supplemented by CMATS, which added an exclusion on further

³⁷ Letter from Prime Minister Alkatiri to Prime Minister Howard dated 4 March 2003 (**Annex AU-006**).

³⁸ Letter from Prime Minister Howard to Prime Minister Alkatiri dated 25 July 2003 (**Annex AU-007**).

³⁹ Australia's Response to the Commission's Questions to the Parties, para. A21 (31 August 2016)

⁴⁰ Competence Hearing Tr. (Final) 244:19 to 245:2; 412:3-15.

procedures for the duration of that treaty.⁴¹ However, Timor-Leste argues that only a legally binding agreement would be relevant for the purposes of Article 281.⁴²

55. Article 281 has been considered on a number of previous occasions by courts and tribunals acting pursuant to Part XV of the Convention. As Timor-Leste noted, the tribunal in the *South China Sea Arbitration* applied Article 281 on the basis that a legally binding agreement was required and analysed various instruments relevant to those proceedings in such terms.⁴³ As Australia observed, Article 281 was discussed (although that provision was not raised as a jurisdictional objection by either party) by the tribunal in *Barbados v. Trinidad and Tobago* in reference to what it described as a “*de facto* agreement” that was “agreed in practice, although not by any formal agreement,” to settle the dispute through negotiations, before concluding that the parties’ *de facto* agreement did not, in any event, exclude further procedures.⁴⁴ It is unclear, however, whether by a “*de facto* agreement”, the tribunal in *Barbados v. Trinidad and Tobago* contemplated a non-binding agreement. Article 281 was also considered by the International Tribunal for the Law of the Sea in its provisional measures order in *Land Reclamation in and around the Straits of Johor*, when it considered Singapore’s contention that “a consensual process of negotiation had commenced and, as a legal consequence, both States had embarked upon a course of negotiation under article 281.”⁴⁵ The parties had, in any event, agreed that their discussions were without prejudice to the possibility of arbitration under the Convention, such that the International Tribunal for the Law of the Sea found Article 281 not to be applicable under those circumstances.⁴⁶ Finally, the tribunal in the *Southern Bluefin Tuna Arbitration* applied Article 281 to the Convention for the Conservation of Southern Bluefin Tuna, which was unequivocally a legally binding agreement.⁴⁷
56. Although Article 281 does not expressly state that an “agreement” must be legally binding for the article to apply, the Commission nevertheless considers that Article 281 requires a legally binding

⁴¹ Competence Hearing Tr. (Final) 244:19 to 245:2; 412:3-15.

⁴² Competence Hearing Tr. (Final) 354:8-17.

⁴³ *South China Sea Arbitration (Philippines v. China)*, Award on Jurisdiction of 29 October 2015, paras. 193-291.

⁴⁴ *Barbados v. Trinidad and Tobago*, Award of 11 April 2006, RIAA Vol. XXVII, p.147 at pp. 205-206, para. 200(ii).

⁴⁵ *Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore)*, Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003, p. 10 at p. 20, para. 53.

⁴⁶ *Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore)*, Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003, p. 10 at p. 21, paras. 55-57.

⁴⁷ *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)*, Award of 4 August 2000, RIAA Vol. XXIII p. 1.

agreement. As a matter of the text of the Convention, Article 281 stands adjacent to Article 282, which contemplates formal, binding agreements when it refers to a "general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision." The two provisions use the same terminology of "have agreed" and "agreement", and the Commission does not consider that the text of the Convention would support significantly different meanings to the same terms appearing in two parallel articles.

57. Equally importantly, the Commission does not consider that a reading of Article 281 that would permit a non-binding agreement to preclude the application of the compulsory dispute settlement provisions of Part XV would be consistent with the fact that Part XV of the Convention is itself a binding agreement.
58. On the basis of the foregoing considerations, the Commission concludes that the 2003 exchange of letters between Prime Ministers Alkatiri and Howard did not constitute an agreement that would have legal effect pursuant to Article 281 of the Convention. Australia does not contend, of course, that the exchange of letters was intended to "exclude any further procedure." That element of Article 281 arises only with respect to CMATS, to which the Commission now turns.

1. The 2006 Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS)

59. The second instrument that, Australia submits, forms part of the Parties' agreement for the purposes of Article 281 is CMATS itself, Article 4 of which provides as follows:

Article 4
Moratorium

1. Neither Australia nor Timor-Leste shall assert, pursue or further by any means in relation to the other Party its claims to sovereign rights and jurisdiction and maritime boundaries for the period of this Treaty.
2. Paragraph 1 of this Article does not prevent a Party from continuing activities (including the regulation and authorisation of existing and new activities) in areas in which its domestic legislation on 19 May 2002 authorised the granting of permission for conducting activities in relation to petroleum or other resources of the seabed and subsoil.
3. Notwithstanding paragraph 2 of this Article, the JPDA will continue to be governed by the terms of the Timor Sea Treaty and associated instruments.
4. Notwithstanding any other bilateral or multilateral agreement binding on the Parties, or any declaration made by either Party pursuant to any such agreement, neither Party shall commence or pursue any proceedings against the other Party before any court, tribunal or other dispute settlement mechanism that would raise or result in, either directly or indirectly, issues or findings of relevance to maritime boundaries or delimitation in the Timor Sea.

5. Any court, tribunal or other dispute settlement body hearing proceedings involving the Parties shall not consider, make comment on, nor make findings that would raise or result in, either directly or indirectly, issues or findings of relevance to maritime boundaries or delimitation in the Timor Sea. Any such comment or finding shall be of no effect, and shall not be relied upon, or cited, by the Parties at any time.
 6. Neither Party shall raise or pursue in any international organisation matters that are, directly or indirectly, relevant to maritime boundaries or delimitation in the Timor Sea.
 7. The Parties shall not be under an obligation to negotiate permanent maritime boundaries for the period of this Treaty.
60. It is Australia's contention that Article 4 of CMATS, when read together with the exchange of letters discussed above, jointly constitute an agreement pursuant to Article 281, displacing the competence of the Commission. In Australia's view, the exchange of letters constitutes an agreement to settle permanent maritime boundaries between the Parties through negotiations. According to Australia, CMATS adds to that an exclusion of further procedures and, although separated in time, the two agreements together fulfil the requirements of Article 281. Timor-Leste, for its part, submits that CMATS is void for reasons being considered in parallel proceedings by the tribunal in the *Timor Sea Treaty Arbitration*⁴⁸ and, in any event, that CMATS does not provide for dispute settlement.⁴⁹
61. Because Australia's Article 281 objections depend on both the exchange of letters and CMATS, the Commission's finding that the exchange of letters does not constitute an agreement within the meaning of Article 281 would be sufficient to dispense with this objection in its entirety. Nevertheless, the Commission considers it appropriate to examine whether CMATS alone would constitute an agreement within the meaning of Article 281.
62. Unlike the exchange of letters, CMATS is a binding treaty between the Parties. Article 4(4) of CMATS also appears to have been intended to exclude recourse to dispute resolution mechanisms, including those of the Convention. In the Commission's view, what CMATS is not—and what Article 281 requires—is an agreement “to seek settlement of the dispute by a peaceful means of [the Parties'] own choice.” CMATS is an agreement *not* to seek settlement of the Parties' dispute over maritime boundaries for the duration of the moratorium.
63. Article 279 of the Convention calls on the Parties to “seek a solution by the means indicated in Article 33, paragraph 1, of the Charter” of the United Nations, which include negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements. Article 33 of the Charter and Article 280 of the Convention both make clear that

⁴⁸ Competence Hearing Tr. (Final) 333:12-14.

⁴⁹ Competence Hearing Tr. (Final) 356:10-19.

this list is not exhaustive, and that States may settle their disputes through any other “peaceful means of their own choice.” There is, in short, a great deal of flexibility in the range of approaches to dispute settlement that the Convention will recognize and respect. Nowhere in CMATS, however, is there any procedure intended to provide for the settlement of maritime boundaries. On the contrary, CMATS forecloses all possible avenues for the resolution of disputes relating to maritime boundaries, negating, in Article 4(7), the Parties’ “obligation to negotiate permanent maritime boundaries for the period of this Treaty.” Indeed, even if the Parties had concluded a binding agreement in 2003 to settle their maritime boundary through negotiation, CMATS on its own terms would negate, rather than confirm, such an obligation.

64. Nothing in CMATS constitutes an agreement “to seek settlement of the dispute by a peaceful means of [the Parties’] own choice.” Nor does the Commission consider that an agreement *not* to pursue any means of dispute settlement can reasonably be considered a dispute settlement means of the Parties’ own choice. Accordingly, the Commission concludes that CMATS is not an agreement pursuant to Article 281 that would preclude recourse to compulsory conciliation pursuant to Article 298 and Annex V.

A. ARTICLE 298 OF THE CONVENTION

65. Article 298 provides in relevant part as follows:

Optional exceptions to applicability of section 2

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to one or more of the following categories of disputes:
 - (a) (i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2; and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;

66. As with the provisions of the Convention discussed in paragraph 49 above, Article 298 embodies a compromise on dispute settlement following extensive negotiations between those States which favoured compulsory and binding dispute settlement procedures and other States which sought to exclude even non-binding dispute settlement procedures. Article 298(1)(a)(i) establishes the limits of what a party to the Convention can unilaterally exclude from compulsory settlement of

disputes and, in particular, from compulsory conciliation under Annex V, section 2 of the Convention. At the same time, Article 298(1)(a)(i) establishes certain preconditions to invoking compulsory conciliation—namely the exclusion of pre-existing disputes and the absence of a negotiated agreement—which limit the competence of a compulsory conciliation commission under Annex V and form the basis of Australia's objections.

67. On 22 March 2002, Australia made the following declaration under Article 298(1)(a)(i):

The Government of Australia further declares, under paragraph 1 (a) of article 298 of the United Nations Convention on the Law of the Sea done at Montego Bay on the tenth day of December one thousand nine hundred and eighty-two, that it does not accept any of the procedures provided for in section 2 of Part XV (including the procedures referred to in paragraphs (a) and (b) of this declaration) with respect to disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations as well as those involving historic bays or titles.⁵⁰

68. Australia accepts that, as a logical consequence of this declaration, it has consented to “submission of the matter to conciliation under Annex V, section 2.” Australia, however, argues that the conditions attached to such consent have not been fulfilled, namely that it applies only in cases where “a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties.”⁵¹ According to Australia, Timor-Leste has submitted to conciliation a pre-existing dispute, which has not previously been submitted to negotiation.⁵² In particular, Australia relies upon the 2003 exchange of letters between Prime Minister Mari Alkatiri and Prime Minister John Howard as evidence of a pre-existing dispute that pre-dates the 2013 entry into force of the Convention for Timor-Leste.⁵³ To the extent that this dispute is not a pre-existing dispute dating back to at least 2003, and has only arisen after 2013, Australia submits that it has yet to be the subject of negotiations between the Parties since the moratorium in Article 4 of CMATS has precluded such negotiations.⁵⁴

1. Whether the Parties' dispute has arisen “subsequent to the entry into force of this Convention”

69. Before attempting to apply Article 298(1)(a)(i), a preliminary question arises, namely, what is the dispute envisaged under Article 298(1)(a)(i) to which any requirements set forth in that article

⁵⁰ Australia, Declaration under Articles 287 and 298, 22 March 2002, 2177 UNTS 307.

⁵¹ Competence Hearing Tr. (Final) 256:9 to 258:15.

⁵² Competence Hearing Tr. (Final) 256:9 to 258:15.

⁵³ Australia's Objection to Competence, para. 153.

⁵⁴ Australia's Objection to Competence, para. 155.

would apply? As Timor-Leste has noted, its Notification tracks the language of Australia's declaration and thus purports to cover exactly what Australia's declaration does.⁵⁵ Australia, for its part, has made clear that its declaration intended to exclude from dispute resolution under section 2 of Part XV of the Convention exactly the maximum scope of disputes that may be excluded under Article 298, *i.e.*, all "disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations."

70. Australia's declaration raises the further question of what constitutes a dispute "concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations." The Commission will return to this matter below in connection with certain matters that Australia argues are to be excluded from the scope of the Commission's competence, even if it concludes that it has competence to proceed with the conciliation. For present purposes, however, it suffices to note that an objection under Article 298(1)(a)(i) must clearly invoke a dispute which concerns the interpretation or application of the Convention, which is in principle distinct from a dispute which invokes pre-existing rights and obligations from other sources.⁵⁶
71. Thus, as stated by the Chairman at the 28th meeting of Negotiating Group 7 during the Third UN Conference, when considering the text of what would become Article 298:

As to the question of a distinction between "future" and "past" disputes, it should be borne in mind that the provisions of Part XV of the [Informal Composite Negotiating Text] deal with disputes "relating to the interpretation and application of the . . . Convention". If it were clear enough that disputes which have arisen before the entry into force of the Convention, never belong to that category and thus are not governed by the provisions of Part XV, including Article 297 [later Article 298], an express distinction between old and new disputes would not appear necessary.⁵⁷

72. The Commission does not deny the possibility that there might be an overlap between rights and obligations under the Convention and rights and obligations under customary international law or other instruments and that such overlapping rights and obligations might form the subject matter of a dispute that straddles the entry into force of the Convention. Australia has, for instance, drawn attention to the express reference to Articles 74 and 83 in the preamble to CMATS,⁵⁸ which

⁵⁵ Competence Hearing Tr. (Final) 306:4 to 307:3.

⁵⁶ See *MOX Plant Case (Ireland v. United Kingdom)*, *Provisional Measures, Order of 3 December 2001*, *ITLOS Reports 2001*, p. 89 at p. 105-106, paras. 45-52; *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)*, *Provisional Measures, Order of 27 August 1999*, *ITLOS Reports 1999*, p. 280 at p. 294, para. 51.

⁵⁷ "Statement by the Chairman", Document NG7/26 (26 March 1979) reproduced in Renate Platzöder (ed.), *Third United Nations Conference on the Law of the Sea: Documents, Vol. XI*, p. 435 (1987).

⁵⁸ *Treaty between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea*, Preamble, para. 3, 12 January 2006, 2438 UNTS 359 ("TAKING INTO ACCOUNT the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982 and, in

it asserts to be the product of negotiations over disputed maritime boundaries between 2003 and 2006. Yet, this does not necessarily render a pre-existing dispute over maritime boundaries the same as a dispute concerning the interpretation and application of Articles 74 and 83 of the Convention. Therefore, even adopting Australia's characterization of the dispute, there would, at the very least, still remain matters which fall within the scope of these provisions of the Convention, but beyond the scope of the alleged pre-existing dispute between the Parties which was addressed in CMATS.

73. In any event, Australia at most invokes only a dispute dating back to Timor-Leste's independence in 2002,⁵⁹ prior to the entry into force of the Convention *as between the Parties in 2013*, but not prior to the entry into force of the Convention *in general in 1994*. The key question is thus whether the unqualified reference to "entry into force of this Convention" within the requirement that "such a dispute arises subsequent to the entry into force of this Convention" refers to the entry into force of the Convention as a whole on 16 November 1994 or to the entry into force of the Convention as between Australia and Timor-Leste on 7 February 2013.
74. For the Commission, the ordinary meaning of the unqualified phrase favours the former interpretation regarding entry into force of the Convention as a whole, especially when taking into account that the Convention contains various provisions where the phrase "entry into force" is expressly qualified to indicate that it refers to the entry into force as between the relevant parties.⁶⁰ While the Convention is not always consistent in its use of terminology, it does appear to be so in this respect.

particular, Articles 74 and 83 which provide that the delimitation of the exclusive economic zone and continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law in order to achieve an equitable solution"). *See also Timor Sea Treaty between the Government of East Timor and the Government of Australia*, Article 2(a), 20 May 2002, 2258 UNTS 3 ("This Treaty gives effect to international law as reflected in the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982 which under Article 83 requires States with opposite or adjacent coasts to make every effort to enter into provisional arrangements of a practical nature pending agreement on the final delimitation of the continental shelf between them in a manner consistent with international law. This Treaty is intended to adhere to such obligation.").

⁵⁹ Australia's Objection to Competence, paras. 153-154.

⁶⁰ *See, e.g.*, Annex II, Article 4 of the Convention, which refers to "the entry into force of this Convention for that State", and Annex IV, Article 11(3)(d)(i) of the Convention, which refers to actions to be taken "within 60 days after the entry into force of this Convention, or within 30 days after the deposit of its instrument of ratification or accession." *See also* Articles 154, 308(3), 312(1), Annex II, Article 2(2), Annex III, Articles 6(1) and 7(1), and Annex VI, Article 4(3) of the Convention, all of which use the phrase "entry into force of this Convention" without qualification in circumstances which appear to refer necessarily to the entry into force of the Convention as a whole, rather than for specific parties.

75. Nevertheless, to the extent that ambiguity remains, the negotiating history is decisive. In the course of the negotiations at the Third UN Conference on the text of what would become Article 298, the delegation of Israel explicitly proposed that Negotiating Group 7 include additional language to specify the exclusion of disputes arising prior to the entry into force of the Convention "as between all the parties to the dispute."⁶¹ This proposal was then repeated in the Second Committee,⁶² but was not taken up by either the Negotiating Group or the Second Committee, despite the adoption of various other elements of the Israeli delegation's proposals.⁶³
76. Timor-Leste considers it significant that a number of former members of diplomatic delegations at the Third UN Conference⁶⁴ simply assume in later works that the phrase refers to the 1994 entry into force of the Convention as a whole.⁶⁵ According to Timor-Leste, these works are evidence that past participants in the Conference consider the meaning of the phrase to be plain, whether on its own or in conjunction with the provision's context and negotiating history. In contrast, Australia submits that the phrase refers to the entry into force of the Convention as between the parties to the particular dispute, invoking the presumption of the non-retroactivity of treaties.⁶⁶

⁶¹ "Informal Working Paper by Israel [6 February 1979]", Document NG7/30 (2 April 1979) reproduced in Renate Platzöder (ed.), *Third United Nations Conference on the Law of the Sea: Documents, Vol. XI*, p. 451 (1987). Mexico had also made a proposal incorporating the same additional language. See "Mexico Informal Proposal", Document NG7/29 (30 March 1979) reproduced in Renate Platzöder (ed.), *Third United Nations Conference on the Law of the Sea: Documents, Vol. XI*, p. 448 (1987).

⁶² "Summary Records of Meetings of the Second Committee, 57th Meeting", UN Doc. A/CONF.62/C.2/SR.57, paras. 50, 54-55 (24 April 1979), *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XI (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Eighth Session)*, p. 61.

⁶³ "Summary Records of Meetings of the Second Committee, 57th Meeting", UN Doc. A/CONF.62/C.2/SR.57, para. 41 (24 April 1979), *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XI (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Eighth Session)*, p. 60; "Report of the Chairman on the work of Negotiating Group 7", Document NG7/39 (20 April 1979) reproduced in Renate Platzöder (ed.), *Third United Nations Conference on the Law of the Sea: Documents, Vol. XI*, p. 462 (1987). See also "Summary records of meetings of the Plenary, 112th Plenary Meeting", UN Doc. A/CONF.62/SR.112, paras. 25-26 (25 April 1979), *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XI (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Eighth Session)*, p. 11.

⁶⁴ See, e.g., S. Rosenne, *Essays on International Law and Practice*, p. 507 (2007); J.A. de Yturriaga, *The International Regime of Fisheries: From UNCLOS 1982 to the Presential Sea*, p. 152 (1997); P.S. Rao, "The South China Sea Arbitration (The Philippines v. China): Assessment of the Award on Jurisdiction and Admissibility" 15 *Chinese Journal of International Law*, para. 17 (2016), advance access, available at <chinesejil.oxfordjournals.org/content/early/2016/06/21/chinesejil.jmw019.full.pdf+html>.

⁶⁵ Timor-Leste's Written Submission in Response to Australia's Objections to Competence, para. 31.

⁶⁶ Australia's Objection to Competence, paras. 149-151; Competence Hearing Tr. (Final) 400:9-16; Natalie Klein, *Dispute Settlement in the UN Convention on the Law of the Sea*, p. 258 (2005).

Ultimately, for the reasons set out in this section, the Commission agrees with the interpretation put forward by Timor-Leste.

1. Whether any “agreement within a reasonable period of time [was] reached in negotiations between the parties”

77. With respect to the second requirement under Article 298(1)(a)(i), Australia asserts that the provision requires that the Parties negotiate for a “reasonable period of time” before submitting a dispute to compulsory conciliation, and that this requirement has not been fulfilled since no negotiations have taken place on maritime boundaries due to the moratorium in Article 4 of CMATS.⁶⁷
78. The requirement under Article 298(1)(a)(i), however, is that “no agreement within a reasonable period of time is reached in negotiations between the parties.” It does not expressly require that prior negotiations between the parties to the dispute actually take place. Such a requirement would effectively grant a party the right to veto any recourse to compulsory conciliation by refusing to negotiate, contrary to the intention of Article 298. According to the text, the provision merely requires that no agreement be reached within a reasonable period of time in any such negotiations. Furthermore, the “agreement” envisaged by the provision is an agreement resolving the “dispute concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations” in the sense described above.
79. In fact, negotiations on maritime boundaries did take place between 2003 and 2006 in the lead up to CMATS. While CMATS is an agreement resulting from those negotiations, it does not purport to resolve the dispute over permanent maritime boundaries. It is at most a provisional arrangement of the kind contemplated under Articles 74(3) and 83(3). Thus, to the extent that there was a pre-existing dispute over maritime boundaries dating back to 2002, this dispute has been the subject of prior negotiations between the Parties which did not produce an agreement on sea boundary delimitation.
80. Even if the relevant dispute is taken only to have arisen in 2013, after the entry into force of the Convention for Timor-Leste, it is clear that Timor-Leste has repeatedly sought to engage in negotiations with Australia over permanent maritime boundaries since then. Despite Australia's unwillingness to engage in such negotiations on account of Article 4 of CMATS, this does not preclude the fact that “no agreement within a reasonable period of time [has been] reached in negotiations between the parties.” Moreover, negotiations do appear to have taken place between

⁶⁷ Australia's Objection to Competence, para. 162.

the Parties regarding CMATS between September 2014 and March 2015 in the context of attempts to resolve the matter before the tribunal in the *Timor Sea Treaty Arbitration*, also without success.⁶⁸

81. The Commission does not in any event interpret CMATS Article 4(1) to preclude any and all possible negotiations between the Parties. The paragraph provides that neither Party “shall assert, pursue or further by any means in relation to the other Party its claims to sovereign rights and jurisdiction and maritime boundaries.” When read in context, that paragraph seems only to proscribe acts by the Parties that attempt to advance or improve their legal positions or prejudice the other Party’s legal position in respect of the Parties’ respective maritime claims vis-à-vis each other. Similarly, whether or not the present conciliation proceedings fall within the scope of Article 4(4) and 4(5) of CMATS, those paragraphs do not exclude bilateral negotiations between the Parties of the kind envisaged under Article 298(1)(a)(i) of the Convention. Finally, Article 4(7) suspends the obligation to negotiate permanent maritime boundaries, but does not prohibit such negotiations. Moreover, nothing in CMATS precludes negotiations regarding CMATS itself and the provisional arrangements established thereunder, as is evident from Article 11 of CMATS. Such discussions are in fact expressly foreseen within the context of the Timor-Leste/Australia Maritime Commission under Article 9 of CMATS.⁶⁹
82. The Commission therefore concludes that the present dispute between the Parties concerning the interpretation or application of Articles 74 and 83 of the Convention has arisen after the entry into force of the Convention and that no agreement has been reached in negotiations between the Parties within a reasonable period of time, thereby satisfying the requirements of Article 298(1)(a)(i) regarding the competence of the Commission.

A. ARTICLE 311 AND THE RELATIONSHIP BETWEEN THE CONVENTION AND CMATS

83. The Parties also disagree with respect to the effect of CMATS in relation to Article 311 of the Convention. Article 311 addresses generally the relationship between the Convention and other treaty instruments and provides as follows:

Relation to other conventions and international agreements

1. This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958.
2. This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the

⁶⁸ Australia’s Objection to Competence, paras. 165-167.

⁶⁹ Competence Hearing Tr. (Final) 228:16 to 232:17, 405:22 to 406:1.

enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

3. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Convention, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Convention, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.
4. States Parties intending to conclude an agreement referred to in paragraph 3 shall notify the other States Parties through the depositary of this Convention of their intention to conclude the agreement and of the modification or suspension for which it provides.
5. This article does not affect international agreements expressly permitted or preserved by other articles of this Convention.
6. States Parties agree that there shall be no amendments to the basic principle relating to the common heritage of mankind set forth in article 136 and that they shall not be party to any agreement in derogation thereof.

84. In the Commission's view, however, it is not necessary to enter into an examination of CMATS in terms of Article 311. CMATS does not derogate from the terms of the Convention. The Convention is the later treaty between the Parties, and the governments of Timor-Leste and Australia have not notified the States Parties to the Convention of any modification or suspension of its terms, as required by Article 311(4). Nor does CMATS describe the moratorium provisions in its Article 4 as modifying or suspending any obligation under the Convention.

85. Where another agreement between States Parties to the Convention bears on dispute resolution, the relationship between that agreement and the dispute resolution provisions of the Convention is addressed in Part XV, and specifically in Articles 281 and 282 of the Convention. Having already concluded that CMATS is not, for the purposes of Article 281, an agreement "to seek settlement of the dispute by a peaceful means of [the Parties'] own choice" of which the Convention will take cognizance, the Commission need not engage in any further analysis of whether or not CMATS is more generally compatible with the Convention within the terms of Article 311. Nor does this analysis depend upon whether or not CMATS is properly considered to be a "practical arrangement of a provisional nature" within the meaning of Articles 74 and 83. The application of Article 281 and of Part XV does not depend upon the substantive content of the agreement between the Parties that is alleged to bear on the availability of dispute resolution under the Convention. Rather, Article 281 depends upon the alternative arrangements for the settlement of disputes that such an agreement makes available.

A. COMPETENCE AND AUSTRALIA'S OBJECTION TO THE "ADMISSIBILITY" OF THE PROCEEDINGS

86. The preceding analysis brings the Commission to Australia's final objection, namely that the Commission should decline to exercise its competence because Timor-Leste has commenced these proceedings in breach of CMATS.
87. Competence, according to Australia, "embrace[s] what might otherwise be considered to be both jurisdiction and admissibility, and it intrinsically entails an exercise of discretion, and that it is open to you to consider and determine all of our objections on admissibility, propriety and abuse of right."⁷⁰ Because Australia considers Timor-Leste to have breached CMATS, it argues that the Commission must decline to proceed, lest compulsory conciliation become "a mechanism to reopen every treaty commitment merely because one State has changed its mind or reassessed the bargain."⁷¹ For Timor-Leste, "[i]t is not obvious that the notion of admissibility, which seems to relate mainly to judicial propriety, has a role to play in conciliation."⁷² Timor-Leste also considers that it has not breached CMATS⁷³ and that CMATS is void as a treaty between the Parties.⁷⁴
88. Australia's "admissibility" objection takes two forms. First, Australia argues that CMATS is presumptively valid and must be treated as such unless and until the tribunal in the *Timor Sea Treaty Arbitration* finds it null and void as alleged by Timor-Leste.⁷⁵ Second, Australia requests that the Commission dismiss the present conciliation proceedings, or at least order a stay until the *Timor Sea Treaty Arbitration* tribunal has rendered its award.⁷⁶ This is, in Australia's view, necessary so that the status of CMATS can be clarified prior to the Commission's decision on its competence and in order to avoid the potential for contradictory results as between the two proceedings.⁷⁷
89. Neither a dismissal nor a stay is warranted in the Commission's view, however, since there is no material overlap between the matters on which this Commission is asked to decide and those before the *Timor Sea Treaty Arbitration* tribunal. The Parties are agreed that this Commission

⁷⁰ Competence Hearing Tr. (Final) 385:11-17.

⁷¹ Competence Hearing Tr. (Final) 388:18-20.

⁷² Competence Hearing Tr. (Final) 318:2-5.

⁷³ Timor-Leste's Written Responses to the Commission's Questions, Q13.

⁷⁴ Competence Hearing Tr. (Final) 333:13-14.

⁷⁵ Australia's Objection to Competence, para. 186; Competence Hearing Tr. (Final) 134:21-135:4.

⁷⁶ Australia's Objection to Competence, paras. 183-184.

⁷⁷ Competence Hearing Tr. (Final) 136:17-25.

should not decide the question of the validity of CMATS.⁷⁸ Further, in answer to a question from the Commission at the hearing on competence as to whether the issue of compatibility between CMATS and the Convention arose in the *Timor Sea Treaty Arbitration*, Timor-Leste confirmed that it does not “seek[] a determination from the [*Timor Sea Treaty Arbitration*] Tribunal on the compatibility of CMATS with the Convention.”⁷⁹ Consequently, there is no question on which the two proceedings could come to contradictory results. Moreover, the Commission has ultimately decided to uphold its competence for reasons that do not require any inquiry into the compatibility of CMATS and the Convention. Even if CMATS were presumed to be valid, it would not affect the Commission's competence or the “admissibility” of the dispute.

90. A subsidiary objection remains: that it would be improper for the Commission to proceed with the conciliation when that would allegedly allow Timor-Leste to benefit from its breach of CMATS. This raises the question of the significance for dispute resolution under the Convention of the alleged breach of another treaty, the existence of which breach is contested as between the Parties. This amounts to a variation of the clean hands doctrine enunciated by the Permanent Court of International Justice in its decision in *Diversion of Water from the Meuse*, where it declined to support a contention by the Netherlands that Belgium had acted in contravention of a treaty regulating the taking of water from the Meuse River where the Netherlands had engaged in the same conduct.⁸⁰ Here however, Australia asks the Commission to find a breach of another instrument (CMATS) in the overall legal relationship between the Parties and to give that breach decisive effect with respect to the Commission's competence under the Convention.
91. The alleged breach of CMATS, however, is not something that properly falls to the Commission to consider or decide. Timor-Leste contests Australia's allegation and argues in any event that CMATS is invalid and without legal effect. The Parties agree that the validity of CMATS is presently before the tribunal in the *Timor Sea Treaty Arbitration* and therefore not a matter that the Commission is competent to address.⁸¹ In any event, the Commission could not address one aspect of CMATS (its alleged breach) without also addressing Timor-Leste's defence regarding the validity of the treaty.

⁷⁸ Australia's Objection to Competence, para. 184; Timor-Leste's Comments on Bifurcation, para. 22.

⁷⁹ Timor-Leste's Written Responses to the Commission's Questions, Q11.

⁸⁰ *Case Concerning the Diversion of Water from the River Meuse (Netherlands v. Belgium)*, Judgment of 28 June 1937, PCIJ Series A/B, No. 70, p. 4 at p. 25.

⁸¹ Timor-Leste's Written Responses to the Commission's Questions, Q10; Competence Hearing Tr. (Final) 394:5-15.

92. For the purposes of these proceedings, it suffices that CMATS is not an agreement that meets the requirements of the Convention to preclude dispute resolution under Part XV. The alleged breach of CMATS is not an established fact, and the clean hand doctrine does not extend so far as to make the possible breach of some other agreement, such as CMATS, a bar to dispute resolution proceedings. The effect of these proceedings on CMATS, like the question of the validity of CMATS, is a matter for the Parties to consider in another forum.

A. THE SCOPE OF THE MATTERS SUBMITTED TO CONCILIATION

93. During the course of the hearing on competence, a further disagreement concerning the competence of the Commission emerged between the Parties. In its opening statement, Timor-Leste set out the matters with which it hoped the Commission would assist the Parties as follows:

First, we hope that the Commission can assist the Parties to reach an agreement on the delimitation of permanent maritime boundaries

. . .

In addition to the issue of permanent maritime boundaries, a second task for the Commission is to assist Australia and Timor-Leste to agree on appropriate transitional arrangements in the disputed maritime areas, to bring the Parties from their current temporary arrangements to the full implementation of their newly agreed permanent maritime boundary.

Finally, a third task for the Commission, and one related to the issue of transitional arrangements, concerns the post-CMATS arrangements. With the expected termination of CMATS, and with it the Timor Sea Treaty, the Parties will benefit from the assistance of the Commission in finding the optimal way to come to a mutual position on dissolving the joint institutions and arrangements found in those provisional arrangements, and moving on.⁸²

94. Australia objected that this amounted to an attempt to expand the competence of the Commission to include issues that are, in Australia's view, "outside the notification by Timor-Leste which commenced the proceedings" and "outside Article 298 of UNCLOS, because they do not concern the matters in that article."⁸³ Although not couched as a formal objection to the Commission's competence generally, the Commission considers it appropriate at this juncture also to address this aspect of the Parties' disagreement over its competence.
95. Article 298, on its own terms, requires Australia to accept submission of "the matter" to conciliation under Annex V. The matter in question, again in the terms of Article 298 itself, is a "dispute[] concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations." Turning to those articles, the Commission recalls that Article 74 provides with respect to the exclusive economic zone as follows:

⁸² Competence Hearing Tr. (Final) 48:3 to 49:18.

⁸³ Competence Hearing Tr. (Final) 70:10-13.

*Delimitation of the exclusive economic zone
between States with opposite or adjacent coasts*

1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.

96. Article 83 is the near mirror image of Article 74 with respect to the continental shelf:

*Delimitation of the continental shelf
between States with opposite or adjacent coasts*

1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.

97. It is apparent from an examination of these articles of the Convention that they address not only the actual delimitation of the sea boundary between States with opposite or adjacent coasts, but also the question of the transitional period pending a final delimitation and the provisional arrangements of a practical nature that the Parties are called on to apply pending delimitation. The Commission does not, therefore, see that Timor-Leste's request that the Commission also consider transitional arrangements, or the arrangements that the Parties may enter into following the termination of CMATS, lies outside the scope of Articles 74 and 83 or, correspondingly, of Article 298(1)(a)(i).

98. The Commission likewise notes that paragraph 5 of Timor-Leste's notification initiating these proceedings calls for the Commission to address "the interpretation and application of Articles 74 and 83 of UNCLOS for the delimitation of the exclusive economic zone and the continental shelf between Timor-Leste and Australia including the establishment of the permanent maritime boundaries between the two States."⁸⁴ Even if the notification were considered to strictly define the matters that could be discussed in the course of conciliation—a position that the Commission doubts—Timor-Leste's notification was plainly not limited to the establishment of permanent maritime boundaries.
99. The Commission thus does not consider that the matters raised by Timor-Leste during the hearing fall beyond the scope of either its notification or of Article 298.

A. ARTICLE 7 OF ANNEX V AND THE APPLICATION OF THE 12-MONTH PERIOD

100. Having concluded that it has competence to conciliate the matters raised in Timor-Leste's notification of 11 April 2016, the Commission now turns to one final issue that, although not a part of Australia's objections, bears on the Commission's competence. This issue concerns the duration of the proceedings and the effect of the time limit for conciliation in Annex V to the Convention.
101. Article 7(1) of Annex V provides in mandatory terms that "[t]he commission shall report within 12 months of its constitution." The Parties are, of course, free to modify or extend this deadline, a power expressly noted in Article 10 of Annex V, but they must do so by agreement.
102. In the course of the procedural meeting on 28 July 2016, the Commission questioned the Parties concerning the interpretation of this provision and the relevant date on which the 12-month period would begin to run in the case of a compulsory conciliation.
103. Timor-Leste takes the view that the 12-month period in Article 7 runs from 25 June 2016 (the date on which the formation of the Commission was completed) and that it is "not expecting to extend the time scheme." According to Timor-Leste, "[t]he Government took the decision to initiate a 12-month process under UNCLOS and a 12-month process it is."⁸⁵
104. Australia, in contrast, emphasizes that Annex V is divided into two sections, the first—including the 12-month deadline—devoted to voluntary conciliation and the second to compulsory conciliation. According to Australia:

⁸⁴ Notification, para. 5.

⁸⁵ Procedural Meeting Tr. 100:16-21.

Section II . . . deals with initiation of proceedings and competence and then some reconciliation provisions. It deals with a challenge in Article 13. Section II does not address modalities/rules/scope of the conciliation. Article 13, which is in Section II, contemplates a competence challenge. Article 14, which is in Section II, makes Section I subject to Section II. Articles 2-10 of Section I of this Annex apply subject to this Section [II].⁸⁶

Therefore, Australia concludes, “a decision on competence is required under Section II before we get into the Section I conciliation phase, and therefore the 12 months which is addressed in Article 7 of Section I only begins to run from the point that we get into the conciliation phase.”⁸⁷

105. Article 13 of Annex V provides that the Commission shall decide any disagreement with respect to its competence. It follows that it is for the Commission to resolve this disagreement also and, as necessary, to interpret the terms of Annex V. This point was, indeed, put to both Parties in the course of the procedural meeting on 28 July 2016⁸⁸ and not disputed by either side.
106. Although these proceedings arise by way of a compulsory conciliation, Annex V itself is not principally concerned with compulsory proceedings. Article 284 of the Convention makes available voluntary conciliation within the general provisions described in Section 1 of Part XV. Section 1 of Annex V, which makes up the majority of the Annex, falls under the heading “Conciliation Procedure Pursuant to Section 1 of Part XV,” and it is in this Section of Annex V that Article 7 and its 12-month deadline are to be found. Compulsory conciliation, in contrast, is structurally separated into the brief Section 2 of the Annex that provides for the resolution of disagreements over competence and further that procedures of Section 1 apply to a compulsory conciliation “subject to this section.”
107. A strict application of the 12-month deadline to the conciliation process as a whole may come into conflict with the need to give appropriate consideration to disagreements concerning competence in the case of compulsory conciliation. The deadline in Article 7 is unquestionably important to the conciliation process. It serves to fix an end to the procedure and ensure that a party is not compelled to continue endlessly a conciliation process that, in its view, has no hope of success. This is particularly significant given that Article 284 of the Convention and Article 8 of Annex V permit the termination of even a voluntary conciliation only by agreement, by settlement, or following a report from the conciliation commission. In other words, once conciliation has begun, the Parties are required continue the process for 12 months and may extend it thereafter, but only by agreement.

⁸⁶ Procedural Meeting Tr. 118:4-14.

⁸⁷ Procedural Meeting Tr. 118:18-23.

⁸⁸ Procedural Meeting Tr. 129:8-13.

108. On the other hand, the resolution of disagreements over competence can be a central aspect of compulsory conciliation. Indeed, Article 13 is one of only four Articles that make up Section 2 of Annex V, the only portion of the Annex devoted to compulsory conciliation. While the results of such a proceeding are non-binding, it remains the case that an Article 298 procedure is a compulsory process, and one of the parties may be participating against its will. It is neither appropriate that a State be subjected to compulsory conciliation before a commission that lacks competence over the matter, nor is such a conciliation process likely to be effective. As a method for the resolution of disputes, conciliation depends ultimately on the parties' acceptance of the process and willingness to seek agreement and give serious consideration to the recommendations of the commission.
109. Article 13 thus calls for serious attention to any disagreements regarding competence. Article 7 is fixed at the minimum period of time in which a conciliation process could realistically be expected to bear fruit, ensuring that only a productive process will be continued, by agreement, beyond that point. In the Commission's view, the tension between these provisions is resolved by Article 14 of Annex V, which provides that Section 1 of the Annex applies subject to Section 2. The deadline in Article 7 must therefore give way to the time needed to consider and decide objections to competence and is thus properly understood to run only after a Commission has addressed any objections that may be made. Any other approach would run the risk of a commission failing to give proper consideration to a justified objection to competence or, alternatively, of giving such objections appropriate attention only to find that too much time had elapsed for the parties to fairly evaluate whether the conciliation process was likely to prove effective and worthy of extension by agreement.
110. Accordingly, the Commission concludes that, in this compulsory conciliation process, the 12-month period in Article 7 of Annex will begin to run as of the date of this Decision.

* * *

IV. DECISION

111. For the reasons set out in this Decision, the Commission unanimously decides as follows:

- A. The Commission is competent with respect to the compulsory conciliation of the matters set out in Timor-Leste's *Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS* of 11 April 2016.
- B. There are no issues of admissibility or comity that preclude the Commission from continuing these proceedings.
- C. The 12-month period in Article 7 of Annex V of the Convention shall run from the date of this Decision.

* * *

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Done this 19th day of September 2016,



Dr. Rosalie Balkin



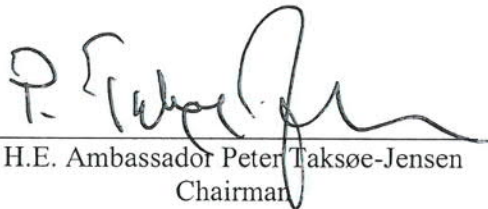
Judge Abdul G. Koroma



Professor Donald McRae



Judge Rüdiger Wolfrum



H.E. Ambassador Peter Taksøe-Jensen
Chairman



Mr. Garth Schofield
Registrar

Annex 10:
Letter from Australia to the Commission of 22 September 2016



Australian Government
Attorney-General's Department

Office of International Law

22 September 2016

Mr Garth Schofield
Legal Counsel
Permanent Court of Arbitration
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

Dear Mr Schofield

***Conciliation Proceedings under Article 298 and Annex V of UNCLOS (PCA Case No. 2016-10)
Democratic Republic of Timor-Leste and Commonwealth of Australia***

I refer to your letter of 19 September 2016, inviting Australia to indicate whether it considers necessary any redaction of the Commission's Decision on Competence in the abovementioned proceedings.

Having carefully reviewed the Decision, Australia does not seek any redaction of the Decision and approves the release of paragraphs 52 and 53.

I would be grateful if you would convey this letter to the Chairman and members of the Conciliation Commission. A copy of this letter has been forwarded to the Agent and Deputy Agent for Timor-Leste.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'J Reid'.

John Reid
Agent for Australia
First Assistant Secretary
Office of International Law
Attorney-General's Department
Canberra, Australia

Annex 11:
Press Releases Nos. 4 and 5



PRESS RELEASE

Conciliation between the Democratic Republic of Timor-Leste and the Commonwealth of Australia

THE HAGUE, 26 September 2016

Conciliation Commission Publishes Decision on Competence

On 19 September 2016, the Conciliation Commission issued its Decision on Competence in the compulsory conciliation initiated between the Democratic Republic of Timor-Leste (“**Timor-Leste**”) and the Commonwealth of Australia (“**Australia**”) under [Annex V](#) of the United Nations Convention on the Law of the Sea (the “**Convention**”). In its Decision, the Commission held that it was competent to continue with the conciliation process.

These compulsory conciliation proceedings concern the maritime boundary between Timor-Leste and Australia and were initiated by Timor-Leste by way of a Notice addressed to Australia pursuant to Article 298 and Annex V of the Convention. The conciliation is being conducted under the auspices of the Permanent Court of Arbitration (the “**PCA**”).

Australia’s Objections to Competence and Timor-Leste’s Response

Pursuant to the Convention, a compulsory conciliation may be initiated where a party has exercised its right to exclude disputes relating to sea boundary delimitation from compulsory arbitration and judicial settlement. Australia exercised this right by way of a declaration made on 22 March 2002. When a dispute falling within such a declaration arises, a compulsory conciliation may be initiated at the request of one of the parties to the dispute. The conclusions and recommendations of the Conciliation Commission, however, are not binding on the parties.

From the outset of these proceedings, Australia had indicated its intention to contest the competence of the Commission and did so on 27 June 2016, immediately following the constitution of the Commission. Annex V to the Convention provides that “[a] disagreement as to whether a conciliation commission acting under this section has competence shall be decided by the commission.” From 29 to 31 August 2016, the Commission convened a Hearing on Competence at the Peace Palace, the headquarters of the PCA in The Hague, the Netherlands. In its Decision of 19 September 2016, the Commission considered and decided on the objections raised by Australia.

In its objections, Australia argued that compulsory conciliation was precluded by the Treaty on Certain Maritime Arrangements in the Timor Sea (“**CMATS**”), which includes an article providing for a “moratorium” on dispute settlement procedures. Australia also argued that Timor-Leste had not met the preconditions in the Convention to submit a dispute to compulsory conciliation. In response, Timor-Leste argued that the Commission should consider its competence by reference to the Convention and should only consider other treaties to the extent provided for in the Convention. Timor-Leste considered that CMATS was not an agreement that would preclude compulsory conciliation under the Convention and, in any event, that CMATS is null and void. Timor-Leste also argued that it had met the preconditions to submit a dispute to compulsory conciliation.

Summary of the Commission’s Decision on Competence

In its Decision, the Commission held that it must approach the question of its competence from the perspective of the Convention. Other agreements such as CMATS are relevant to the question of the Commission’s competence, but only within the framework and from the perspective of the Convention itself. The Commission considered that two provisions of the Convention bear on its competence.

First, Article 281 of the Convention provides that a dispute may not be submitted to compulsory settlement where the parties have agreed on another means of settlement and that agreement excludes further procedures. Australia contended that the Parties had agreed, through an exchange of letters in 2003 to resolve their dispute over maritime boundaries through negotiation. According to Australia, CMATS then supplemented the exchange of letters with an agreement to exclude further procedures.

In its Decision, the Commission held that the exchange of letters did not constitute an agreement for the purposes of Article 281 because the exchange was not a legally binding agreement. Although Article 281 does not expressly refer to legally binding agreements, the Commission held that this was a necessary implication of the terms used in the Convention and that any other interpretation would be unreasonable in that it would permit a nonbinding agreement to displace the provisions of a legally binding treaty. The Commission also held that, although CMATS is a legally binding treaty, it is not an agreement for the purposes of Article 281 because CMATS does not provide any alternative means of resolving disputes over maritime boundaries; rather, CMATS is an agreement not to resolve such disputes.

Second, Article 298 of the Convention includes two preconditions to compulsory conciliation. A dispute must arise “subsequent to the entry into force of this Convention” and no agreement must have been reached in negotiations between the parties “within a reasonable period of time.” The Commission reviewed the negotiating history of the Convention and concluded that the relevant date was the entry into force of the Convention generally on 16 November 1994 (rather than the date in 2013 on which the Convention entered into force as between Timor-Leste and Australia). The “entry into force of the Convention” was thus prior to the independence of Timor-Leste in 2002, and the Commission concluded that the Parties’ dispute therefore arose after the relevant date. The Commission also noted that there had been negotiations between the Parties in 2003 to 2006 and that negotiations regarding CMATS appear to have taken place in 2014 to 2015, without an agreement on boundaries having been reached, and that Timor-Leste had sought further negotiations. Accordingly, the Commission found the requirements of Article 298 to have been met.

Next, the Commission also considered Australia’s objection to the “admissibility” of the proceedings on the grounds that Timor-Leste had violated the moratorium in CMATS by initiating these proceedings. The Commission held that the possible breach of CMATS was not a matter the Commission could decide and was something for the Parties to address in another forum. The Commission therefore held that there was no issue of admissibility that would prevent it from proceeding with the conciliation.

Finally, the Commission interpreted Annex V to the Convention and concluded that the one-year time frame for the conciliation process should run from the date of the Decision on Competence.

Next Steps

The Commission will proceed to hold consultations with the Parties on the future conduct of the conciliation and intends to convene a series of meetings with the Parties over the course of the next year. The Commission anticipates that future meetings will be conducted largely in a confidential setting in order to provide an environment conducive to facilitating the eventual success of the conciliation.

Background on the Conciliation Process

The Commission was constituted on 25 June 2016 pursuant to the procedure set out in Annex V of the Convention. The five-member Commission is chaired by H.E. Ambassador Peter Taksøe-Jensen (Denmark). The other members of the Commission are Dr. Rosalie Balkin (Australia), Judge Abdul G. Koroma (Sierra Leone), Professor Donald McRae (Canada and New Zealand), and Judge Rüdiger Wolfrum (Germany). With the agreement of the Parties, the Permanent Court of Arbitration acts as Registry in the proceedings.

These conciliation proceedings were initiated by Timor-Leste on 11 April 2016 by way of a “Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS” addressed to Australia.

On 2 May 2016, Australia submitted “Australia’s Response to the Notice of Conciliation”.

On 28 July 2016, the Conciliation Commission held a procedural meeting with the Parties at the Peace Palace in The Hague, the Netherlands.

On 12 and 25 August 2016, the Parties provided the Commission with written submissions on the question of the Commission’s competence.

On 29, 30, and 31 August, the Commission convened the Opening Session of the Conciliation and a Hearing on Competence at the Peace Palace in The Hague, the Netherlands.

On 31 August 2016 and on 9 and 13 September 2016, the Parties provided the Commission with supplemental written answers to questions posed by the Commission during the hearing.

Further information about the case may be found at www.pcacases.com/web/view/132, including the full text of the Commission’s Decision on Competence, earlier Press Releases, a video recording and transcript of the Opening Session, and the presentations of the Parties.

* * *

Background on the Permanent Court of Arbitration

The Permanent Court of Arbitration is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 121 Member States. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding, and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties. The PCA’s International Bureau is currently administering 8 interstate disputes, 75 investor-State arbitrations, and 34 cases arising under contracts involving a State or other public entity. More information about the PCA can be found at www.pca-cpa.org.

Contact: Permanent Court of Arbitration

E-mail: bureau@pca-cpa.org



PRESS RELEASE

Conciliation between the Democratic Republic of Timor-Leste and the Commonwealth of Australia

SINGAPORE, 13 October 2016

Optimism Pervades Recent Meetings with Conciliation Commission

Delegations from both Timor-Leste and Australia held a series of confidential meetings with the Conciliation Commission in Singapore this week, in the conciliation initiated between the Democratic Republic of Timor-Leste (“**Timor-Leste**”) and the Commonwealth of Australia (“**Australia**”) under [Annex V](#) of the United Nations Convention on the Law of the Sea (the “**Convention**”).

This conciliation concerns the maritime boundary between Timor-Leste and Australia and was initiated by Timor-Leste by way of a Notice addressed to Australia pursuant to Article 298 and Annex V of the Convention. The conciliation is being conducted under the auspices of the Permanent Court of Arbitration (the “**PCA**”).

Both Parties and the Commission agreed that the meetings were very productive. All agreed we should aim to reach agreement within the timeframe of the conciliation process.

“I was very pleased to see a sincere willingness on both sides to come together in a spirit of cooperation,” remarked the Chairman of the Conciliation Commission, H.E. Ambassador Peter Taksøe-Jensen. “Both sides are to be commended for being willing to move beyond past differences and work hard to create conditions conducive to achieving an agreement, as well as stability in the meantime for all other stakeholders in the Timor Sea.”

Mr. Gary Quinlan AO, Deputy Secretary, Australian Department of Foreign Affairs and Trade, head of the Australian delegation added, “Australia is engaged in good faith in the conciliation process with the Commission and Timor-Leste. The process is confidential and so I can’t go into the detail of the discussions underway. Australia certainly sees these proceedings with the Commission and Timor-Leste as constructive, and we will continue to engage seriously.” “I share the optimism of our Australian friends,” said H.E. Minister Xanana Gusmão, Chief Negotiator for Timor-Leste. “The atmosphere was very positive and we are now on the right path. But we have agreed to a strictly confidential process. So, I cannot say much more right now.”

The meetings were agreed by the Parties and the Commission to be strictly confidential, and that no further press statements will be made by either side regarding what has been discussed so far.

Next Steps

A number of further meetings between the Parties and the Commission are expected to take place over the course of the next year. The Commission anticipates that future meetings will continue to be conducted largely in a confidential setting in order to provide an environment conducive to facilitating the eventual success of the conciliation, although further joint public statements may be made from time to time.

Background on the Conciliation Process

The Commission was constituted on 25 June 2016 pursuant to the procedure set out in Annex V of the Convention. The five-member Commission is chaired by H.E. Ambassador Peter Taksøe-Jensen (Denmark). The other members of the Commission are Dr. Rosalie Balkin (Australia), Judge Abdul G. Koroma (Sierra Leone), Professor Donald McRae (Canada and New Zealand), and Judge Rüdiger Wolfrum (Germany). With the agreement of the Parties, the Permanent Court of Arbitration acts as Registry in the conciliation.

This conciliation was initiated by Timor-Leste on 11 April 2016 by way of a “Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS” addressed to Australia.

On 2 May 2016, Australia submitted “Australia’s Response to the Notice of Conciliation”.

On 28 July 2016, the Conciliation Commission held a procedural meeting with the Parties at the Peace Palace in The Hague, the Netherlands.

On 29, 30, and 31 August, the Commission convened the Opening Session of the Conciliation and a Hearing on Competence at the Peace Palace in The Hague, the Netherlands.

On 19 September 2016, the Commission rendered its Decision on Competence, finding that the Conciliation could proceed.

Further information about the case may be found at www.pcacases.com/web/view/132, including the full text of the Commission’s Decision on Competence, earlier Press Releases, a video recording and transcript of the Opening Session, and the presentations of the Parties.

* * *

Background on the Permanent Court of Arbitration

The Permanent Court of Arbitration is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 121 Member States. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding, and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties. The PCA’s International Bureau is currently administering 8 interstate disputes, 75 investor-State arbitrations, and 34 cases arising under contracts involving a State or other public entity. More information about the PCA can be found at www.pca-cpa.org.

Contact: Permanent Court of Arbitration

E-mail: bureau@pca-cpa.org

Annex 12:
Commission's Proposal on Confidence-Building Measures of
14 October 2016

CONCILIATION BETWEEN TIMOR-LESTE AND AUSTRALIA

COMMISSION PROPOSAL ON CONFIDENCE-BUILDING MEASURES

The Commission has carefully considered how best to move forward with the Conciliation process and create the conditions most conducive to achieving an agreement on permanent maritime boundaries within the timeframe of the Conciliation process. In this respect, the Commission proposes to the Parties certain measures to be implemented with a view to removing obstacles to progress, establishing a stable starting point for negotiations, and building trust between the Parties. If these measures are implemented by the Parties, the Commission is optimistic about obtaining full engagement to begin substantive negotiations on both provisional and final solutions on maritime boundaries at the Commission's next meetings with the Parties in January of next year.

As a general matter, the Commission places great importance on maintaining stability in the relationship between the Parties during the course of this Conciliation. Accordingly, as alluded to in its letter of 21 September 2016, the Commission initially thought that it would be helpful to maintain all the current treaty arrangements during the pendency of the process. However, based on its discussions with the Parties, it appears that CMATS may remain an obstacle to moving forward that could be productively removed from the equation.

Timor-Leste had previously indicated that it intends to proceed with the termination of CMATS in the near future. Australia does not dispute that Timor-Leste has the right to terminate CMATS. At the same time, both States share a common interest in maintaining regulatory stability and investor confidence by clarifying that the Timor Sea Treaty would continue to apply to activities undertaken in the Timor Sea following termination of CMATS and serve as part of the transitional arrangements until a final delimitation of maritime boundaries has come into effect.

With the above in mind, the Commission proposes that the Parties take the following steps as confidence building measures:

1. Steps to be taken with respect to CMATS:

- Either:
 - **Both Parties** to agree by 8 December 2016 to terminate CMATS by mutual consent, with such termination taking place according to an agreed schedule, bearing in mind domestic legal processes; or
 - **Timor-Leste** to initiate termination of CMATS unilaterally by 15 January 2017 (i.e., one day prior to the opening of the January session with the Commission) and **Australia** to take note of Timor-Leste's termination of CMATS;
- **Both Parties** to agree that, following the termination of CMATS, the Timor Sea Treaty will apply in its original form, prior to amendment by CMATS;
- **Both Parties** to agree that Articles 12(3) and 12(4) of CMATS would no longer apply;
- **Australia** to confirm that, following termination of CMATS, Article 4(5) of CMATS would not limit or exclude its obligation to negotiate an agreement with Timor-Leste on the basis of any report the Commission may produce in the course of these proceedings;

2. The Parties' commitment to negotiate maritime boundaries

- **Australia** and **Timor-Leste** to commit to negotiate permanent maritime boundaries; such commitment to be formally confirmed in writing to the Commission by each government by 8 December 2016;

3. Steps to be taken with respect to pending arbitrations:

- **Both Parties** to write jointly, by 21 October 2016, to the respective tribunals in the *Timor Sea Treaty Arbitration* and the *Article 8(b) Arbitration*, suspending those proceedings by agreement until 20 January 2017 (i.e., the final day of the January session with the Commission);
- **Timor-Leste** to write to the respective tribunals in the *Timor Sea Treaty Arbitration* and the *Article 8(b) Arbitration* by 20 January 2017 (i.e., the final day of the January session with the Commission), withdrawing its claims and requesting termination of those proceedings;

4. Steps to be taken with respect to petroleum exploration in the Timor Sea:

- **Australia** to remove the area in the recent acreage release identified by Timor-Leste as covered by its claim; such removal to be confirmed to the Commission in writing by 8 December 2016;

5. Steps to be taken with respect to the further work of the Commission:

- **Both Parties** to set out their positions on maritime boundaries in the Timor Sea in written submissions not exceeding 30 pages (excluding annexes), to be received by 20 December 2016; such written submissions should include the Parties' respective positions on the delimitation of permanent maritime boundaries (including coordinates of the proposed delimitation line) and an explanation of the principles on which their delimitation is based;
- **Australia** to provide the necessary mandate for its delegation to negotiate permanent maritime boundaries in the Timor Sea and to confirm to the Commission in writing the possession of such mandate by 9 January 2017;
- **Both Parties** to take a forward-looking approach to the negotiations and to raise only issues that are directly relevant to reaching an agreement on maritime boundaries.

6. Steps to be taken with respect to public communications:

- **Both Parties** to approach public statements on the issue of maritime boundaries and their relationship with one another generally with a view to creating space for constructive engagement, rather than to generate pressure on the other Party or foreclose options; Accordingly, **both Parties** to generally express optimism about the Conciliation process;
- **Both Parties** to provide positive comments from senior members of their present delegations on the other Party's engagement in the Conciliation process for quotation in a press release to be issued by the PCA at the close of the present session with the Commission;
- **Both Parties** to issue a joint statement (the content of which will be developed in consultation with the Commission) concurrent with the termination of CMATS, outlining the effect of termination on the Timor Sea Treaty and operators in the Timor Sea;

ANNEX: TIMELINE

Date	Event
Friday, 21 October 2016	Parties to write jointly to the respective tribunals in the <i>Timor Sea Treaty Arbitration</i> and the <i>Article 8(b) Arbitration</i> , suspending those proceedings by agreement until 20 January 2017
Thursday, 8 December 2016	Each government to write formally to the Commission, confirming commitment to negotiate permanent maritime boundaries
Thursday, 8 December 2016	Australia to advise Commission whether CMATS is to be terminated by Agreement
Thursday, 8 December 2016	Australia to confirm to the Commission that it has taken steps to remove the area in the recent acreage release identified by Timor-Leste as covered by its claim
Mid-December 2016	Parties and Commission to agree on trilateral Joint Statement (to be issued concurrently by each government and by the Commission at the same time that the termination of CMATS is initiated (either by agreement or unilaterally)) on modalities of termination of CMATS and continued application of Timor Sea Treaty as a transitional arrangement
Tuesday, 20 December 2016	Parties to simultaneously submit written statements to the Registry; Registry to circulate statements after receipt from both Parties
Monday, 9 January 2017	Australia to confirm to the Commission that it has a mandate to negotiate permanent maritime boundaries
Sunday, 15 January 2017	If CMATS to be terminated unilaterally, Timor-Leste to initiate termination process
Monday, 16 January 2017 to Friday, 20 January 2017	Confidential Meetings between the Parties and the Commission
Friday, 20 January 2017	Timor-Leste to write to the respective tribunals in the <i>Timor Sea Treaty Arbitration</i> and the <i>Article 8(b) Arbitration</i> by 20 January 2017, withdrawing its claims and requesting termination of those proceedings
Monday, 27 March 2017 to Friday, 31 March 2017	Confidential Meetings between the Parties and the Commission
Tuesday, 6 June 2017 to Friday, 9 June 2017	Confidential Meetings between the Parties and the Commission
Monday, 24 July 2017 to Friday, 28 July 2017	Confidential Meetings between the Parties and the Commission
Monday, 28 August 2017 to Friday, 1 September 2017	Confidential Meetings between the Parties and the Commission
Monday, 11 September 2017 to Friday, 15 September 2017	Dates reserved by Commission for purpose TBD

Annex 13:
Joint letter from the Parties to the Commission of 21 October 2016

Mr Garth Schofield
Legal Counsel
Permanent Court of Arbitration
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

21 October 2016

By email: gschofield@pca-cpa.org

Dear Sir,

PCA Case No. 2016-10 – Conciliation between The Democratic Republic of Timor-Leste and the Commonwealth of Australia

We refer to the Commission's Proposal on Confidence-Building Measures provided to the Parties following the conclusion of the recent *ex parte* meetings held in Singapore from 10-13 October 2016.

In accordance with the Commission's Proposal, please find attached correspondence from the Parties to the respective Arbitral Tribunals in the *Timor Sea Treaty Arbitration* and the *Article 8(b) Arbitration*, requesting the suspension of those proceedings from 21 October 2016 until 20 January 2016.

The Parties would be grateful if you would communicate this letter and the attached correspondence to the Commission.

Yours faithfully,



Ms Elizabeth Exposto
Chief Executive Officer
Maritime Boundary Office

Deputy Agent for Timor-Leste

e.exposto@gfm.tl



John Reid
First Assistant Secretary
Office of International Law
Attorney-General's Department

Agent for Australia

john.reid@ag.gov.au

Mr Garth Schofield
Legal Counsel
Permanent Court of Arbitration
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

21 October 2016

By email: gschofield@pca-cpa.org

Dear Sir,

PCA Case No. 2013-16 – Arbitration under the Timor Sea Treaty – Timor-Leste v Australia

We are under joint instructions to notify the Tribunal that the Parties have decided to suspend these proceedings from today's date until 20 January 2017. This suspension implements one important element of recent proposals put forward by the Commission in the conciliation proceedings initiated under Article 298 and Annex V of the *UN Convention on the Law of the Sea*.

During the period of suspension, neither Party will make any submission or application to the Tribunal or seek orders from the Tribunal designed to advance these proceedings.

The Parties also wish to place on record that the above suspension is without prejudice to the position of either of them in respect of the dispute underlying the arbitration or in respect of their procedural or substantive rights when the period of suspension comes to an end.

The Parties would be grateful if you would communicate this letter to the Tribunal.

Yours faithfully,



Joaquim da Fonseca
Ambassador of Timor-Leste to the UK
Embassy of the Timor-Leste in London
Portland House
Bressenden Place
London SW1E 5RS
UNITED KINGDOM

Agent for Timor-Leste

j.fonseca@tlembassy.co.uk



John Reid
First Assistant Secretary
Office of International Law
Attorney-General's Department
3-5 National Circuit
Barton, Australian Capital Territory 2600
AUSTRALIA

Agent for Australia

john.reid@ag.gov.au

Mr Garth Schofield
Legal Counsel
Permanent Court of Arbitration
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

21 October 2016

By email: gschofield@pca-cpa.org

Dear Sir,

PCA Case No. 2015-42 – Arbitration under the Timor Sea Treaty – Timor-Leste v Australia

We are writing to notify the Tribunal in the abovementioned proceedings that the Parties have decided to suspend these proceedings as of 21 October 2016 until 20 January 2017. This suspension implements one important element of the proposals put forward by the Commission in the conciliation proceedings initiated under Article 298 and Annex V of the *UN Convention on the Law of the Sea*.

We note that in accordance with the Parties correspondence to the Tribunal of 23 September 2016, Australia submitted its Application for the Production of Documents from the ConocoPhillips Arbitration on 14 October 2016. Timor-Leste is due to submit its response on 28 October 2016. Given, however, that this agreed suspension is effective as of 21 October 2016, Timor-Leste now has insufficient time to complete its responsive submission. Accordingly, the Parties agree that Timor-Leste will make its responsive submission within seven days of the lifting of the suspension.

During the period of suspension, neither Party will make any submission or application to the Tribunal or seek orders from the Tribunal, nor engage in any action designed to advance these proceedings.

The Parties would be grateful if you would communicate this letter to the Tribunal.

Yours faithfully,



Ambassador Pierre-Richard Prosper
Arent Fox LLP
555 West Fifth Street, 48th Floor
Los Angeles, California 90013
USA

Co-Agent for Timor-Leste

Pierre.Prospier@arentfox.com



John Reid
First Assistant Secretary, Office of International Law
Attorney-General's Department
3-5 National Circuit
Barton, Australian Capital Territory 2600
AUSTRALIA

Agent for Australia

john.reid@ag.gov.au

Annex 14:
Letter from Timor-Leste to the Commission of 6 December 2016



PRESIDÊNCIA DO
**CONSELHO
DE MINISTROS**
VI GOVERNO CONSTITUCIONAL



Gabinete do
Ministro

REF: 889 /PCM/XII/2016

Data/Date:

6 December 2016

Para/To:

Mr Garth Schofield, Senior Legal Counsel, Permanent Court of Arbitration
Email: gschofield@pca-cpa.org

Assunto/Subject:

PCA Case No 2016-10: Conciliation Proceedings between the Government of the Democratic Republic of Timor-Leste and the Government of the Commonwealth of Australia pursuant to Article 298 and Annex V of UNCLOS

Dear Sir,

I refer to the Commission's proposal on confidence-building measures.

Pursuant to point 2 of the Commission's proposal, please find **enclosed** a letter from H.E. Dr Rui Maria de Araújo, Prime Minister of Timor-Leste, to the Chairman of the Conciliation Commission, confirming Timor-Leste's commitment to negotiate permanent maritime boundaries with Australia.

Yours faithfully,

Agio Pereira

Minister of State and the Presidency of the Council of Ministers
Agent for Timor-Leste

CC: Elizabeth Exposto
Email: e.exposto@gfm.tl



Palácio do Governo,
Avenida Presidente Nicolau Lobato,
Dili, Timor-Leste



**PRIME
MINISTER**

Díli, 6 December 2016

Assunto/Subject: PCA Case No 2016-10: Conciliation Proceedings between the Government of the Democratic Republic of Timor-Leste and the Government of the Commonwealth of Australia pursuant to Article 298 and Annex V of UNCLOS

Dear Ambassador,

I refer to the above proceedings and the Commission's proposal no. 2 on confidence-building measures.

I am pleased formally to confirm Timor-Leste's commitment to negotiate permanent maritime boundaries with Australia.

Timor-Leste looks forward to working with Australia and the Commission in resolving this long-standing dispute between the two countries.

Yours faithfully,

Dr. Rui Maria de Araújo
Prime Minister of the Democratic Republic of Timor-Leste

H.E. Ambassador Peter Taksøe-Jensen
Chairman of the Conciliation Commission

Cc: H.E. Mr Agio Pereira, Agent for Timor-Leste
Email: Agio.Pereira@pcm.gov.tl

Elizabeth Exposto, Deputy Agent for Timor-Leste
Email: E.Exposto@gfm.tl

Annex 15:
Letter from Australia to the Commission of 8 December 2016



8 December 2016

Mr Garth Schofield
Legal Counsel
Permanent Court of Arbitration
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

Dear Mr Schofield

***Conciliation Proceedings under Article 298 and Annex V of UNCLOS (PCA Case No. 2016-10)
Democratic Republic of Timor-Leste and Commonwealth of Australia***

We refer to the Commission's Proposal on Confidence-Building Measures provided to the Parties at the conclusion of *ex parte* meetings between the Commission and the Parties in Singapore from 10-13 October 2016.

Australia accepts the Commission's Proposal. In respect of maritime boundaries, Australia confirms the following:

- i) Australia commits to negotiate permanent maritime boundaries with Timor-Leste
- ii) Australia will make written submissions on maritime boundaries in the Timor Sea by 20 December 2016
- iii) the Australian delegation has been provided the necessary mandate to negotiate permanent maritime boundaries in the Timor Sea, and
- iv) Australia also confirms that the area identified by Timor-Leste as covered by its claim will be removed from the 2016 Offshore Petroleum Exploration Acreage Release area W16-2. Timor-Leste has provided Australia with the co-ordinates defining the northern area of W16-2 and Australia is taking steps to excise the area.

With regard to the termination of the CMATS Treaty, the Commission put forward two options. Australia has given careful consideration to these options and consistent with its long-held position, Australia has decided not to jointly terminate the CMATS Treaty. On that basis, Australia acknowledges that Timor-Leste will now make arrangements to terminate the CMATS Treaty unilaterally.

Australia agrees that, following its termination by Timor-Leste:

- i) the Timor Sea Treaty will apply in its original form, prior to amendment by the CMATS Treaty, and

- ii) Articles 12(3) and 12(4) of the CMATS Treaty will no longer apply and Article 4(5) of the CMATS Treaty will not limit or exclude its obligation to negotiate an agreement with Timor-Leste on the basis of any report the Commission may produce in the course of these proceedings.

Australia will work with the Commission and Timor-Leste to agree by mid-December a trilateral Joint Statement on modalities of termination and the continued application of the Timor Sea Treaty. Australia also confirms its commitment to the other steps proposed by the Commission on public communication.

Australia understands that Timor-Leste will write to the respective tribunals in the *Timor Sea Treaty Arbitration* and the *Article 8(b) Arbitration* by 20 January 2017 withdrawing its claims and requesting termination of those proceedings.

Australia makes these commitments in good faith in order for the successful implementation of the overall package of confidence-building measures to proceed, including the range of actions required of Timor-Leste. We share the Commission's objective that the implementation of all of these measures will establish a stable starting point for negotiation and build trust between the Parties.

We would be grateful if you would convey this letter to the Chairman and members of the Conciliation Commission. We have copied this letter to the Agent and Deputy-Agent for Timor-Leste.

Yours sincerely



John Reid
Agent for Australia
First Assistant Secretary
Office of International Law
Attorney-General's Department
Canberra, Australia



Katrina Cooper
Co-Agent for Australia
Senior Legal Advisor
Department of Foreign Affairs and Trade
Canberra, Australia

Cc:

H.E. Mr Agio Pereira, Agent for Timor-Leste
Agio.pereira@pcm.gov.tl

Ms Elizabeth Exposto, Deputy Agent for Timor-Leste
e.exposto@gfm.tl

Annex 16:
Trilateral Joint Statement of 9 January 2017



**JOINT STATEMENT BY THE GOVERNMENTS OF TIMOR-LESTE AND AUSTRALIA AND THE
CONCILIATION COMMISSION CONSTITUTED PURSUANT TO ANNEX V OF THE UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA**

Australia and Timor-Leste are engaged in the ongoing Conciliation under the United Nations Convention on the Law of the Sea. The purpose of this process is to resolve the differences between the two States over maritime boundaries in the Timor Sea.

From 10 to 13 October 2016, the governments of Timor-Leste and Australia participated in a series of meetings convened by the Conciliation Commission constituted in this matter. In the course of those meetings the governments of Timor-Leste and Australia agreed to an integrated package of measures intended to facilitate the conciliation process and create the conditions conducive to the achievement of an agreement on permanent maritime boundaries in the Timor Sea.

As part of this package of measures, the Government of Timor-Leste has decided to deliver to the Government of Australia a written notification of its wish to terminate the 2006 *Treaty on Certain Maritime Arrangements in the Timor Sea* pursuant to Article 12(2) of that treaty. The Government of Australia has taken note of this wish and recognises that Timor-Leste has the right to initiate the termination of the treaty. Accordingly, the *Treaty on Certain Maritime Arrangements in the Timor Sea* will cease to be in force as of three months from the date of that notification.

The Commission and the Parties recognise the importance of providing stability and certainty for petroleum companies with interests in the Timor Sea and of continuing to provide a stable framework for petroleum operations and the development of resources in the Timor Sea. In the interest of avoiding uncertainty, the governments of Timor-Leste and Australia wish to record their shared understanding of the legal effects of the termination of the *Treaty on Certain Maritime Arrangements in the Timor Sea* as follows:

- The governments of Timor-Leste and Australia agree that, following the termination of the *Treaty on Certain Maritime Arrangements in the Timor Sea*, the *Timor Sea Treaty between the Government of East Timor and the Government of Australia* of 20 May 2002 and its supporting regulatory framework shall remain in force between them in its original form, that is, prior to its amendment by the *Treaty on Certain Maritime Arrangements in the Timor Sea*.
- The governments of Timor-Leste and Australia agree that the termination of the *Treaty on Certain Maritime Arrangements in the Timor Sea* shall include the termination of the provisions listed in Article 12(4) of that treaty and thus no provision of the Treaty will survive termination. All provisions of the treaty will cease to have effect three months after the delivery of Timor-Leste's notification.

For the further conduct of the conciliation process, the governments of Timor-Leste and Australia have each confirmed to the other their commitment to negotiate permanent maritime boundaries under the auspices of the Commission as part of the integrated package of measures agreed by both countries. The governments of Timor-Leste and Australia look forward to continuing to engage with the Conciliation Commission and to the eventual conclusion of an agreement on maritime boundaries in the Timor Sea. The Commission will hold a number of meetings over the course of the year, which will largely be conducted in a confidential setting.

The governments of Australia and Timor-Leste remain committed to their close relationship and continue to work together on shared economic, development and regional interests.

This statement is being issued simultaneously by the Foreign Minister of Timor-Leste, the Foreign Minister of Australia, and the Permanent Court of Arbitration on behalf of the Conciliation Commission.

* * *

Annex 17:
Letter from Australia to Timor-Leste of 12 January 2017



Australian Government

Department of Foreign Affairs and Trade

12 January 2017

Mr Garth Schofield
Legal Counsel
Permanent Court of Arbitration
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

Dear Mr Schofield

Conciliation Proceedings under Article 298 and Annex V of UNCLS (PCA Case No. 2016-10) Democratic Republic of Timor-Leste and Commonwealth of Australia

I write to inform you of recent steps taken by Australia to fulfil its undertakings in relation to the Australian Government's 2016 Offshore Petroleum Acreage Release Area 'W16-2'.

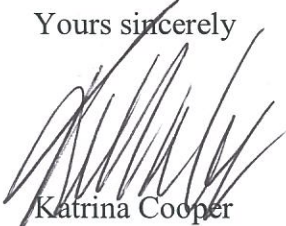
As part of the integrated package of confidence building measures Australia and Timor-Leste agreed to complete as part of the Conciliation Commission process, Australia committed to removing the area Timor-Leste identified as covered by its maritime boundary claim in Acreage Release Area W16-2.

I can confirm that Australia has now completed this step. On 10 January 2017, the Commonwealth-Western Australia Offshore Petroleum Joint Authority announced it had officially amended the block listing for Acreage Release Area W16-2 by removing the area in question. Timor-Leste was advised of these actions in writing on 12 January 2017.

I have attached a copy of the Gazette notice published by the Commonwealth of Australia that confirms the completion of this confidence building measure. An online version of this gazette notice is also available at: <https://www.legislation.gov.au/Details/C2017G00020>.

The action taken to amend Acreage Release Area W16-2 is without prejudice to Australia's position on its continental shelf and EEZ entitlements and on maritime delimitation between Australia and Timor-Leste.

Yours sincerely


Katrina Cooper
Co-Agent for Australia

Annex 18:
Trilateral Joint Statement of 24 January 2017



**JOINT STATEMENT BY THE GOVERNMENTS OF TIMOR-LESTE AND AUSTRALIA AND THE
CONCILIATION COMMISSION CONSTITUTED PURSUANT TO ANNEX V OF THE UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA**

Delegations from both Timor-Leste and Australia participated in a series of confidential meetings with the Conciliation Commission in Singapore from 16 to 20 January 2017. These meetings are part of an ongoing, structured dialogue in the context of the conciliation between the Democratic Republic of Timor-Leste and the Commonwealth of Australia being conducted pursuant to the UN Convention on the Law of the Sea and under the auspices of the Permanent Court of Arbitration. These meetings will continue over the course of the year in an effort to resolve the differences between the two States over maritime boundaries in the Timor Sea.

In October 2016, the Conciliation Commission reached agreement with the Parties on certain confidence-building measures, which included a series of actions by both Timor-Leste and Australia to demonstrate each Party's commitment to the conciliation process and to create the conditions conducive to the achievement of an agreement on permanent maritime boundaries.

As part of this integrated package of confidence-building measures, the Foreign Ministers of Timor-Leste and Australia and the Conciliation Commission issued a Trilateral Joint Statement on 9 January 2017, noting Timor-Leste's intention to terminate the *Treaty on Certain Maritime Arrangements in the Timor Sea* and setting out the Parties' agreement on the legal consequences of such termination. On 10 January 2017, Timor-Leste formally notified Australia of the termination of the Treaty, which shall cease to be in force on 10 April 2017, in accordance with its terms.

Over the course of the week, the Commission met with the Parties to explore their negotiating positions on where the maritime boundary in the Timor Sea should be set with a view to identifying possible areas of agreement for discussion in future meetings. Both Timor-Leste and Australia agreed that the meetings were productive, and reaffirmed their commitment to work in good faith towards an agreement on maritime boundaries by the end of the conciliation process in September 2017. The Commission intends to do its utmost to help the Parties reach an agreement that is both equitable and achievable.

Recognizing that the Parties are undertaking good faith negotiations on permanent maritime boundaries, and in continuation of the confidence-building measures and the dialogue between the Parties, on Friday, 20 January 2017, Timor-Leste wrote to the tribunals in the two arbitrations it had initiated with Australia under the *Timor Sea Treaty* in order to withdraw its claims. These arbitrations had previously been suspended by agreement of the two governments following the Commission's meeting with the Parties in October 2016. The withdrawal of these arbitrations was the last step in the integrated package of confidence-building measures agreed during the Commission's meetings with the Parties in October 2016.

The Commission and the Parties recognise the importance of providing stability and certainty for petroleum companies with current rights in the Timor Sea. The Parties are committed to providing a stable framework for existing petroleum operations. They have agreed that the 2002 *Timor Sea Treaty* and its supporting regulatory framework will remain in force between them in its original form until a final delimitation of maritime boundaries has come into effect. As this process continues, the Commission and the Parties will ensure that the issue of transitional arrangements for any new regime will be included in the program of work for the conciliation with a view to ensuring that current rights of these companies are respected.

Timor-Leste and Australia enjoy a close and strong friendship. The governments of both countries are committed to their important relationship and working together on many shared interests.

This statement is being issued simultaneously by the Government of Timor-Leste, the Government of Australia, and the Permanent Court of Arbitration on behalf of the Conciliation Commission.

* * *

Annex 19:
Commission Non-Paper of 31 March 2017

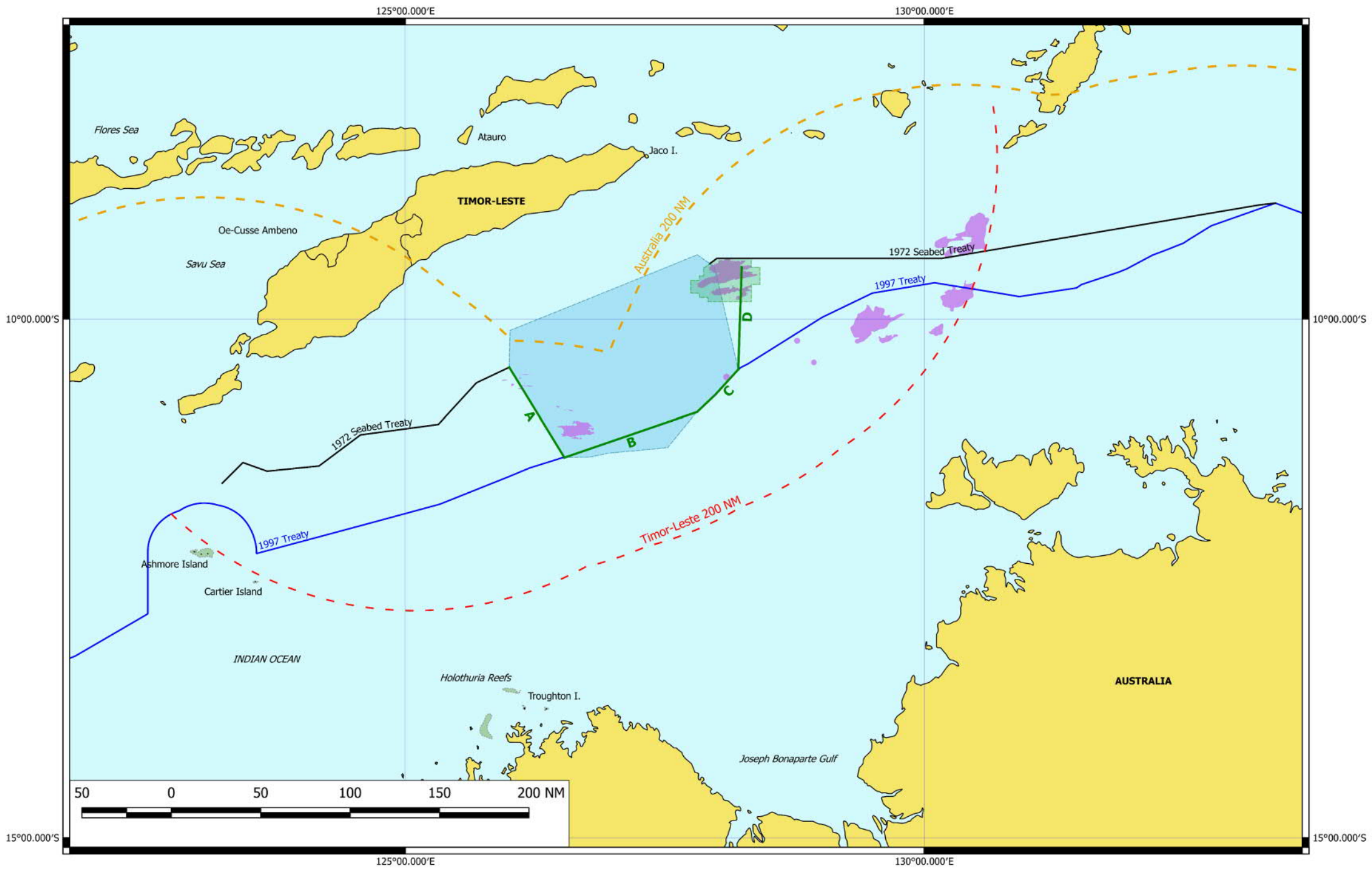
NON-PAPER

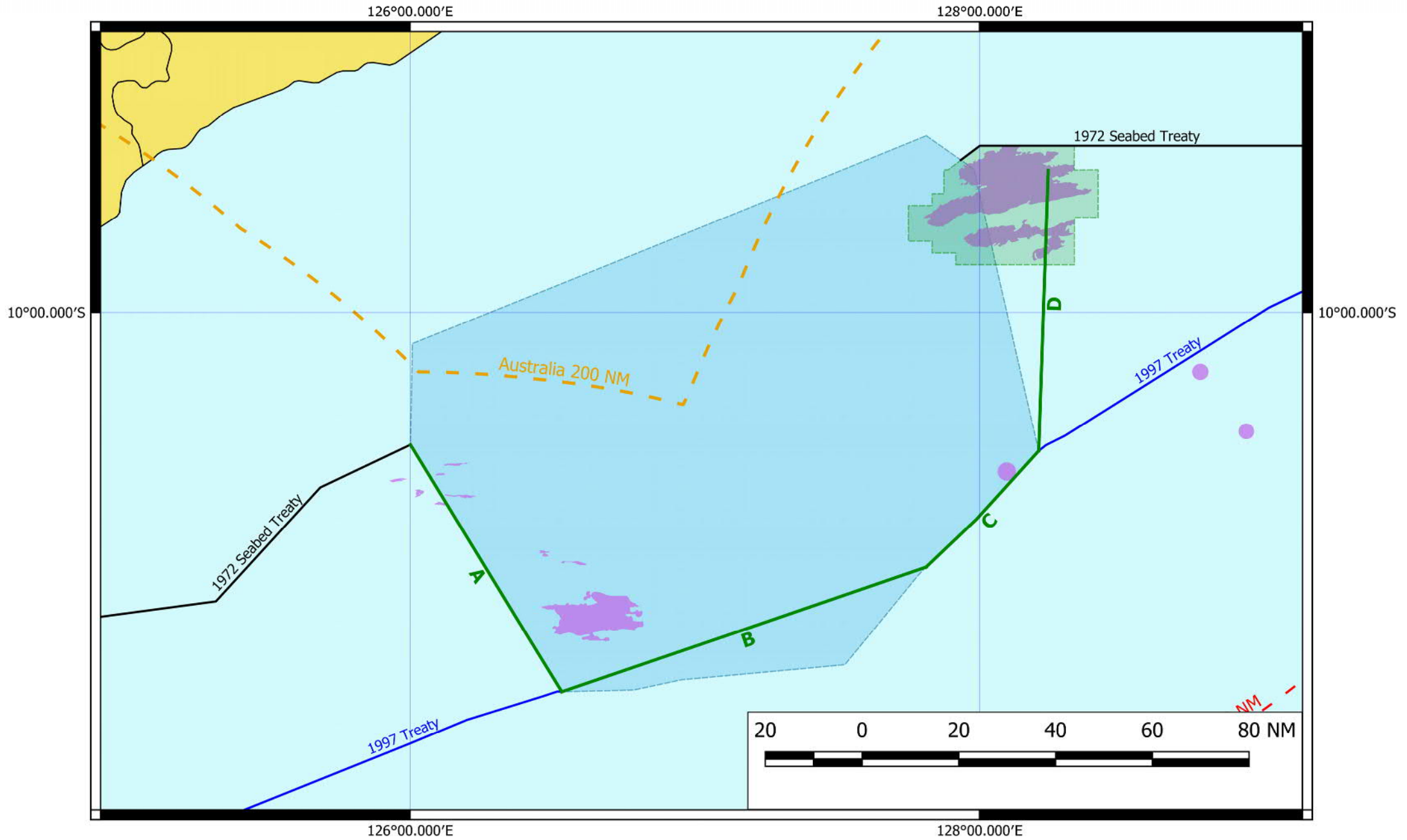
Indicative Description of Line

- **Segment A:** a seabed boundary only, running along the western boundary of the current JPDA, from the line of the 1972 Seabed Treaty between Australia and Indonesia until it intersects with the line of the 1997 Perth Treaty between Australia and Indonesia.
- **Segment B:** a single maritime boundary, running to the north-east from the point where the current JPDA boundary intersects with the 1997 Perth Treaty until it intersects with the median/southern boundary of the current JPDA at point 10° 54' 49.1" S; 127° 47' 30.2" E (WGS-84) (corresponding to point ATL-6 on the median line constructed by Timor-Leste).
- **Segment C:** a single maritime boundary, following the median line/southern boundary of the current JPDA from its intersection with Segment B at point 10° 54' 49.1" S; 127° 47' 30.2" E (WGS-84) until it reaches the eastern corner of the current JPDA.
- **Segment D:** a seabed boundary only, running along a geodetic line that has an initial azimuth of 2° 00' 00" from the eastern corner of the current JPDA, stopping at a point 5 nautical miles from the 1972 Seabed Treaty between Australia and Indonesia.
- The end of the line is without prejudice to the direction or extent of the continuation of the line, which will be determined subsequently. The location of the line in Segment D is without prejudice to the sharing of resources within the Greater Sunrise Special Regime.

Greater Sunrise Special Regime to be established as part of a comprehensive agreement

- Shared sovereign rights with respect to natural resources within Greater Sunrise area;
- Agreement on allocation of jurisdiction;
- Management according to best practices;
- Timor-Leste as Regulator/Designated Authority shall exercise all day-to-day regulatory management;
- Joint Commission including neutral third country members; decisions by majority vote, subject to Ministerial Council and binding arbitration (or other dispute resolution);
- Joint fiscal scheme;
- Comprehensive development plan;
- Environmental regulation, response, and liability arrangements;
- Revenue shares to be agreed in the course of the conciliation proceedings;
- Revenue-sharing arrangement, including with respect to tax revenues and downstream benefits, with independent oversight;
- Strategy to take account of Timor-Leste's economic development goals, in particular with regard to industrial development of south coast;





Annex 20:
Press Releases Nos. 6 to 8

**PRESS RELEASE****Conciliation between
the Democratic Republic of Timor-Leste and the Commonwealth of Australia**

WASHINGTON, 3 April 2017

Timor-Leste and Australia Continue Discussions with Conciliation Committee in Maritime Boundary Proceedings

Delegations from both Timor-Leste and Australia held a series of confidential meetings with the Conciliation Commission in Washington, D.C. during the week of 26-31 March 2017. These meetings are part of an ongoing, structured dialogue in the context of the conciliation between the Democratic Republic of Timor-Leste (“**Timor-Leste**”) and the Commonwealth of Australia (“**Australia**”) being conducted pursuant to the UN Convention on the Law of the Sea and under the auspices of the Permanent Court of Arbitration (the “**PCA**”). These meetings will continue in an effort to resolve the differences between the two states over maritime boundaries in the Timor Sea.

Over the course of the week, the Commission met with the Parties to explore their negotiating positions and seek to identify possible areas of agreement. These meetings built on previous meetings between the Commission and the Parties that took place in Singapore in October 2016 and January 2017.

Both the Parties and the Commission agreed that the meetings were productive, and reaffirmed their commitment to work towards the eventual conclusion of an agreement on maritime boundaries. “These are difficult issues for any State, and I am very pleased with how the Parties have approached the meetings,” said Ambassador Peter Taksøe-Jensen, the Chairman of the Commission. “At the same time, conciliation is a marathon, not a sprint, and we still have work to do. The Commission is not here to decide the Parties’ dispute, but to help them find an agreement that is both fair and achievable, in accordance with the UN Convention on the Law of the Sea. We will continue to meet with the Parties with that goal in mind.”

Next Steps

A number of further meetings between the Parties and the Commission are expected to take place over the course of this year. The Commission will conduct future meetings in a confidential setting in order to provide an environment conducive to facilitating the eventual success of the conciliation, although further joint public statements may be made from time to time.

Background on the Conciliation Process

The Commission was constituted on 25 June 2016 pursuant to the procedure set out in Annex V of the Convention. The five-member Commission is chaired by H.E. Ambassador Peter Taksøe-Jensen (Denmark). The other members of the Commission are Dr. Rosalie Balkin (Australia), Judge Abdul G. Koroma (Sierra Leone), Professor Donald McRae (Canada and New Zealand), and Judge Rüdiger Wolfrum (Germany). With the agreement of the Parties, the Permanent Court of Arbitration acts as Registry in the proceedings.

These conciliation proceedings were initiated by Timor-Leste on 11 April 2016 by way of a “Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS” addressed to Australia.

On 2 May 2016, Australia submitted “Australia’s Response to the Notice of Conciliation”.

On 28 July 2016, the Conciliation Commission held a procedural meeting with the Parties at the Peace Palace in The Hague, the Netherlands.

On 29, 30, and 31 August, the Commission convened the Opening Session of the Conciliation and a Hearing on Competence at the Peace Palace in The Hague, the Netherlands.

On 19 September 2016, the Commission rendered its Decision on Competence, finding that the Conciliation would continue.

From 10 to 13 October 2016, the Commission met with the Parties in Singapore.

On 9 January 2017, the Foreign Ministers of Timor-Leste and Australia, together with the Commission, issued a Trilateral Joint Statement on the termination of the *Treaty on Certain Maritime Arrangements in the Timor Sea*.

From 16 to 20 January 2017, the Commission met with the Parties in Singapore.

Further information about the case may be found at www.pcacases.com/web/view/132, including the full text of the Commission's Decision on Competence, earlier Press Releases, a video recording and transcript of the Opening Session, the presentations of the Parties, and previous press releases and Trilateral Joint Statements.

* * *

Background on the Permanent Court of Arbitration

The Permanent Court of Arbitration is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 121 Member States. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding, and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties. The PCA's International Bureau is currently administering 6 interstate disputes, 75 investor-State arbitrations, and 41 cases arising under contracts involving a State or other public entity. More information about the PCA can be found at www.pca-cpa.org.

Contact: Permanent Court of Arbitration

E-mail: bureau@pca-cpa.org

**PRESS RELEASE****Conciliation between
the Democratic Republic of Timor-Leste and the Commonwealth of Australia**

COPENHAGEN, 12 June 2017

Timor-Leste and Australia Continue Discussions with Conciliation Committee in Maritime Boundary Proceedings

Delegations from both Timor-Leste and Australia held a series of confidential meetings with the Conciliation Commission in Copenhagen last week. These meetings are part of a structured dialogue in the context of the conciliation between the Democratic Republic of Timor-Leste (“**Timor-Leste**”) and the Commonwealth of Australia (“**Australia**”) being conducted pursuant to the UN Convention on the Law of the Sea and under the auspices of the Permanent Court of Arbitration (the “**PCA**”). These meetings will continue in an effort to resolve the differences between the two states over maritime boundaries in the Timor Sea.

Over the course of the week, the Commission met with the Parties to explore their positions and seek to identify possible areas of agreement. These meetings built on previous meetings between the Commission and the Parties that took place in Singapore in October 2016 and January 2017 and in Washington, D.C. in March 2017.

Both the Parties and the Commission agreed that the meetings were productive, and reaffirmed their commitment to work towards the eventual conclusion of an agreement on maritime boundaries. “Over the course of the last months, the Commission has gained a deeper understanding of the Parties’ interests and of the differences that separate them,” said Ambassador Peter Taksøe-Jensen, the Chairman of the Commission. “The Commission continues to believe that, with the goodwill we see from both governments, a comprehensive resolution of this dispute is possible. We will continue to work with that objective in mind.”

Next Steps

A number of further meetings between the Parties and the Commission are expected to take place in the coming months. The Commission will conduct future meetings in a confidential setting in order to provide an environment conducive to facilitating the eventual success of the conciliation, although further public statements may be made from time to time.

Background on the Conciliation Process

The Commission was constituted on 25 June 2016 pursuant to the procedure set out in Annex V of the Convention. The five-member Commission is chaired by H.E. Ambassador Peter Taksøe-Jensen (Denmark). The other members of the Commission are Dr. Rosalie Balkin (Australia), Judge Abdul G. Koroma (Sierra Leone), Professor Donald McRae (Canada and New Zealand), and Judge Rüdiger Wolfrum (Germany). With the agreement of the Parties, the Permanent Court of Arbitration acts as Registry in the proceedings.

These conciliation proceedings were initiated by Timor-Leste on 11 April 2016 by way of a “Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS” addressed to Australia.

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On 19 September 2016, the Commission rendered its Decision on Competence, finding that the Conciliation would continue.

From 10 to 13 October 2016, the Commission met with the Parties in Singapore.

On 9 January 2017, the Foreign Ministers of Timor-Leste and Australia, together with the Commission, issued a Trilateral Joint Statement on the termination of the *Treaty on Certain Maritime Arrangements in the Timor Sea*.

From 16 to 20 January 2017, the Commission met with the Parties in Singapore.

From 27 to 31 March 2017, the Commission met with the Parties in Washington, D.C.

Further information about the case may be found at www.pcacases.com/web/view/132, including the full text of the Commission's Decision on Competence, earlier Press Releases, a video recording and transcript of the Opening Session, the presentations of the Parties and previous press releases and Trilateral Joint Statements.

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Contact: Permanent Court of Arbitration

E-mail: bureau@pca-cpa.org

**PRESS RELEASE****Conciliation between
the Democratic Republic of Timor-Leste and the Commonwealth of Australia**

SINGAPORE, 9 August 2017

Timor-Leste and Australia Hold Further Productive Discussions with Conciliation Commission in Maritime Boundary Proceedings

Delegations from both Timor-Leste and Australia held a series of confidential meetings with the Conciliation Commission in Singapore during the week of 24-28 July 2017. These meetings are part of a structured dialogue in the context of the conciliation between the Democratic Republic of Timor-Leste (“**Timor-Leste**”) and the Commonwealth of Australia (“**Australia**”) being conducted pursuant to the UN Convention on the Law of the Sea and under the auspices of the Permanent Court of Arbitration (the “**PCA**”). These meetings will continue in an effort to resolve the differences between the two states over maritime boundaries in the Timor Sea.

Over the course of the week, the Commission met with the Parties to explore their positions and seek to identify possible areas of agreement. These meetings built on previous meetings between the Commission and the Parties that have taken place on a regular basis since October 2016.

Both the Parties and the Commission agreed that the meetings were productive, and reaffirmed their commitment to work towards the eventual conclusion of an agreement on maritime boundaries. “We have made steady progress over the course of the last several months, and made progress again at this meeting,” said Ambassador Peter Taksøe-Jensen, the Chairman of the Commission. “Difficult issues remain, but given the goodwill shown by both governments throughout this process, the Commission remains confident that we will be able to overcome the Parties’ differences and reach an agreement.”

Next Steps

A number of further meetings between the Parties and the Commission are expected to take place over the course of the coming months. The Commission has conducted its meetings in a confidential setting in order to provide an environment conducive to facilitating the eventual success of the conciliation, although further public statements may be made from time to time. The Commission expects to conclude its substantive discussions with the Parties by October of this year, after which it will proceed to issue its report.

Background on the Conciliation Process

The Commission was constituted on 25 June 2016 pursuant to the procedure set out in Annex V of the Convention. The five-member Commission is chaired by H.E. Ambassador Peter Taksøe-Jensen (Denmark). The other members of the Commission are Dr. Rosalie Balkin (Australia), Judge Abdul G. Koroma (Sierra Leone), Professor Donald McRae (Canada and New Zealand), and Judge Rüdiger Wolfrum (Germany). With the agreement of the Parties, the Permanent Court of Arbitration acts as Registry in the proceedings.

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On 29, 30, and 31 August, the Commission convened the Opening Session of the Conciliation and a Hearing on Competence at the Peace Palace in The Hague, the Netherlands.

On 19 September 2016, the Commission rendered its Decision on Competence, finding that the Conciliation would continue.

From 10 to 13 October 2016, the Commission met with the Parties in Singapore.

On 9 January 2017, the Foreign Ministers of Timor-Leste and Australia, together with the Commission, issued a Trilateral Joint Statement on the termination of the *Treaty on Certain Maritime Arrangements in the Timor Sea*.

From 16 to 20 January 2017, the Commission met with the Parties in Singapore.

From 27 to 31 March 2017, the Commission met with the Parties in Washington, D.C.

From 5 to 9 June 2017, the Commission met with the Parties in Copenhagen.

Further information about the case may be found at www.pca-cpa.org/en/cases/132/, including the full text of the Commission’s Decision on Competence, earlier Press Releases, a video recording and transcript of the Opening Session, the presentations of the Parties and previous press releases and Trilateral Joint Statements.

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Background on the Permanent Court of Arbitration

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Contact: Permanent Court of Arbitration

E-mail: bureau@pca-cpa.org

Annex 21:
Comprehensive Package Agreement of 30 August 2017

COMPREHENSIVE PACKAGE AGREEMENT

30 AUGUST 2017

Western Boundary:

- The western boundary (Segment A1) is a boundary for the continental shelf regime only.
- Segment A1 runs in a southerly direction from point A17 until it reaches the line of the 1997 Treaty between Australia and Indonesia at point TA-1.
- Segment A1 is a provisional boundary until Timor-Leste (a) concludes a seabed boundary with Indonesia and (b) the existing Coralina and Laminaria fields are decommissioned. Thereafter, the boundary will be adjusted to run as a geodetic line from point TA-1:
 - to any point between points A17 and A18 at which the continental shelf boundary between Timor-Leste and Indonesia meets the 1972 Treaty between Indonesia and Australia; or
 - to point A18, if the boundary between Timor-Leste and Indonesia meets the 1972 Treaty to the west of point A18.

Southern Boundary:

- Segment A2 of the southern boundary is a boundary for the continental shelf regime only.
- Segment A2 follows the line of the 1997 Treaty between Australia and Indonesia until point TA-2.
- Segments B and C of the southern boundary are a comprehensive maritime boundary for both the continental shelf and exclusive economic zone.
- Segment B runs as a geodetic line from point TA-2 until it reaches the median line at point TA-3.
- Segment C follows the median line from point TA-3 to point TA-4.

Eastern Boundary:

- The eastern boundary (Segments D and E) is a boundary for the continental shelf regime only.
- Boundary runs to the east of Greater Sunrise before turning to connect back to point A16:
 - Segment D runs as a geodetic line from point TA-4 to point TA-5.
 - Segment E runs as a geodetic line from point TA-5 to point A16 on the line of the 1972 Treaty between Australia and Indonesia.
- Segment E of the boundary crosses the Greater Sunrise field in a proportion that is roughly congruent with the division of revenue from the resource.
- To the north of point X, Segments D and E are a provisional boundary until (a) Timor-Leste concludes a seabed boundary with Indonesia and (b) the existing Sunrise and Troubador fields are decommissioned. Thereafter, the boundary will run as a geodetic line from point X to the point at which the continental shelf boundary between Timor-Leste and Indonesia meets the 1972 Treaty between Indonesia and Australia.

Special Regime Elements

- Special Regime area equals the Greater Sunrise unitisation area.
- The treaty would provide that:
 - “(a) Within the Special Regime area, Timor-Leste and Australia jointly exercise their rights as coastal States pursuant to Article 77 of the United Nations Convention on the Law of the Sea.
 - (b) Governance and the exercise of jurisdiction within the Special Regime area are as set out in Annex ## to this Treaty.”
- The Parties will agree to a revenue split. The revenue split will depend on the choice of development concept in order to reflect the impact of the downstream elements of the project and the broader economic benefits of the project.
 - Timor LNG: sharing of upstream revenue in the proportion of 70:30 in Timor-Leste’s favour, reflecting downstream operations and broader economic benefits.
 - Darwin LNG: sharing of upstream revenue in the proportion of 80:20 in Timor-Leste’s favour, reflecting downstream operations and broader economic benefits.
- Joint governance of Special Regime area (details to be elaborated and included in Annex ## to treaty).

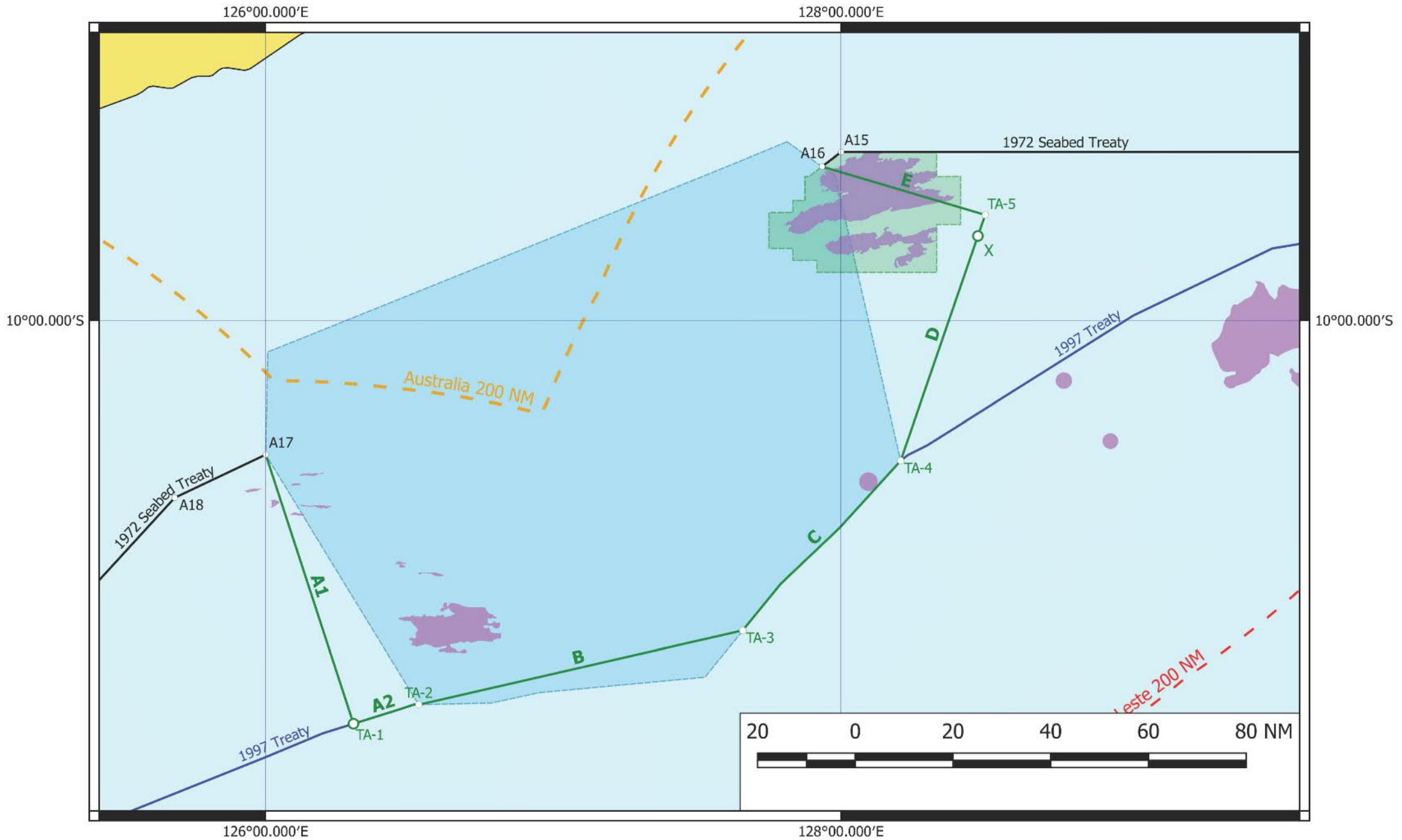
Mechanism for Development Concept

- Treaty to include a mechanism for engaging with the Sunrise Joint Venture and ensuring that a decision is taken with respect to the development concept.
- Details of mechanism are set out in Annex B to this document.

Other Resources

- Timor-Leste would obtain all future upstream revenue from Bayu-Undan, Buffalo, and Kitan fields.
- Governance and regulatory arrangements for currently operating Bayu-Undan and Kitan fields would be “grandfathered” (i.e. maintained as is).
- Transition of Buffalo field into Timor-Leste’s jurisdiction would be covered by transitional arrangements which guarantee equivalent terms and conditions.
- No compensation for past exploitation.

Annex A: Sketch Map



ANNEX B: APPROACH ON THE GREATER SUNRISE DEVELOPMENT CONCEPT

- Following agreement in principle on the elements of a boundary agreement and Greater Sunrise Special Regime (“GSSR”), Timor-Leste and Australia to begin joint engagement with Joint Venture, with a view to a timely and informed decision on the development concept for Greater Sunrise (the “Development Concept”) in accordance with the Criteria and Action Plan set forth below.
- The Development Concept will include:
 - Description of development strategy, consistent with good oilfield practice;
 - Commercial viability assessment;
 - Technical viability assessment;
 - Local content opportunities;
 - Timor-Leste development; and
 - Timor-Leste equity.
- The criteria for the assessment of proposals for the Development Concept (the “Criteria”) shall be:
 - the Development Concept is commercially viable, including best commercial advantage;
 - the Development Concept is technically feasible;
 - the Development Concept supports the development objectives and needs of each of Timor-Leste and Australia, while at the same time providing a fair return to the Joint Venture;
 - the Development Concept demonstrates a significant contribution to the sustainable economic development of Timor-Leste, including through clear and measurable local content commitments;
 - the Development Concept is consistent with good oilfield practice;
 - the Joint Venture has, or has access to, the financial and technical competence to carry out the development of the Greater Sunrise field; and
 - the Joint Venture could reasonably be expected to carry out the Development Concept during the specified period.
- The Parties agree to not unreasonably refuse the development plan for the agreed Development Concept.
- The Commission may intervene, at any stage of the Action Plan, to engage on behalf of the Parties with the Joint Venture, or at the request of either Party, to engage with the Parties.
- Following the entry into force of the boundary agreement and GSSR, governance of the GSSR shall transfer to the Designated Authority and Governance Board in accordance with the terms of the GSSR.
- The relationship between the GSSR agreement, the agreement on the Development Concept, and the trilateral agreement with the Joint Venture to be addressed by the Commission in due course.

ACTION PLAN

1. Parties engage with the Joint Venture

The following activities will be commenced immediately following the conclusion of the current meetings with the Commission:

- Parties provide all relevant information to the JV, and to each other, for further and more comprehensive analysis of the TLNG concept, in particular, any Timor-Leste financial contributions/subsidies towards the capital costs of TLNG
- Parties agree to timeline and procedures for delivery of such information and analysis from the JV. Timeline must ensure sufficient time for joint or separate analysis by the Parties
- Detailed request for further and more comprehensive information from the JV (via a letter from the Commission) including engaging in respect of:
 - South Coast development options
 - Local Content obligations
 - Equity participation for Timor-Leste
 - Fiscal arrangements/model for the project
- Regular engagement with the JV to ensure that at the completion of the process the Parties have access to all necessary information and analysis in order to reach an informed decision

2. Joint Venture Responds to the Parties

By 1 November 2017, the following tasks shall have been completed:

- Following JV response to Parties' requests for information and analysis, Parties to meet to consider information and analysis provided by the JV and determine whether any additional information or analysis remains outstanding for DLNG and/or TLNG
- Parties to review (including as necessary with their own independent experts) information and analysis provided by the JV for DLNG and/or TLNG
- Parties report back to the Commission at the October Commission meeting to provide an update on the process and identify any concerns regarding progress and/or information and analysis from the JV, with a view to Commission engagement if any blockage was identified

3. Parties Assess Options and Decide Development Concept

By 15 December 2017, the following tasks shall have been completed:

- Parties undertake assessment of Development Concept on the basis of the Criteria
- Parties agree to the Development Concept

4. Further Procedure

- Following agreement by the Parties on the Development Concept, Parties sign a trilateral agreement with the JV for the Development Concept including, among other things, terms on fiscal regime, the approval of operator, and the security of title
- If the Parties are unable to agree to the Development Concept in accordance with the Criteria ahead of 15 December 2017, the Commission shall engage with the Parties with a view to facilitating agreement on the Development Concept by no later than 1 February 2018

Annex 22:
Protocol to meet the Commission's Action Plan of 25 September 2017

PROTOCOL TO MEET COMMISSION`S ACTION PLAN

Date	Action
25 Sept	<ul style="list-style-type: none"> • Call between Parties and JV to explain Protocol including timing and details for exchange of information in order to meet Action Plan - seek initial response and settle agreed Protocol • On this call, Timor-Leste to run through its motives and plan to be in a position to choose from "two viable options", discuss request for further information on both options and further requests that may follow once industry advisors in place • Discuss timeline in the Commission`s Action Plan and realistic delivery times
25 Sept pm/ Tuesday 26 Sept am	Parties to update Commission concerning Protocol and engagement with JV - PCA on behalf of the Commission may wish to formalise this with a letter to the JV
Date to be agreed	Parties and JV (or CP on behalf of JV) working call/meeting to discuss Protocol and add more detail around deliverables and timing
Date/location to be agreed	More formal meeting between JV and senior members of both Parties (before and/or after Hague?)
October Commission in The Hague	Update Commission concerning Protocol and steps taken to meet Commission`s Action plan. Parties to agree with Commission what information around the 30 August agreement can be disclosed to JV in order to meet Commission`s Action Plan.
Immediately Post October Commission	<ul style="list-style-type: none"> • Parties agree a detailed timeline for meetings and engagement through to the end of the year, data room, teams for communications, begin series of engagement on key information exchange; positions with respect to terms of engagement (if required, noting JV has proposed a HoA and Timor has raised confidentiality/indemnity points) • Timor-Leste to provide information to JV as agreed with the Commission in October in the Hague • Timor-Leste to have appointed an expert consultant to review, verify and advise it on both options/JV to provide information in form required by expert
October - 15 Dec	<p>Series of meetings to discuss and agree on:</p> <ul style="list-style-type: none"> • common assumptions on some key aspects of both options, such as a common cost basis for DLNG and TLNG, reserve capacity [others?] • Continued, regular engagement with JV to negotiate the terms of each option • Meetings between JV members and DLNG in terms of tolling arrangements • Completion of technical / other studies for each option (to be considered further) • Sign off with JV on final terms of the two options (including high level PSC and commercial terms) - in at least sufficient detail to ensure a comparison can be made in economic terms

	<ul style="list-style-type: none"> • Continued engagement with JV to clarify or negotiate changes to TLNG and DLNG options • fiscal and regulatory terms to apply to Greater Sunrise for both TLNG and DLNG • High-level discussions with JV on necessary changes to PSC terms for both TLNG and DLNG <p>[See Action Plan for more detail]</p>
<p>15 Dec [<i>TL has a concern as to whether this timeline is realistic/achievable. TL view is that it will not allow sufficient time to fully analyse TLNG</i>]</p>	<p>Once both options are in a viable state both Parties to make recommendations to relevant leadership for a decision</p>
<p>Post 15 Dec / 1 February</p>	<p>Noted that, as per Action Plan, if Parties are unable to agree the Development concept, Parties to engage with Commission with a view to facilitating agreement on the Development Concept by no later than 1 February 2018</p>

Annex 23:
Exchange of Correspondence between Australia and Timor-Leste on
Transitional Arrangements for Bayu-Undan and Kitan
of 13 October 2017



13 October 2017

H.E. Mr. Hermenegildo Pereira
Deputy Minister to the Prime Minister for the Delimitation of Boundaries
Agent for Timor-Leste

Your Excellency

Exchange of Correspondence on Bayu-Undan and Kitan Transitional Arrangements

I have the honour of referring to recent discussions between officials of the Government of Australia and the Government of Timor-Leste (hereinafter referred to as the Parties) under the auspices of the Conciliation Commission established pursuant to Article 298 and Annex V of the *United Nations Convention on the Law of the Sea* concerning transitional arrangements for the Bayu-Undan Gas Field (subject to PSC JPDA 03-12 and PSC JPDA 03-13) and the Kitan Oil Field (subject to PSC JPDA 06-105) in the Timor Sea, forming part of the negotiation of the *Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea* ('the Treaty').

I write to set out the following steps that the Parties have determined will take place expeditiously and be completed prior to the entry into force of the Treaty.

The Joint Commission, as established under Article 6(c) of the Timor Sea Treaty, will approve:

- (a) the entry into revised production sharing contracts by the relevant Timor-Leste statutory authority, amended as necessary to take into account the terms of the Treaty, relating to the Bayu-Undan Gas Field and the Kitan Oil Field;
- (b) the continuation following the entry into force of the Treaty of any approved work programmes, expenditures and regulatory approvals relating to the Bayu-Undan Gas Field and the Kitan Oil Field which are applicable on the date the Treaty enters into force;
- (c) the Interim Petroleum Mining Code as it applies to the Bayu-Undan Gas Field and the Petroleum Mining Code as it applies to the Kitan Oil Field, and any subsidiary instruments entered into under those Codes, amended as necessary taking into account the terms of the Treaty, for the purposes of incorporation into Timor-Leste's domestic legislation; and
- (d) the Interim Regulations as they apply to the Bayu-Undan Gas Field and the Kitan Oil Field, and any subsidiary instruments entered into under those Regulations, amended as necessary taking into account the terms of the Treaty, for the purposes of incorporation into Timor-Leste's domestic legislation.

Timor-Leste will incorporate the following regulatory arrangements, as approved by the Joint Commission in accordance with the above, into its domestic legislation:

- (i) the Interim Petroleum Mining Code;
- (ii) the Petroleum Mining Code; and
- (iii) the Interim Regulations.

Timor-Leste will include in its arrangements with the contractors of the Bayu-Undan Gas Field and Kitan Oil Field provisions that provide for:

- (a) the stability of the regulatory arrangements referred to in the above paragraph; and
- (b) the continuance of the fiscal regime on conditions equivalent to the fiscal regime in place on the date this arrangement takes effect.

I hope and trust that the preceding accords with Timor-Leste's understanding and look forward to your confirmation that this letter and your reply will constitute an arrangement between the Parties, which will take effect on the date of signature of your reply.



Mr. John Reid,
Agent for Australia

cc: Mr. Francisco da Costa Monteiro, Timor-Leste Joint Commissioner
(by email: francisco.monteiro@timorgap.com)

Mr. Antonio Jose Loyola de Sousa, Timor-Leste Joint Commissioner
(by email: antonio.sousa@timorgap.com)

Mr. Bruce Wilson, Australian Joint Commissioner
(by email: bruce.wilson@industry.gov.au)

Members of the Conciliation Commission
(by email: gschofield@pca-cpa.org, m DOE@pca-cpa.org)



GABINETE DO MINISTRO ADJUNTO
DO PRIMEIRO-MINISTRO PARA
DELIMITAÇÃO DE FRONTEIRAS

VII GOVERNO CONSTITUCIONAL



Gabinete do
Ministro

Ref :03/X/2017

13 October 2017

Mr. John Reid
Acting Deputy Secretary
Commonwealth Attorney-General's Department
Agent for Australia

Dear Mr. Reid,

Exchange of Correspondence on Bayu-Undan and Kitan Transitional Arrangements

I refer to your letter of 13 October 2017, the terms of which are set out below.

I write to set out the following steps that the Parties have determined will take place expeditiously and be completed prior to the entry into force of the Treaty.

The Joint Commission, as established under Article 6(c) of the Timor Sea Treaty, will approve:

- (a) the entry into revised production sharing contracts by the relevant Timor-Leste statutory authority, amended as necessary to take into account the terms of the Treaty, relating to the Bayu-Undan Gas Field and the Kitan Oil Field;
- (b) the continuation following the entry into force of the Treaty of any approved work programmes, expenditures and regulatory approvals relating to the Bayu-Undan Gas Field and the Kitan Oil Field which are applicable on the date the Treaty enters into force;
- (c) the Interim Petroleum Mining Code as it applies to the Bayu-Undan Gas Field and the Petroleum Mining Code as it applies to the Kitan Oil Field, and any subsidiary instruments entered into under those Codes, amended as necessary taking into account the terms of the Treaty, for the purposes of incorporation into Timor-Leste's domestic legislation; and
- (d) the Interim Regulations as they apply to the Bayu-Undan Gas Field and the Kitan Oil Field, and any subsidiary instruments entered into under those

Regulations, amended as necessary taking into account the terms of the Treaty, for the purposes of incorporation into Timor-Leste's domestic legislation.

Timor-Leste will incorporate the following regulatory arrangements, as approved by the Joint Commission in accordance with the above, into its domestic legislation:

- (i) the Interim Petroleum Mining Code;
- (ii) the Petroleum Mining Code; and
- (iii) the Interim Regulations.

Timor-Leste will include in its arrangements with the contractors of the Bayu-Undan Gas Field and Kitan Oil Field provisions that provide for:

- (a) the stability of the regulatory arrangements referred to in the above paragraph; and
- (b) the continuance of the fiscal regime on conditions equivalent to the fiscal regime in place on the date this arrangement takes effect.

I have the honor to confirm that the terms of your letter as set out above are acceptable to the Government of the Democratic Republic of Timor-Leste and that each of the actions detailed in your letter will occur expeditiously and will be completed prior to the entry into force of the Treaty.

I have the further honour to confirm that your letter together with this reply will constitute an arrangement between Timor-Leste and Australia which will take effect on the date of signature of this letter.


H.E. Mr. Hermenegildo Pereira
Agent for Timor-Leste

cc: Mr. Francisco da Costa Monteiro, Timor-Leste Joint Commissioner
(by email: francisco.monteiro@timorgap.com)

Mr. Antonio Jose Loyola de Sousa, Timor-Leste Joint Commissioner
(by email: antonio.sousa@timorgap.com)

Mr. Bruce Wilson, Australian Joint Commissioner
(by email: bruce.wilson@industry.gov.au)

Members of the Conciliation Commission
(by email: gschofield@pca-cpa.org, m DOE@pca-cpa.org)



Palácio do Governo,
Avenida Presidente Nicolau Lobato,
Dili, Timor-Leste

Annex 24:
Press Releases Nos. 9 to 14

**PRESS RELEASE****Conciliation between
the Democratic Republic of Timor-Leste and the Commonwealth of Australia**

COPENHAGEN, 1 September 2017

Timor-Leste and Australia Achieve Breakthrough in Maritime Boundary Conciliation Proceedings

Through a series of confidential meetings with the Conciliation Commission in Copenhagen this past week, Timor-Leste and Australia have reached agreement on the central elements of a maritime boundary delimitation between them in the Timor Sea. The Parties' agreement constitutes a package and, in addition to boundaries, addresses the legal status of the Greater Sunrise gas field, the establishment of a Special Regime for Greater Sunrise, a pathway to the development of the resource, and the sharing of the resulting revenue.

These meetings are part of a structured dialogue in the context of the conciliation between the Democratic Republic of Timor-Leste ("**Timor-Leste**") and the Commonwealth of Australia ("**Australia**") being conducted by a Conciliation Commission (the "**Commission**") pursuant to the UN Convention on the Law of the Sea and under the auspices of the Permanent Court of Arbitration (the "**PCA**").

The Parties and the Commission will now turn to formalizing the Parties' agreement and to addressing a number of remaining issues and points of detail. Until all issues are resolved, the details of the Parties' agreement will remain confidential. Nevertheless, the Parties agree that the agreement reached on 30 August 2017 marks a significant milestone in relations between them and in the historic friendship between the peoples of Timor-Leste and Australia.

The leader of Timor-Leste's delegation, Chief Negotiator and former President Xanana Gusmão, hailed the agreement and stated:

I thank the Commission for its resolve and skill in bringing the Parties together, through a long and at times difficult process, to help us achieve our dream of full sovereignty and to finally settle our maritime boundaries with Australia. This is an historic agreement and marks the beginning of a new era in Timor-Leste's friendship with Australia.

Timor-Leste's Agent in these proceedings, Minister Agio Pereira, echoed these sentiments, noting:

This agreement was made possible because of the strength and leadership of the father of our nation, the Chief Negotiator, Xanana Gusmão, who worked with the Commission and Australia to secure the political and economic sovereignty of our nation and secure the future of our people. With our joint success at resolving our dispute through this conciliation process, Timor-Leste and Australia hope to have set a positive example for the international community at large.

The Minister for Foreign Affairs of Australia, the Hon. Julie Bishop MP, stated:

This is a landmark day in the relationship between Timor-Leste and Australia. This agreement, which supports the national interest of both our nations, further strengthens the long-standing and deep ties between our Governments and our people. I thank the Commission for its role in bringing the Parties together.

The Chairman of the Commission, Ambassador Peter Taksøe-Jensen of Denmark, speaking on behalf of the Commission, made the following statement:

I commend the Parties for being able to reach an equitable and balanced solution that benefits both Timor-Leste and Australia. These negotiations have been challenging, and this agreement has only been possible because of the courage and goodwill shown by leaders on both sides. The key moment in these negotiations transpired on the evening of 30 August, and the significance of that date is not lost on the Commission. Both countries will now look back on this date fondly.

Next Steps

The Parties will continue to meet with the Commission in order to finalize their agreement in October 2017. At the same time, the Parties will begin to engage with other stakeholders in the Timor Sea regarding the implications of their agreement, in particular with respect to the Greater Sunrise resource.

The Commission will continue to conduct its meetings in a confidential setting in order to provide an environment conducive to maintaining and finalizing the agreement reached in Copenhagen this week. Further public statements will be made from time to time.

Following its engagement with the Parties in October of this year, the Commission will prepare and issue a report on the proceedings as anticipated by the UN Convention on the Law of the Sea.

Background on the Conciliation Process

The Commission was constituted on 25 June 2016 pursuant to the procedure set out in Annex V of the Convention. The five-member Commission is chaired by H.E. Ambassador Peter Taksøe-Jensen (Denmark). The other members of the Commission are Dr. Rosalie Balkin (Australia), Judge Abdul G. Koroma (Sierra Leone), Professor Donald McRae (Canada and New Zealand), and Judge Rüdiger Wolfrum (Germany). With the agreement of the Parties, the Permanent Court of Arbitration acts as Registry in the proceedings.

These conciliation proceedings were initiated by Timor-Leste on 11 April 2016 by way of a “Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS” addressed to Australia.

On 2 May 2016, Australia submitted “Australia’s Response to the Notice of Conciliation”.

On 28 July 2016, the Conciliation Commission held a procedural meeting with the Parties at the Peace Palace in The Hague, the Netherlands.

On 29, 30, and 31 August, the Commission convened the Opening Session of the Conciliation and a Hearing on Competence at the Peace Palace in The Hague, the Netherlands.

On 19 September 2016, the Commission rendered its Decision on Competence, finding that the Conciliation would continue.

From 10 to 13 October 2016, the Commission met with the Parties in Singapore.

On 9 January 2017, the Foreign Ministers of Timor-Leste and Australia, together with the Commission, issued a Trilateral Joint Statement on the termination of the *Treaty on Certain Maritime Arrangements in the Timor Sea*.

From 16 to 20 January 2017, the Commission met with the Parties in Singapore.

From 27 to 31 March 2017, the Commission met with the Parties in Washington, D.C.

From 5 to 9 June 2017, the Commission met with the Parties in Copenhagen.

From 24 to 28 July 2017, the Commission met with the Parties in Singapore.

Further information about the case may be found at www.pca-cpa.org/en/cases/132/, including the full text of the Commission's Decision on Competence, earlier Press Releases, a video recording and transcript of the Opening Session, the presentations of the Parties and previous press releases and Trilateral Joint Statements.

* * *

Background on the Permanent Court of Arbitration

The Permanent Court of Arbitration is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 121 Member States. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding, and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties. The PCA's International Bureau is currently administering 6 interstate disputes, 77 investor-State arbitrations, and 46 cases arising under contracts involving a State or other public entity. More information about the PCA can be found at www.pca-cpa.org.

Contact: Permanent Court of Arbitration

E-mail: bureau@pca-cpa.org



PRESS RELEASE

CONCILIATION BETWEEN THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE AND THE COMMONWEALTH OF AUSTRALIA

THE HAGUE, 15 OCTOBER 2017

Timor-Leste and Australia reach agreement on treaty text reflecting 30 August Comprehensive Package Agreement

Through a series of confidential meetings with the Conciliation Commission in The Hague this past week, Timor-Leste and Australia have reached agreement on the complete text of a draft treaty as anticipated in the Comprehensive Package Agreement of 30 August 2017 (the “**30 August Agreement**”). This draft treaty delimits the maritime boundary between them in the Timor Sea and addresses the legal status of the Greater Sunrise gas field, the establishment of a Special Regime for Greater Sunrise, a pathway to the development of the resource, and the sharing of the resulting revenue. The Parties will now pursue their domestic approval processes in order to proceed with the signing of the Treaty. In order to accelerate the Parties’ engagement with the Greater Sunrise Joint Venture and to invite the Joint Venture to provide the information necessary to ensure the rapid development of the Greater Sunrise gas fields, the Parties and the Commission also met with representatives of the Joint Venture during the course of the week.

These meetings are part of a structured dialogue in the context of the conciliation between the Democratic Republic of Timor-Leste (“**Timor-Leste**”) and the Commonwealth of Australia (“**Australia**”) being conducted by a Conciliation Commission (the “**Commission**”) pursuant to the UN Convention on the Law of the Sea and under the auspices of the Permanent Court of Arbitration (the “**PCA**”).

The Parties agreed in Copenhagen that the essential elements of the 30 August Agreement were the agreement on a maritime boundary and a process of engagement leading to an early decision on the utilisation of the Greater Sunrise Resource. Having reached agreement on maritime boundaries, engagement with the Greater Sunrise Joint Venture and the development of Greater Sunrise will now become the principal focus of the Parties. To that end, the 30 August Agreement provides for the Commission to remain involved to facilitate this engagement and ensure that an informed decision is taken on the Development Concept for the Greater Sunrise field.

The Chairman of the Commission, Ambassador Peter Taksøe-Jensen, speaking on behalf of the Commission, made the following statement:

The Conciliation Commission has met regularly with the governments of Timor-Leste and Australia over the last year and has come to know their representatives very well. I can say without hesitation that, from the Commission’s perspective, the meetings this week were the easiest since we began this process in the summer of 2016. The true breakthrough in these proceedings occurred in Copenhagen on 30 August of this year. This week has involved the translation of that agreement into the form of a draft treaty, and I am pleased to note that this has been done in a bilateral setting, without the need for intervention by the Commission. The Parties’ engagement has been efficient and constructive.

I am encouraged regarding the spirit with which the Parties are approaching the joint development of resources. It has been a pleasure to see the governments of Timor-Leste and Australia forming a common position and standing together to ensure that the resources of the seabed are developed to the benefit of both peoples.

Next Steps

The Parties will continue to engage with the Greater Sunrise Joint Venture regarding the development of the Greater Sunrise gas field, as well as with other stakeholders with resource interests in the Timor Sea. As agreed in the Comprehensive Package Agreement, the Commission will remain engaged to facilitate this process as necessary. The parties will be meeting in Singapore before the end of November with the Commission in order to review progress on the CPA pathway to the development of the resource, and set a date for signing by the end of the year or early 2018 if satisfied with progress. There will be a further meeting between the Parties and the Commission in December 2017.

This ongoing engagement will take place in a confidential setting. In light of the implications for other stakeholders with rights or interests in the Timor Sea, the specifics of the Parties' agreement on maritime boundaries will be disclosed in a coordinated process, following consultations with affected parties.

While continuing to facilitate the Parties' engagement with the Greater Sunrise Joint Venture, the Commission will also now turn to preparing a report on the proceedings as anticipated by the UN Convention on the Law of the Sea. The Commission anticipates that this report will be finalized and made public in early 2018.

Background on the Conciliation Process

The Commission was constituted on 25 June 2016 pursuant to the procedure set out in Annex V of the Convention. The five-member Commission is chaired by H.E. Ambassador Peter Taksøe-Jensen (Denmark). The other members of the Commission are Dr. Rosalie Balkin (Australia), Judge Abdul G. Koroma (Sierra Leone), Professor Donald McRae (Canada and New Zealand), and Judge Rüdiger Wolfrum (Germany). With the agreement of the Parties, the Permanent Court of Arbitration acts as Registry in the proceedings.

These conciliation proceedings were initiated by Timor-Leste on 11 April 2016 by way of a "Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS" addressed to Australia.

On 2 May 2016, Australia submitted "Australia's Response to the Notice of Conciliation".

On 28 July 2016, the Conciliation Commission held a procedural meeting with the Parties at the Peace Palace in The Hague, the Netherlands.

On 29, 30, and 31 August, the Commission convened the Opening Session of the Conciliation and a Hearing on Competence at the Peace Palace in The Hague, the Netherlands.

On 19 September 2016, the Commission rendered its Decision on Competence, finding that the Conciliation would continue.

From 10 to 13 October 2016, the Commission met with the Parties in Singapore.

On 9 January 2017, the Foreign Ministers of Timor-Leste and Australia, together with the Commission, issued a Trilateral Joint Statement on the termination of the Treaty on Certain Maritime Arrangements in the Timor Sea.

From 16 to 20 January 2017, the Commission met with the Parties in Singapore.

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From 5 to 9 June 2017, the Commission met with the Parties in Copenhagen.

From 24 to 28 July 2017, the Commission met with the Parties in Singapore.

From 28 August to 1 September 2017, the Commission met with the Parties in Copenhagen.

On 30 August 2017, the Parties reached a Comprehensive Package Agreement on the central elements of a maritime boundary delimitation between them in the Timor Sea. In addition to boundaries, the Comprehensive Package Agreement addresses the legal status of the Greater Sunrise gas field, the establishment of a Special Regime for Greater Sunrise, a pathway to the development of the resource, and the sharing of the resulting revenue.

Further information about the conciliation may be found at www.pca-cpa.org/en/cases/132/, including the full text of the Commission's Decision on Competence, earlier Press Releases, a video recording and transcript of the Opening Session, the presentations of the Parties and previous press releases and Trilateral Joint Statements.

* * *

Background on the Permanent Court of Arbitration

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Contact: Permanent Court of Arbitration
E-mail: bureau@pca-cpa.org



PRESS RELEASE

CONCILIATION BETWEEN THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE AND THE COMMONWEALTH OF AUSTRALIA

THE HAGUE, 23 NOVEMBER 2017

Timor-Leste and Australia continue engagement with Greater Sunrise Joint Venture and progress towards signature of maritime boundary treaty

The Conciliation Commission held meetings during the last week in Singapore with the Democratic Republic of Timor-Leste (“**Timor-Leste**”) and the Commonwealth of Australia (“**Australia**”), as well as with the Greater Sunrise Joint Venture, in order to review progress on the pathway to the development of the Greater Sunrise gas fields.

This meeting was convened further to the Comprehensive Package Agreement reached between the Parties on 30 August 2017 regarding maritime boundaries in the Timor Sea, which includes an “Action Plan” for engagement regarding the development of the resource. As part of this Action Plan, the governments of Timor-Leste and Australia and the Greater Sunrise Joint Venture have engaged in intensive meetings and discussions since September of this year, culminating in two trilateral meetings held this month in Brisbane and Singapore. During these meetings, the governments and Joint Venture have sought to elaborate and reach agreement on a development concept for the Greater Sunrise gas fields.

The Commission and the two governments also discussed the coordination of the public disclosure of the text of the draft treaty on maritime boundaries, finalized in The Hague last month. The two governments have now commenced engagement with private stakeholders in the Timor Sea regarding the effect of the treaty on private interests, as well the transitional arrangements envisaged by the two governments.

These meetings are part of a structured dialogue in the context of the conciliation between the Timor-Leste and Australia being conducted by a Conciliation Commission pursuant to the UN Convention on the Law of the Sea and under the auspices of the Permanent Court of Arbitration (the “**PCA**”). In the course of the conciliation proceedings, the Parties have reached agreement on the text of a treaty which delimits the maritime boundary between them in the Timor Sea and addresses the legal status of the Greater Sunrise gas field, the establishment of a Special Regime for Greater Sunrise, a pathway to the development of the resource, and the sharing of the resulting revenue.

Next Steps

The Parties continue to pursue their domestic approval processes in order to proceed with the signing of the treaty. The Commission will convene a further stocktaking session in December of this year, in order to review progress with respect to the development concept for Greater Sunrise and to coordinate steps regarding the disclosure and signature of the treaty. While continuing to facilitate the Parties’ engagement regarding the development of the Greater Sunrise resource, the Commission has also now turned to preparing its report on the proceedings in accordance with the UN Convention on the Law of the Sea. The Commission’s report will be finalized and made public in early 2018.

Background on the Conciliation Process

The Commission was constituted on 25 June 2016 pursuant to the procedure set out in Annex V of the Convention. The five-member Commission is chaired by H.E. Ambassador Peter Taksøe-Jensen (Denmark). The other members of the Commission are Dr. Rosalie Balkin (Australia), Judge Abdul G. Koroma (Sierra Leone), Professor Donald McRae (Canada and New Zealand), and Judge Rüdiger Wolfrum (Germany). With the agreement of the Parties, the Permanent Court of Arbitration acts as Registry in the proceedings.

These conciliation proceedings were initiated by Timor-Leste on 11 April 2016 by way of a “Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS” addressed to Australia.

On 2 May 2016, Australia submitted “Australia’s Response to the Notice of Conciliation”.

On 28 July 2016, the Conciliation Commission held a procedural meeting with the Parties at the Peace Palace in The Hague, the Netherlands.

On 29, 30, and 31 August, the Commission convened the Opening Session of the Conciliation and a Hearing on Competence at the Peace Palace in The Hague, the Netherlands.

On 19 September 2016, the Commission rendered its Decision on Competence, finding that the Conciliation would continue.

From 10 to 13 October 2016, the Commission met with the Parties in Singapore.

On 9 January 2017, the Foreign Ministers of Timor-Leste and Australia, together with the Commission, issued a Trilateral Joint Statement on the termination of the Treaty on Certain Maritime Arrangements in the Timor Sea.

From 16 to 20 January 2017, the Commission met with the Parties in Singapore.

From 27 to 31 March 2017, the Commission met with the Parties in Washington, D.C.

From 5 to 9 June 2017, the Commission met with the Parties in Copenhagen.

From 24 to 28 July 2017, the Commission met with the Parties in Singapore.

From 28 August to 1 September 2017, the Commission met with the Parties in Copenhagen.

On 30 August 2017, the Parties reached a Comprehensive Package Agreement on the central elements of a maritime boundary delimitation between them in the Timor Sea (the “**30 August Agreement**”). In addition to boundaries, the Comprehensive Package Agreement addresses the legal status of the Greater Sunrise gas field, the establishment of a Special Regime for Greater Sunrise, a pathway to the development of the resource, and the sharing of the resulting revenue.

On 13 October 2017, following meetings in The Hague, the Parties reached agreement on the complete text of a draft treaty as anticipated in the 30 August Agreement. This draft treaty delimits the maritime boundary between them in the Timor Sea and addresses the legal status of the Greater Sunrise gas field, the establishment of a Special Regime for Greater Sunrise, a pathway to the development of the resource, and the sharing of the resulting revenue.

Further information about the conciliation may be found at www.pca-cpa.org/en/cases/132/, including the full text of the Commission’s Decision on Competence, a video recording and transcript of the

Opening Session, the presentations of the Parties, and previous press releases and Trilateral Joint Statements.

* * *

Background on the Permanent Court of Arbitration

The Permanent Court of Arbitration is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 121 Contracting Parties. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding, and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties. The PCA's International Bureau is currently administering 5 interstate disputes, 76 investor-State arbitrations, and 45 cases arising under contracts involving a State or other public entity. More information about the PCA can be found at www.pca-cpa.org.

Contact: Permanent Court of Arbitration
E-mail: bureau@pca-cpa.org



PRESS RELEASE

CONCILIATION BETWEEN THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE AND THE COMMONWEALTH OF AUSTRALIA

THE HAGUE, 26 DECEMBER 2017

Timor-Leste and Australia continue engagement with Greater Sunrise Joint Venture and agree timeframe for signature of maritime boundary treaty

The Conciliation Commission held meetings during the week of 11 December 2017 in Singapore with the Democratic Republic of Timor-Leste (“**Timor-Leste**”) and the Commonwealth of Australia (“**Australia**”), as well as with the Greater Sunrise Joint Venture. The purpose of these meetings was both to review progress on the pathway to the development of the Greater Sunrise gas fields and to fix a timeframe for the signature of the maritime boundary treaty agreed between the two governments.

These meetings are part of a structured dialogue in the context of the conciliation between the Timor-Leste and Australia being conducted by a Conciliation Commission pursuant to the UN Convention on the Law of the Sea and under the auspices of the Permanent Court of Arbitration (the “**PCA**”). In the course of the conciliation proceedings, the Parties have reached agreement on the text of a treaty which delimits the maritime boundary between them in the Timor Sea and addresses the legal status of the Greater Sunrise gas field, the establishment of a Special Regime for Greater Sunrise, a pathway to the development of the resource, and the sharing of the resulting revenue.

Treaty on Maritime Boundaries

On 30 August 2017, the governments of Timor-Leste and Australia reached agreement on Comprehensive Package Agreement regarding maritime boundaries in the Timor Sea. This agreement was formalized into a draft treaty and initialled by the agent of each government in October 2017 in The Hague.

In broad terms, the draft treaty delimits the maritime boundary between Timor-Leste and Australia in the Timor Sea and establishes a Special Regime for the area comprising the Greater Sunrise gas field. The draft treaty also establishes revenue sharing arrangements where the shares of upstream revenue allocated to each of the Parties will differ depending on downstream benefits associated with the different development concepts for the Greater Sunrise gas field.

Having now concluded their respective domestic processes, the two governments agreed that they will proceed with signature in early March 2018.

Development of Greater Sunrise

As part of a comprehensive package, the 30 August Agreement included an “action plan” for engagement regarding the development of the Greater Sunrise gas field. Pursuant to this action plan, the two governments and the Greater Sunrise Joint Venture (the licence holder to the resource) have engaged in intensive meetings and discussions since September of this year, including three trilateral meetings in November and December 2017 in Brisbane, Singapore, and Melbourne. During these

meetings, the governments and Joint Venture have sought to elaborate and reach agreement on a development concept for Greater Sunrise.

Having considered the progress made in the trilateral engagement to date, the governments agreed that the Commission would engage directly with them and with the Joint Venture to resolve certain outstanding matters and that a decision on the development concept would be taken by 1 March 2018.

Next Steps

The Commission, the two governments, and the Joint Venture have agreed to a supplemental action plan to resolve certain outstanding matters to allow for a decision on the development concept to be taken by 1 March 2018. As part of this supplemental action plan, the Commission envisages several further meetings with the governments and Joint Venture in January and February 2018.

In parallel with this process, the two governments will identify a precise date for the signature of the treaty in early March 2018. The two governments are presently preparing certain materials relating to the transition and consulting with private actors potentially affected by the new boundary, prior to making public the terms of the treaty.

The Commission anticipates that its report will be finalized and made public in April 2018.

Background on the Conciliation Process

The Commission was constituted on 25 June 2016 pursuant to the procedure set out in Annex V of the Convention. The five-member Commission is chaired by H.E. Ambassador Peter Taksøe-Jensen (Denmark). The other members of the Commission are Dr. Rosalie Balkin (Australia), Judge Abdul G. Koroma (Sierra Leone), Professor Donald McRae (Canada and New Zealand), and Judge Rüdiger Wolfrum (Germany). With the agreement of the Parties, the Permanent Court of Arbitration acts as Registry in the proceedings.

These conciliation proceedings were initiated by Timor-Leste on 11 April 2016 by way of a “Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS” addressed to Australia.

On 2 May 2016, Australia submitted “Australia’s Response to the Notice of Conciliation”.

On 28 July 2016, the Conciliation Commission held a procedural meeting with the Parties at the Peace Palace in The Hague, the Netherlands.

On 29, 30, and 31 August, the Commission convened the Opening Session of the Conciliation and a Hearing on Competence at the Peace Palace in The Hague, the Netherlands.

On 19 September 2016, the Commission rendered its Decision on Competence, finding that the Conciliation would continue.

From 10 to 13 October 2016, the Commission met with the Parties in Singapore.

On 9 January 2017, the Foreign Ministers of Timor-Leste and Australia, together with the Commission, issued a Trilateral Joint Statement on the termination of the Treaty on Certain Maritime Arrangements in the Timor Sea.

From 16 to 20 January 2017, the Commission met with the Parties in Singapore.

From 27 to 31 March 2017, the Commission met with the Parties in Washington, D.C.

From 5 to 9 June 2017, the Commission met with the Parties in Copenhagen.

From 24 to 28 July 2017, the Commission met with the Parties in Singapore.

From 28 August to 1 September 2017, the Commission met with the Parties in Copenhagen.

On 30 August 2017, the Parties reached a Comprehensive Package Agreement on the central elements of a maritime boundary delimitation between them in the Timor Sea (the “**30 August Agreement**”). In addition to boundaries, the Comprehensive Package Agreement addresses the legal status of the Greater Sunrise gas field, the establishment of a Special Regime for Greater Sunrise, a pathway to the development of the resource, and the sharing of the resulting revenue.

On 13 October 2017, following meetings in The Hague, the Parties reached agreement on the complete text of a draft treaty as anticipated in the 30 August Agreement. This draft treaty delimits the maritime boundary between them in the Timor Sea and addresses the legal status of the Greater Sunrise gas field, the establishment of a Special Regime for Greater Sunrise, a pathway to the development of the resource, and the sharing of the resulting revenue.

On 18 November 2017, the Commission met with the Parties and the Joint Venture in Singapore.

Further information about the conciliation may be found at www.pca-cpa.org/en/cases/132/, including the full text of the Commission’s Decision on Competence, a video recording and transcript of the Opening Session, the presentations of the Parties, and previous press releases and Trilateral Joint Statements.

* * *

Background on the Permanent Court of Arbitration

The Permanent Court of Arbitration is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 121 Contracting Parties. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding, and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties. The PCA’s International Bureau is currently administering 5 interstate disputes, 76 investor-State arbitrations, and 45 cases arising under contracts involving a State or other public entity. More information about the PCA can be found at www.pca-cpa.org.

Contact: Permanent Court of Arbitration
E-mail: bureau@pca-cpa.org



PRESS RELEASE

CONCILIATION BETWEEN THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE AND THE COMMONWEALTH OF AUSTRALIA

KUALA LUMPUR, 25 FEBRUARY 2018

Conciliation Commission concludes engagement on development pathway for Greater Sunrise gas fields at final conciliation session with Timor-Leste and Australia

The Conciliation Commission held its final set of meetings during the week of 19 February 2018 in Kuala Lumpur with the Democratic Republic of Timor-Leste (“**Timor-Leste**”) and the Commonwealth of Australia (“**Australia**”), as well as with the Greater Sunrise Joint Venture. In keeping with the action plan arising out of the Comprehensive Package Agreement of 30 August 2017 between the governments of Timor-Leste and Australia, the Conciliation Commission presented its conclusions to the two governments, with a view to providing them with an informed basis to take a decision on the development of the shared resource.

These meetings are part of a structured dialogue in the context of the conciliation between the Timor-Leste and Australia being conducted by a Conciliation Commission pursuant to the United Nations Convention on the Law of the Sea and under the auspices of the Permanent Court of Arbitration (the “**PCA**”).

Signature of Treaty on Maritime Boundaries

In the course of the conciliation proceedings, the Parties have reached agreement on a treaty which delimits the maritime boundary between them in the Timor Sea and addresses the legal status of the Greater Sunrise gas field, the establishment of a Special Regime for Greater Sunrise, and a pathway to the development of the resource. The treaty also establishes revenue sharing arrangements between the governments of Timor-Leste and Australia where the shares of upstream revenue allocated to each of the Parties will differ depending on downstream benefits associated with the different development concepts for the Greater Sunrise gas field.

Having now concluded their respective domestic processes, the two governments have agreed to convene at 5:00pm on 6 March 2018 in New York for the signature of their new Maritime Boundaries Treaty. The Secretary-General of the United Nations, H.E. António Guterres, has graciously agreed to host the signing ceremony at United Nations Headquarters and to witness the signature of the treaty along with the Chairman of the Conciliation Commission, H.E. Ambassador Peter Taksøe-Jensen.

Next Steps

The Commission will now proceed to finalize its report regarding the proceedings, to be deposited with Secretary-General of the United Nations in accordance with Annex V of the Convention. The report is expected to be made public in mid-April 2018.

Background on the Conciliation Process

The Commission was constituted on 25 June 2016 pursuant to the procedure set out in Annex V of the Convention. The five-member Commission is chaired by H.E. Ambassador Peter Taksøe-Jensen (Denmark). The other members of the Commission are Dr. Rosalie Balkin (Australia), Judge Abdul G. Koroma (Sierra Leone), Professor Donald McRae (Canada and New Zealand), and Judge Rüdiger Wolfrum (Germany). With the agreement of the Parties, the Permanent Court of Arbitration acts as Registry in the proceedings.

These conciliation proceedings were initiated by Timor-Leste on 11 April 2016 by way of a “Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS” addressed to Australia.

On 2 May 2016, Australia submitted “Australia’s Response to the Notice of Conciliation”.

On 28 July 2016, the Conciliation Commission held a procedural meeting with the Parties at the Peace Palace in The Hague, the Netherlands.

On 29, 30, and 31 August, the Commission convened the Opening Session of the Conciliation and a Hearing on Competence at the Peace Palace in The Hague, the Netherlands.

On 19 September 2016, the Commission rendered its Decision on Competence, finding that the Conciliation would continue.

From 10 to 13 October 2016, the Commission met with the Parties in Singapore.

On 9 January 2017, the Foreign Ministers of Timor-Leste and Australia, together with the Commission, issued a Trilateral Joint Statement on the termination of the Treaty on Certain Maritime Arrangements in the Timor Sea.

From 16 to 20 January 2017, the Commission met with the Parties in Singapore.

From 27 to 31 March 2017, the Commission met with the Parties in Washington, D.C.

From 5 to 9 June 2017, the Commission met with the Parties in Copenhagen.

From 24 to 28 July 2017, the Commission met with the Parties in Singapore.

From 28 August to 1 September 2017, the Commission met with the Parties in Copenhagen.

On 30 August 2017, the Parties reached a Comprehensive Package Agreement on the central elements of a maritime boundary delimitation between them in the Timor Sea (the “**30 August Agreement**”). In addition to boundaries, the Comprehensive Package Agreement addresses the legal status of the Greater Sunrise gas field, the establishment of a Special Regime for Greater Sunrise, a pathway to the development of the resource, and the sharing of the resulting revenue.

On 13 October 2017, following meetings in The Hague, the Parties reached agreement on the complete text of a draft treaty as anticipated in the 30 August Agreement. This draft treaty delimits the maritime boundary between them in the Timor Sea and addresses the legal status of the Greater Sunrise gas field, the establishment of a Special Regime for Greater Sunrise, a pathway to the development of the resource, and the sharing of the resulting revenue.

On 18 November 2017, the Commission met with the Parties and the Joint Venture in Singapore.

From 12 to 14 December 2017, the Commission met with the Parties and the Joint Venture in Singapore.

From 29 January to 2 February 2018, the Commission met with the Parties and the Joint Venture in Sydney.

From 19 to 23 February 2018, the Commission held its final negotiating session with the Parties and the Joint Venture in Kuala Lumpur.

Further information about the conciliation may be found at www.pca-cpa.org/en/cases/132/, including the full text of the Commission's Decision on Competence, a video recording and transcript of the Opening Session, the presentations of the Parties, and previous press releases and Trilateral Joint Statements.

* * *

Background on the Permanent Court of Arbitration

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Contact: Permanent Court of Arbitration
E-mail: bureau@pca-cpa.org

**PRESS RELEASE****CONCILIATION BETWEEN
THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE AND THE COMMONWEALTH OF AUSTRALIA**

NEW YORK, 6 MARCH 2018

Timor-Leste and Australia sign new Maritime Boundaries Treaty

The Democratic Republic of Timor-Leste (“**Timor-Leste**”) and the Commonwealth of Australia (“**Australia**”) have today signed their new Maritime Boundaries Treaty. The signing ceremony, which took place at 5:00pm today at United Nations Headquarters in New York, constitutes the culmination of the international conciliation proceedings between Timor-Leste and Australia being conducted by a Conciliation Commission pursuant to the UN Convention on the Law of the Sea and under the auspices of the Permanent Court of Arbitration (the “**PCA**”). The signing of the new Maritime Boundaries Treaty was hosted by Secretary-General of the United Nations, H.E. Antonio Guterres, who witnessed the signature of the treaty along with the Chairman of the Conciliation Commission, H.E. Ambassador Peter Taksøe-Jensen, and the members of the Conciliation Commission, Dr. Rosalie Balkin, Judge Abdul G. Koroma, Professor Donald McRae, and Judge Rüdiger Wolfrum.

The new Maritime Boundaries Treaty delimits the maritime boundary between Timor-Leste and Australia in the Timor Sea. The agreement on the boundaries is comprehensive and final. It encompasses the delimitation of both the ‘continental shelf’ (which entails rights to exploit seabed resources, such as petroleum) and the ‘exclusive economic zone’ (which entails rights to exploit resources in the water column, such as fisheries).

The Treaty also addresses the legal status of the Greater Sunrise gas field, the establishment of a Special Regime for Greater Sunrise, and a pathway to the development of the resource. Upstream revenue from Greater Sunrise will be shared 70/30 in Timor-Leste’s favour if the field is developed by a pipeline to Timor-Leste, or 80/20 in Timor-Leste’s favour if the field is developed by a pipeline to Australia.

The Treaty signed by Timor-Leste and Australia forms part of the Comprehensive Package Agreement of 30 August 2017 concluded between them (the “30 August Agreement”). An integral part of the 30 August Agreement was the “action plan” for engagement leading to a decision on the development of the Greater Sunrise gas field. Pursuant to this action plan, the two governments and the Greater Sunrise Joint Venture (the licence holder to the resource) have engaged in intensive meetings and discussions since September of last year. With a view to providing the two governments with an informed basis to take a decision on the development of the shared resource, the Commission also engaged an independent expert with their agreement. At its final session in Kuala Lumpur last month, the Conciliation Commission presented its conclusions to the two governments on the basis of the expert advice received, in order to allow for a timely decision on the development of the shared resource.

Copies of the 30 August Agreement, the Maritime Boundaries Treaty, the Commission’s paper regarding the development of the shared resource, and the remarks delivered by the Chairman of the Conciliation Commission, H.E. Ambassador Peter Taksøe-Jensen, at the signing ceremony are enclosed herewith.

Next Steps

The Commission's full report regarding the conciliation proceedings is expected to be made public in mid-April 2018, and will be deposited with Secretary-General of the United Nations in accordance with Annex V of the Convention.

Background on the Conciliation Process

The Commission was constituted on 25 June 2016 pursuant to the procedure set out in Annex V of the Convention. The five-member Commission is chaired by H.E. Ambassador Peter Taksøe-Jensen (Denmark). The other members of the Commission are Dr. Rosalie Balkin (Australia), Judge Abdul G. Koroma (Sierra Leone), Professor Donald McRae (Canada and New Zealand), and Judge Rüdiger Wolfrum (Germany). With the agreement of the Parties, the Permanent Court of Arbitration acts as Registry in the proceedings.

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From 19 to 23 February 2018, the Commission held its final negotiating session with the Parties and the Joint Venture in Kuala Lumpur.

On 6 March 2018, the new Maritime Boundaries Treaty between Timor-Leste and Australia was signed in New York in the presence of the Secretary-General of the United Nations, H.E. Antonio Guterres, and the Conciliation Commission.

Further information about the conciliation may be found at www.pca-cpa.org/en/cases/132/, including the full text of the Commission's Decision on Competence, a video recording and transcript of the Opening Session, the presentations of the Parties, and previous press releases and Trilateral Joint Statements.

* * *

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Contact: Permanent Court of Arbitration
E-mail: bureau@pca-cpa.org

Annex 25:
**Exchange of letters between the Commission and the Parties on the
interpretation of treaty provisions relating to the fiscal regime for
Greater Sunrise**



His Excellency Hermenegildo Pereira
 Ministro-Adjunto do Primeiro-Ministro para a
 Delimitação das Fronteiras
 Edifício 1, R/C Esquerda
 Palácio do Governo
 Avenida Marginal
 Díli
 Timor-Leste

BY E-MAIL: AGIO.PEREIRA@PCM.GOV.TL
 ELIZABETH.BAPTISTA@PCM.GOV.TL

Ms. Elizabeth Exposto
 Conselho para a Delimitação Definitiva das
 Fronteiras Marítimas
 Gabinete das Fronteiras Marítimas
 1º Andar, Ala Ocidental do Edifício
 Palácio do Governo
 Avenida Marginal
 Díli
 Timor-Leste

BY E-MAIL: E.EXPOSTO@GFM.TL

Mr. John Reid
 First Assistant Secretary
 Office of International Law
 Attorney-General's Department
 Australian Government
 3-5 National Circuit
 Barton, Australian Capital Territory 2600
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Mr. James Larsen
 Senior Legal Adviser
 Department of Foreign Affairs and Trade
 R.G. Casey Building, John McEwen Crescent
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 Australia

BY E-MAIL: JAMES.LARSEN@DFAT.GOV.AU

AG 217386

DIRECT DIAL: +31 70 302 4280

E-MAIL: GSCHOFIELD@PCA-CPA.ORG

16 December 2017

RE: PCA CASE N° 2016-10: CONCILIATION PROCEEDINGS BETWEEN THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA PURSUANT TO ARTICLE 298 AND ANNEX V OF THE UN CONVENTION ON THE LAW OF THE SEA

Dear Mesdames, dear Sirs,

Following the Parties' exchanges this week regarding the fiscal scheme for Greater Sunrise, the Commission does not believe that there is any dispute between the Parties as to the interpretation of the draft Treaty's provisions in this respect. Nevertheless, the Commission considers that it would be useful to confirm the Parties' shared understanding in order to avoid any possible future misunderstandings in the course of implementing transitional arrangements going forward.

As the Parties are well aware, Article 7 of the Treaty establishes a Greater Sunrise Special Regime under which the Parties jointly exercise their rights as coastal States pursuant to Article 77 of the Convention and do not individually exercise such rights until the Greater Sunrise Special Regime ceases to be in force. Title to the resource is not apportioned. The Treaty only apportions the upstream revenue derived directly from the upstream exploitation of Petroleum produced in the Greater Sunrise Fields, which comprises first tranche petroleum, profit petroleum and taxation. This is without prejudice to any arrangements agreed to by the Parties under PSCs for the Greater Sunrise area.

In light of this, it is necessary to define how this affects the "fiscal regime as agreed between the Parties and the Greater Sunrise Contractor" under Article 3(2) of Annex B of the draft Treaty. In the Commission's view, the "fiscal regime as agreed between the Parties and the Greater Sunrise Contractor" addressed in Article 3(2) of Annex B of the draft treaty means a fiscal regime that will:

1. provide “conditions equivalent” to those under the TST (pursuant to Article 22) and “terms equivalent” to those under the IUA (pursuant to Article 27(3)) to the Greater Sunrise Contractor, and
2. ensure that the upstream revenue can be divided between the Parties in the ratios agreed in Article 2(2) of Annex B.

Further, the Commission understands that the Parties are agreed that “conditions/terms equivalent” does not guarantee the Greater Sunrise Contractor terms and conditions that are identical to those in place under the TST/IUA. In the context of Article 3 of Annex B, it does not guarantee identical fiscal terms as those that applied to Petroleum Activities entered into under the TST/IUA. The overall effect of providing conditions/terms equivalent is to ensure that Petroleum Activities entered into under the terms of the TST/IUA continue under conditions which ensure the Greater Sunrise Contractor is in no worse commercial position than under those agreements.

The Commission trusts that the preceding accords with the Parties’ own understanding. For the sake of certainty and good order, the Commission would however ask that each Party confirm the above in writing at their earliest convenience.

Yours sincerely,



Garth Schofield
Senior Legal Counsel

cc: *Conciliation Commission:*

Ambassador Peter Taksøe-Jensen (by e-mail: pettak@um.dk)

Judge Abdul Koroma (by e-mail: koroma.a.g@gmail.com)

Judge Rudiger Wolfrum (by e-mail: wolfrum@mpil.de)

Dr. Rosalie Balkin (by e-mail: rosaliebalkin1@gmail.com)

Professor Donald McRae (by e-mail: dmcrac@uottawa.ca)

Counsel and Legal Representatives of Timor-Leste:

Professor Vaughan Lowe QC (by e-mail: vlowe@essexcourt.net)

Sir Michael Wood KCMG (by e-mail: mwood@20essexst.com)

Mr. Eran Sthoeger (by e-mail: eran.sthoeger@internationallaw.neomailbox.net)

Ms. Janet Legrand (by e-mail: janet.legrand@dlapiper.com)

Mr. Stephen Webb (by e-mail: stephen.webb@dlapiper.com)

Ms. Gitanjali Bajaj (by e-mail: gitanjali.bajaj@dlapiper.com)

Representatives and Counsel for Australia:

Mr. Gary Quinlan AO (by e-mail: gary.quinlan@dfat.gov.au)

Sir Daniel Bethlehem KCMG QC (by e-mail: dbethlehem@20essexst.com)

From: [Elizabeth Exposto](#)
To: [Martin Doe](#); "agio.pereira@pcm.gov.tl"; "agiopereira@gmail.com"; "john.reid@ag.gov.au"; "james.larsen@dfat.gov.au"
Cc: "pettak@um.dk"; "koroma.a.g@gmail.com"; "wolfrum@mpil.de"; "rosaliebalkin1@gmail.com"; "donald.mcrae@uottawa.ca"; "vlowe@essexcourt.net"; "mwood@20essexst.com"; "eran.sthoeger@internationallaw.neomailbox.net"; "janet.legrand@dlapiper.com"; "stephen.webb@dlapiper.com"; "gitanjali.bajaj@dlapiper.com"; "dbethlehem@20essexst.com"; "gary.quinlan@dfat.gov.au"; "gary.quinlan@dfat.gov.au"; Garth Schofield; [Vilmante Blink](#)
Subject: RE: PCA Case N° 2016-10: Conciliation Proceedings between the Government of the Democratic Republic of Timor-Leste and the Government of the Commonwealth of Australia Pursuant to Article 298 and Annex V of the UN Convention on the Law of the Sea
Date: 19 December 2017 01:25:14

Dear Martin and Garth,

I refer to your letter of 16 December 2017, indicating that the Commission considered that it would be useful to confirm the Parties' shared understanding as to the interpretation of the draft Treaty's provisions regarding the fiscal scheme for Greater Sunrise.

I am happy to confirm that what is set out in your letter accords with Timor-Leste's understanding.

Kind regards,

Elizabeth

Elizabeth Exposto

Diretora Executiva / Chief Executive Officer

e.exposto@gfm.tl | +670 7723 0054

<http://www.gfm.tl/>

Conselho para a Delimitação Definitiva das Fronteiras Marítimas / Council for the Final Delimitation of Maritime Boundaries

Gabinete das Fronteiras Marítimas / Maritime Boundary Office

1º Andar, Ala Ocidental do Edifício / 1st Floor, West Wing Building

Palácio do Governo / Government Palace

Avenida Marginal

Dili, Timor-Leste

From: Martin Doe [<mailto:m DOE@pca-cpa.org>]

Sent: Sunday, 17 December 2017 12:17 AM

To: 'agio.pereira@pcm.gov.tl' <agio.pereira@pcm.gov.tl>; 'agiopereira@gmail.com' <agiopereira@gmail.com>; Elizabeth Exposto <e.exposto@gfm.tl>; 'john.reid@ag.gov.au' <john.reid@ag.gov.au>; 'james.larsen@dfat.gov.au' <james.larsen@dfat.gov.au>

Cc: 'pettak@um.dk' <pettak@um.dk>; 'koroma.a.g@gmail.com' <koroma.a.g@gmail.com>; 'wolfrum@mpil.de' <wolfrum@mpil.de>; 'rosaliebalkin1@gmail.com' <rosaliebalkin1@gmail.com>; 'donald.mcrae@uottawa.ca' <donald.mcrae@uottawa.ca>; 'vlowe@essexcourt.net' <vlowe@essexcourt.net>; 'mwood@20essexst.com' <mwood@20essexst.com>; 'eran.sthoeger@internationallaw.neomailbox.net' <eran.sthoeger@internationallaw.neomailbox.net>; 'janet.legrand@dlapiper.com' <janet.legrand@dlapiper.com>; 'stephen.webb@dlapiper.com' <stephen.webb@dlapiper.com>; 'gitanjali.bajaj@dlapiper.com' <gitanjali.bajaj@dlapiper.com>; 'dbethlehem@20essexst.com' <dbethlehem@20essexst.com>; 'gary.quinlan@dfat.gov.au' <gary.quinlan@dfat.gov.au>; 'gary.quinlan@dfat.gov.au' <gary.quinlan@dfat.gov.au>; Garth Schofield <gschofield@pca-cpa.org>; Vilmante Blink <vblink@pca-cpa.org>

Subject: PCA Case N° 2016-10: Conciliation Proceedings between the Government of the Democratic Republic of Timor-Leste and the Government of the Commonwealth of Australia Pursuant to Article 298 and Annex V of the UN Convention on the Law of the Sea

BY E-MAIL ONLY

Dear Mesdames, dear Sirs,

Please see the attached correspondence.

Yours sincerely,

Martin Doe
Senior Legal Counsel • Conseiller juridique senior
Permanent Court of Arbitration • Cour permanente d'arbitrage
Peace Palace • Palais de la Paix
Carnegieplein 2
2517 KJ The Hague • La Haye
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9 January 2018

Mr Garth Schofield
Senior Legal Counsel
Permanent Court of Arbitration
Peace Palace, Carnegieplein 2
2517 KJ The Hague
The Netherlands

Dear Mr Schofield

Conciliation Proceedings under Article 298 and Annex V of UNCLOS (PCA Case No. 2016 10) Democratic Republic of Timor-Leste and Commonwealth of Australia

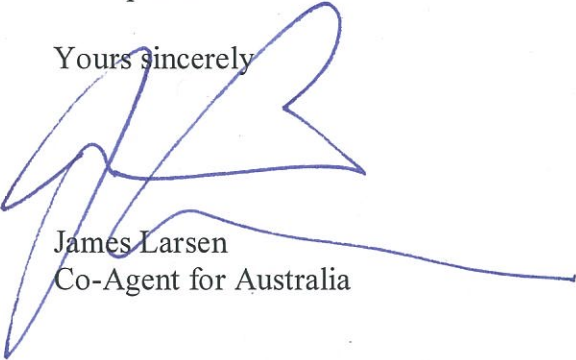
Thank you for your letter of 16 December 2017 regarding the interpretation of the draft Treaty's provisions on the Greater Sunrise Special Regime and its fiscal scheme.

I am pleased to confirm your letter accords with Australia's understanding of these provisions.

We note the Deputy Agent for Timor-Leste's confirmation, by email to the Permanent Court of Arbitration on 19 December 2017, that what is set out in the Commission's letter also accords with Timor-Leste's understanding.

We appreciate the opportunity to clarify the Parties' agreement as to the interpretation of these provisions.

Yours sincerely


James Larsen
Co-Agent for Australia

Annex 26:
Supplemental Action Plan of 23 December 2017

**SUPPLEMENTAL ACTION PLAN FOR
THE GREATER SUNRISE DEVELOPMENT CONCEPT**

23 December 2017

On 30 August 2017 in Copenhagen, the Parties reached agreement on a Comprehensive Package Agreement in respect of the maritime boundary between them in the Timor Sea, a special regime for the governance of the Sunrise and Troubadour gas fields and an Action Plan for engagement with the Greater Sunrise Joint Venture regarding the development of the resource.

Pursuant to the Action Plan, the Parties agreed to engage with the Joint Venture in order to assess the development concepts for Greater Sunrise against the criteria agreed in the 30 August Agreement and to take a decision on the development concept by 15 December 2017. As a fall back, the Action Plan provided that “[i]f the Parties are unable to agree to the Development Concept in accordance with the Criteria ahead of 15 December 2017, the Commission shall engage with the Parties with a view to facilitating agreement on the Development Concept by no later than 1 February 2018.”

Following consultations with the Commission in Singapore, both Parties have concluded that it is not realistic, on the information before them, for the two governments to take a decision on the development concept for Greater Sunrise by 15 December 2017. Both Parties have, however, reaffirmed to the Commission their wish to consider the development concept for Greater Sunrise in the context of the present conciliation proceedings and to take a decision between a D-LNG concept and a T-LNG concept on the basis of information sufficient to permit an appropriate comparison and evaluation of the two concepts.

Pursuant to the fall-back provisions of the Action Plan of the 30 August Agreement, the Commission intends to engage directly with the Parties and with the Joint Venture to ensure that the necessary information to permit an appropriate comparison and evaluation of the D-LNG and T-LNG concepts is available to the Parties and to assist the Parties in taking a decision on the development concept for Greater Sunrise. As part of this engagement, the Commission has adopted the schedule set out in Annex A to this Supplemental Action Plan. The Commission further invokes Article 10(2) of its Rules of Procedure and requests the Parties’ good faith cooperation in the timely provision of the information and materials set out in Annex B to this Supplemental Action Plan. The Commission will also retain an independent expert to assist it with neutral advice regarding the technical and economic data and materials provided by the Parties and by the Joint Venture.

Having consulted with ConocoPhillips, the Commission is satisfied that there is a realistic prospect that the window of availability for a D-LNG concept will remain open until 1 March 2018 (especially if Woodside/Shell/Osaka Gas make an approach to Darwin LNG prior to 15 January 2018), however the Commission also acknowledges that Darwin LNG is currently engaged in discussions with other projects and may enter into an agreement committing capacity to another project prior to 1 March 2018. The Commission and the Parties have accordingly agreed to extend the deadline for a decision on the development concept until 1 March 2018.

**ANNEX A: SCHEDULE FOR ENGAGEMENT REGARDING
THE GREATER SUNRISE DEVELOPMENT CONCEPT**

Date	Action
By 23 December 2017	Commission to adopt the Terms of Reference for its expert adviser
By 29 December 2017	Commission to conclude any supplemental confidentiality agreement necessary for access to the Joint Venture data room
By 29 December 2017	Timor-Leste and Joint Venture to provide Commission with access to their respective data rooms
By 5 January 2018	Commission to notify the Parties and the Joint Venture of the identity of the proposed expert adviser
By 6 January 2018	Parties and the Joint Venture to provide any comments they may have on the identity of the proposed expert adviser
By 15 January 2018	Parties and the Joint Venture to provide all information and materials requested in Annex B to this Action Plan
16 January 2018	Commission to confirm that all information and materials requested pursuant to this Action Plan have been provided
22 January 2018	Parties and the Joint Venture each to provide the Commission with a written submission setting out its views regarding the T-LNG and D-LNG development concepts and the information and materials provided
29 January to 2 February 2018	Commission, Parties, and Joint Venture to meet in a location to be confirmed in order to analyse the information provided by the Parties and the Joint Venture, and assess the sufficiency and adequacy of that information in order for the Parties to take a decision on the selection of a development concept; review Parties' comments on the Framework Agreement and discussion of the process for concluding a Framework Agreement for D-LNG and for T-LNG
By 9 February 2018	Parties and the Joint Venture to provide any additional information and materials identified as necessary by the Commission
14 February 2018	Parties and the Joint Venture each to provide the Commission with a written submission setting out its views regarding the T-LNG and D-LNG development concepts and the information and materials provided
19-23 February 2018	Commission, Parties, and Joint Venture to meet in a location to be confirmed in order to analyse the information provided by the Parties and the Joint Venture, and in order for the Parties to make a decision on the selection of a development concept; discussion leading to the completion of Framework Agreements for D-LNG and for T-LNG
1 March 2018	Latest date for decision on the development concept for Greater Sunrise
1-16 March 2018	Timeframe for signature of Treaty in New York, NY
16 March 2018	Commission to transmit its Report to the Parties in draft
5 April 2018	Parties to provide any comments on the draft Report
19 April 2018	Having considered the Parties' comments, Commission to transmit its final Report to the Parties and the UN Secretary-General

ANNEX B: REQUESTS FOR INFORMATION AND MATERIALS REGARDING THE GREATER SUNRISE DEVELOPMENT CONCEPT

Having consulted with the Parties and with the Greater Sunrise Joint Venture, the Commission has determined that the following information and materials are integral to the assessment and comparison of the D-LNG and T-LNG development concepts. The Commission requests that the Parties and Joint Venture provide the following information by 15 January 2018, in accordance with the schedule annexed to this Action Plan.

Information and Materials in Respect of the D-LNG Concept

- The **Joint Venture** is requested to make a specific offer of equity participation by Timor-Leste in the Greater Sunrise Joint Venture and the Darwin Joint Venture, including details of the conditions attached to the acquisition and holding of such equity, and any option to acquire further equity at cost;
- The **Joint Venture** is requested to confirm that spending in respect of local content activities would be exempted from the cost recovery provisions of the production sharing contract;
- The **Joint Venture** is requested to commit to an overall level of spending on local content activities to be agreed as part of the Heads of Agreement, as well as an indicative plan and timeframe for such spending along the different project phases (to be refined in the course of the elaboration of the development plan), including at least the following items:
 - a domestic gas pipeline or regasification plant;
 - a contribution to the development of supporting infrastructure for the development of petroleum activities in the South Coast, including in particular the Suai supply base/port project;
 - a fibre optic broadband link; and
 - a commitment to establishing a business development center, which will act as an employment and business gateway that promotes opportunities for enabling local capabilities to supply goods and services for petroleum operations, through training, financing, and other support;
 - a commitment to establishing a comprehensive training plan, a Technical College, and targets for employment of Timorese nationals throughout the lifetime of the project;
 - a commitment to establish operational offices in Timor-Leste, run logistics for Greater Sunrise from Timor-Leste, and generally source through Timor-Leste suppliers;
- The **Joint Venture** and **Timor-Leste** are requested to provide a full copy of their economic models for D-LNG;
- **Australia** is requested to provide the latest audit of Darwin Plant.
- **Woodside/Shell/Osaka Gas** are requested to approach the Darwin Joint Venture on behalf of the Greater Sunrise Joint Venture in order to (a) commence exchanges of technical information, including in respect of the physical condition and reliability of the Darwin plant and (b) narrow the current estimated range for the tolling fee and clarify whether that fee would be all-in including OPEX or excluding OPEX.
- **Woodside/Shell/Osaka Gas** are requested to elaborate on the basis for the Joint Venture's views on the condition of the Darwin plant and existing pipeline.
- The **Joint Venture** is requested to provide technical definition and justification for the selection of FPSO Upstream Concept and how this concept compares with a fixed platform concept.

Information and Materials in Respect of the T-LNG Concept

- **Timor-Leste** is requested to provide a specific proposal for how it would arrange sustainable financing for additional costs involved in the downstream elements of a T-LNG approach;
- The **Joint Venture** is requested to indicate the conditions under which it would and would not agree to proceed with a T-LNG approach supported by additional financing, including an indication of specific concerns about sustainability and corresponding local content and equity offers under a T-LNG scenario;
- **Timor-Leste** and the **Joint Venture** are requested to provide a full copy of their economic models for T-LNG;
- The **Joint Venture** is invited to indicate its views on conditions under which it could or could not offer equity participation by Timor-Leste in the Greater Sunrise Joint Venture in the context of a T-LNG concept, including details on the conditions attached to the acquisition and holding of such equity, and any option to acquire equity at cost;
- The **Joint Venture** is invited to indicate its views on conditions under which it would or would not be interested in equity participation in a T-LNG Joint Venture;
- **Timor-Leste** is requested to provide details on its proposal for the construction of the T-LNG downstream facilities including scheduling and start date;
- **Timor-Leste** is requested to provide details on potential operators of the T-LNG downstream facilities and engagement to date;
- **Timor-Leste** is requested to provide details regarding its pipeline construction cost estimates;
- **Timor-Leste** and **Joint Venture** are requested to provide a written clarification of the basis for their respective assumptions and estimates in respect of the following items, including references to any relevant documentation in data rooms:
 - Size of recoverable reserves;
 - Owners cost percentage;
 - Facilities contingency percentage;
 - T-LNG production tariff (all-in including OPEX, and excluding OPEX);
 - T-LNG and D-LNG production profile (including reasonable potential downtime of facilities); and
 - Condensate production rate

Annex 27:
Commission Paper on the Comparative Benefits of Timor LNG and
Darwin LNG & Condensed Comparative Analysis of Alternative
Development Concepts

COMMISSION PAPER
ON THE COMPARATIVE DEVELOPMENT BENEFITS OF TIMOR-LNG AND DARWIN-LNG

The present Paper is intended to set out an objective comparison of the benefits of the development options available for the Greater Sunrise field based on the information available to the Commission as of 22 February 2018.

The Commission recalls that, as part of the 30 August Agreement the governments of Timor-Leste and Australia agreed to criteria for the assessment of proposals for the development concept. In the Commission's view, the differences between the two governments and the Joint Venture in assessing the two concepts relate principally to:

- (a) whether both concepts will “support[] the development objectives and needs of each of Timor-Leste and Australia” and make “a significant contribution to the sustainable economic development of Timor-Leste”; and
- (b) whether both concepts are “commercially viable, including best commercial advantage”.

From the perspective of the sovereign decision of how to develop the resource, however, these criteria are inter-related. Development considerations bear on the benefits that the two governments—and, in particular, Timor-Leste—will derive from the resource. Development benefits, however, can only be realized if an approach to developing the resource is designed that is commercially viable.

The Commission does not wish to make a recommendation to the Parties regarding the development of Greater Sunrise, but considers that the Parties' decision-making would benefit from a neutral comparison of the two concepts in terms of the above metrics. A concise comparison of the two concepts is also set out in the chart included with this Paper as an Annex.

A. Development Benefits of the Timor-LNG and Darwin-LNG Concepts

1. Timor-LNG

The principal development benefits of a Timor LNG concept would follow from the construction and operation of an LNG plant and associated marine facilities at Beaço on the south coast of Timor-Leste. As the Commission understands it, these benefits include the following:

- (a) the return on investment for capital committed to the construction of the LNG plant;
- (b) the economic multiplier effects of oil and gas activity in Timor-Leste;
- (c) the employment of Timorese nationals and the procurement of local materials and supplies during the construction of the plant;
- (d) the employment of Timorese nationals in the operation of the LNG plant, marine facilities, and onshore liquids process facilities with estimated annual operating expenditures of US\$280,000,000;
- (e) savings of at least US\$25,000,000 per year from the reduced cost of power generation as a result of converting Timor-Leste's power stations from diesel to gas;
- (f) the development in Timor-Leste of expertise in LNG operations to facilitate the future development of other gas fields;

- (g) the construction in Timor-Leste of infrastructure, such as the marine facilities and the LNG plant itself, that can facilitate the future development of other gas fields.

The Commission notes that Timor-Leste has repeatedly emphasized that it is more concerned with the development of human capital and long-term economic activity, rather than immediate revenue, and is cognizant of the value of such an approach.

The Commission also notes that, in the event a Timor LNG concept were realized, other elements of the project, such as offshore operations and supply, could well be managed and operated from Timor-Leste, provided that the Joint Venture has agreed to a specific approach to upstream operations. However, the Commission does not consider that such operations can be considered a development benefit of Timor-LNG until the Joint Venture has agreed to a specific approach to upstream operations.

Finally, the Commission notes that a number of consultant reports have endeavoured to quantify the broader economic benefits to Timor-Leste of Timor-LNG or the benefits to Australia of LNG operations in Darwin. The Commission recalls that earlier in these proceedings both governments agreed that such economic effects are difficult to quantify with precision. This continues to be the case.

2. Darwin-LNG with operations from Timor-Leste

The Commission recalls that the governments of Timor-Leste and Australia have already agreed that the revenue sharing arrangements under the Australia-Timor-Leste Maritime Boundaries Treaty will compensate for the broader economic benefits of processing the gas from Greater Sunrise in either Timor-Leste or Australia by allocating to Timor-Leste an additional 10 percent of the government revenue from the field, in addition to the 70 percent to which Timor-Leste would be entitled under either concept. The Commission estimates that this 10 percent will amount to between US\$3,134,000,000 and US\$3,539,000,000 in additional revenue to Timor-Leste over the life of the project that would be available for infrastructure and industrial development initiatives on the South Coast (and effectively matches the total capital investment that Timor-Leste has estimated for the entirety of the Tasi Mane Project, other than the LNG plant itself).

In addition, development benefits of a Darwin-LNG concept would follow from the conduct of offshore operations and supply for the Greater Sunrise fields from Timor-Leste and from the industrial development options available to Timor-Leste with the additional capital made available under this concept. As the Commission understands it, these benefits would be as follows.

First, given that the Darwin-LNG concept leverages existing infrastructure in Australia, the Joint Venture has committed to:

- (a) locating offshore, management, and support operations for the Greater Sunrise Project in Timor-Leste;
- (b) funding for a domestic gas pipeline to Timor-Leste which could be used for power generation, industrial development, and petrochemicals, for the benefit of the Timorese people.

In conjunction with the above, the Joint Venture has made a number of specific commitments with respect to equity participation by Timor-Leste in the project, employment, and supply sourcing, as well as other local content commitments and support for the development of the petroleum sector in Timor-Leste. The benefits to Timor-Leste would be as follows:

- (a) an offer of 3% free equity and up to 6% additional equity purchased on commercial terms for Timor Gap in the Greater Sunrise Joint Venture and an offer of 0.9% free equity and up to 1.8% additional equity purchased on commercial terms in the Darwin-LNG Joint Venture in order to provide Timor-Leste with a direct interest in all aspects of the project;

- (b) participation by Timor Gap, as a result of its equity share in the Great Sunrise Joint Venture, in the design, construction, management, and operations of the Greater Sunrise Project;
- (c) the employment of Timorese nationals in the offshore, management, and support operations for the Greater Sunrise project, which would be run from Timor-Leste with estimated annual operating expenditures of US\$282,000,000;
- (d) the establishment of a fabrication and manufacturing facility in Timor-Leste with estimated annual revenues of US\$6,000,000, as well as the employment in the facility of Timorese nationals;
- (e) a commitment to maximize Timorese sources of supply to the Greater Sunrise project;
- (f) a commitment to prioritize Timorese training and employment in all aspects of the Greater Sunrise project (including career development opportunities in the Darwin LNG facility);
- (g) a commitment of US\$2,500,000 per year during front end engineering design, US\$10,000,000 per year during the first five years after a final investment decision, and US\$5,000,000 per year for the 10 years thereafter, to be used for:
 - i. a business development centre focussed on enabling Timorese companies to meet the supply needs of the project;
 - ii. technical education in Timor-Leste, either through the establishment of a new institution or through the expansion and support of existing educational institutions in Timor-Leste;
- (h) a commitment of US\$200,000,000 in additional capital investment to enable the construction of a domestic gas pipeline to Timor-Leste, along with a commitment to supply gas to Timor-Leste for domestic power generation and other activities at the gas transfer price for up to 50M cu ft per day;
- (i) a stream of condensate of up to 10% of production at market value;
- (j) savings of at least US\$25,000,000 per year from the reduced cost of power generation as a result of converting Timor-Leste's power stations from diesel to gas;
- (k) a commitment of US\$50,000,000 in additional capital investment to the Suai supply base and marine facilities;
- (l) the development in Timor-Leste of expertise in offshore petroleum operations, management, logistics, and manufacturing to facilitate the future development of other oil and gas fields, including the potential development of a future Timor-LNG facility;
- (m) the construction in Timor-Leste of infrastructure, such as marine facilities and fabrication, that can facilitate the future development of other oil and gas fields, including the potential development of a future Timor-LNG facility;
- (n) the economic multiplier effects across the Timor-Leste economy of the foregoing activity in Timor-Leste;

The Joint Venture has further committed that investment in respect of the above commitments will be exempted from the uplift provisions of the production sharing contracts and that the commitment of US\$50,000,000 to the Suai supply base and marine facilities will be treated as non-cost recoverable. Pursuant to requirements of the Treaty, the Joint Venture's development plan will be required to establish "clear, measurable, binding and enforceable local content commitments" in respect of

employment and the development of the Timorese workforce, procurement and the development of Timorese suppliers, and Timorese commercial and industrial capacity. The Treaty also requires the development plan to include mechanisms to ensure that such commitments are implemented in practice.

In addition to the commitments made by the Joint Venture, the government of Australia has made a commitment of US\$100,000,000 toward the capital investment in relation to the domestic gas pipeline to Timor-Leste. Australia has also offered certain additional commitments to support the development of the Timorese petroleum sector and the use of the south coast of Timor-Leste as a petroleum hub for the Timor Sea and surrounding areas. These benefits include:

- (a) a commitment to facilitate access by Timor-Leste employees, vessels and aircraft, goods and services to the Greater Sunrise Area, the Darwin LNG Plant, and other oilfields in the Timor Sea in order to facilitate the development of Timor-Leste as a regional petroleum hub;
- (b) a commitment to implement a dedicated visa and labour scheme to provide Timor-Leste citizens access to employment in the onshore petroleum sector in the Northern Territory of Australia in order enable the Joint Venture to meet its commitments regarding Timorese training and employment and to build experience and capacity for the future development of a Timor LNG facility; and;
- (c) a commitment to provide US\$4,000,000 in funding for engineering and technical education in Timor-Leste with a particular focus on the development of the Timorese petroleum sector.

Finally, the development benefits of Darwin-LNG should be considered to include the infrastructure and industrial development initiatives that could be undertaken with the investment capital that Timor-Leste would need to commit to the construction of an LNG plant in a Timor-LNG scenario. As set out below, it is estimated that this would involve a direct subsidy of approximately US\$5,600,000,000 that would be available for other development investment if not used for Timor-LNG.

B. Certainty of Development Benefits under the Timor-LNG and Darwin-LNG Concepts

As noted at the outset, the Commission takes no view regarding which concept would offer greater development benefits to either Timor-Leste or Australia. The Commission does, however, consider that the benefits of developing Greater Sunrise will only be realized if the field is in fact developed. This consideration goes to the question of the commercial viability of the project.

In the Commission's engagement with the Joint Venture and the Parties, Timor-Leste has maintained that both Timor-LNG and Darwin-LNG are commercially viable. On the other hand, the Joint Venture have consistently held the view that only Darwin-LNG is commercially viable. Both Timor-Leste and the Joint Venture have provided the Commission with detailed economic models that produce diametrically opposite results. The Commission has not been able to accept either conclusion without independent confirmation and considers that a neutral assessment of both concepts is beneficial to the governments' decision-making.

As set out in detail in the Commission's Condensed Comparative Analysis of Alternative Development Concepts, the Commission considers the following assessment to be reasonable on the basis of neutral economic modelling:

- (a) Timor-Leste and the Joint Venture have analysed a Timor-LNG concept both as an integrated project (*i.e.*, with both upstream and downstream returns combined) and on a tolling basis (*i.e.*, with a fee paid to the downstream plant for LNG processing). A Darwin-LNG concept would only be on a tolling basis.

- (b) As an integrated project, the Commission anticipates that, under currently expected market conditions, Timor-LNG would generate a return in the order of 7.0% on a capital investment of US\$15,621,000,000. This would not be sufficient to meet the industry standard for investment by an international oil company.
- (c) As a tolling project, the upstream concept for Greater Sunrise (as envisaged either by Timor-Leste or the Joint Venture) has a fairly high cost of production and, under currently anticipated market conditions, is limited in the tolling fee that it could pay for LNG processing while remaining economically viable. At a tolling fee of US\$2.00 per MMBtu or lower, the return on the upstream project would fall within industry investment levels. However, should the tolling fee be higher than US\$2.50 per MMBtu, the return on the upstream project would fall below industry investment levels and the Commission does not anticipate that either concept would be investable for the members of the Joint Venture or other private sector actors.
- (d) The range of tolling fees currently under negotiation with Darwin-LNG are below US\$2.00 per MMBtu, and would thus fall within the range in which the upstream concept would be economically viable.
- (e) Due to the need to construct a new LNG plant at Beaco in Timor-Leste, a Timor-LNG plant would require a higher tolling fee to generate an adequate rate of return. After adjusting costs estimates, the Commission estimates that, with a toll of US\$2.00 per MMBtu, Timor-LNG would have a negative return of minus 4% on a capital investment of US\$7,142,000,000.
- (f) In order to match the target return of the Timor-Leste Petroleum Fund of 4%, it is estimated that Timor-LNG would need to charge a tolling fee of at least US\$3.50. In order to achieve a return of 7% to permit debt financing or the equity participation of an experienced operator, the Commission anticipates that the Timor-LNG would need to charge a tolling fee of at least US\$4.50. Both scenarios exceed the level that the upstream concept could reasonably be expected to bear.

Based on this assessment, the Commission considers that the challenge for Timor-LNG would be to achieve an acceptable rate of return on the downstream project without exceeding the tolling fee that the upstream concept could actually bear. The Commission considers that this could be done, but only with a direct subsidy of Timor-LNG by the government of Timor-Leste or another funder. The Commission estimates that a direct subsidy of the project's capital expenditure on the order of US\$5,600,000,000 would be required in order to render the remainder of the downstream project financeable through equity or debt.

In the Commission's view, these elements should be borne in mind in the consideration by Timor-Leste and Australia of the development benefits of the two concepts.

* * *

ANNEX: COMPARATIVE ESTIMATES FOR T-LNG AND D-LNG

	TIMOR-LNG CASE	DARWIN-LNG CASE (WITH OPERATIONS FROM TIMOR-LESTE)
Investment Required		
Investment by Timor-Leste	Timor-Leste required to finance or arrange capital financing of US\$7,142,000,000	US\$0
Estimated return on investment	Negative 4% return on 100% TL equity (Direct subsidy of US\$5.6 billion necessary to secure debt finance or operator equity)	2.7% equity in Darwin LNG (0.9% free) 9% equity in Sunrise JV (3% free)
Development Benefits		
Location of LNG Plant	Beaço, Timor-Leste	Darwin, Australia
Pipeline	LNG pipeline to Beaço, Timor-Leste	Domestic gas pipeline to Timor-Leste; LNG pipeline to Darwin
Additional revenue to Timor-Leste pursuant to Treaty	US\$0	10% of government take (approx. US\$3.134 to US\$3.539 billion) available for development investment
Downstream operations	In Timor-Leste (estimated US\$280,000,000 in OPEX per year)	In Australia
Offshore operations and logistics support		Operated from Timor-Leste (estimated US\$282,000,000 in OPEX per year)
Fabrication		Fabrication facility in Timor-Leste (approximately US\$6,000,000 per year)
Sourcing of supplies		Commitment to prioritize Timorese supply, plus up to US\$10,000,000 per year to support business development in Timor-Leste
Employment and training		Commitment to prioritize Timorese employment, plus up to US\$10,000,000 per year for training and technical education in Timor-Leste
Support for Timor-Leste Petroleum Industry (JV)		US\$200,000,000 for domestic gas pipeline; US\$50,000,000 for Suai supply base
Gas and condensate stream		50M cu ft per day gas at gas transfer price; 10% of condensate at market value
Support for Timor-Leste Petroleum Industry (Australia)		US\$100,000,000 for domestic gas pipeline; and commitment to facilitate use of Timor-Leste facilities to supply Australian offshore fields, and facilitate Timorese employment in Darwin
Certainty of Implementation		
Assessment of commercial viability	Considered commercially viable by Timor-Leste only	Considered commercially viable by all parties
Estimated project return (IRR) Integrated Project	7.0%	N/A (Darwin facility would charge a tolling fee)
Segmented Project (Upstream) Estimated return (IRR)	11.82% at US\$4.00 tolling fee 13.18% at US\$3.00 tolling fee 14.44% at US\$2.00 tolling fee	14.52% at US\$3.00 tolling fee 16.08% at US\$2.00 tolling fee 17.27% at US\$1.20 tolling fee
Segmented Project (Upstream) Maximum viable tolling fee	Below US\$2.00 per MMbtu to achieve 15% IRR	US\$2.50 per MMbtu to achieve 15% IRR
Segmented Project (Downstream) Estimated return (IRR)	4.51% at US\$4.00 tolling fee 2.69% at US\$3.00 tolling fee negative 4% at US\$2.00 tolling fee	N/A (Darwin-LNG would handle downstream)
Segmented Project (Downstream) Minimum viable tolling fee	US\$3.57 toll to achieve 4% IRR (govt equity) US\$4.51 toll to achieve 7% IRR (debt finance)	N/A (Darwin-LNG would handle downstream)

CONDENSED COMPARATIVE ANALYSIS OF ALTERNATIVE DEVELOPMENT CONCEPTS

Pursuant to the Supplemental Action Plan agreed with the Parties in December 2017, the Commission has retained the assistance of an expert in oil and gas development planning to undertake a comparative analysis of the alternative development concepts proposed by Timor Gap and the Greater Sunrise Joint Venture based on neutral economic modelling. This document is intended to set out a condensed account of that comparative analysis.

A. Introduction

This analysis examines the subsurface (reservoir) assumptions, development plans, costs estimates and commercial potential of the respective alternative development concepts for the Greater Sunrise field prepared by Timor Gap and the Greater Sunrise Joint Venture (“SJV”). These alternatives are Timor Gap’s concept for the development of the field by way of a fixed platform and multiples pipelines to a new LNG plant in Timor-Leste (also known as Timor-LNG) and the SJV’s concept for the development of the field by way of a Floating Production Storage and Offloading (“FPSO”) unit with a pipeline to tie in to the Bayu Undan pipeline to the existing LNG plant at Wickham Point in Darwin, Australia.

The key technical drivers of the differences between the concepts are the resource volumes assumed and the relative technical risk of the upstream development concepts. The key commercial issue is the comparative economics of the two concepts, the requirement to invest in the construction of a new LNG plant in Timor Gap’s concept, and the tolling fee that such new plant would need to receive to be commercially viable.

B. Subsurface (Reservoir) Assessment and Production Forecasts

As part of their respective concepts, Timor Gap and the SJV have each independently undertaken technical evaluations of the gas initially in place in the Greater Sunrise reservoir and reached similar mid-case estimates. Both Timor Gap and the SJV have also identified field segmentation (discontinuities in the reservoir that reduce the area drained by each well) and the influx of water, which reduces the proportion of gas recovered, as key issues in the development of the field.

Both Timor Gap and the SJV have presented a range of potential recovery factors for gas from the Greater Sunrise field. The SJV’s economic model appears to be based on a 53% recovery factor (*i.e.*, an estimate that 53% of the gas initially in place could be recovered). Timor Gap appears to estimate a higher 75% recovery factor, based on continued low-level production for domestic gas after the end of LNG production. Without this tail production, Timor Gap’s recovery factor appears to be 61%. The variance in recovery factor between 53% and 61% is within expected estimated range, given the data available and prior to production from the field. Subsequent economic analysis is considered for both a 60% and 50% recovery factor. The tail domestic gas production anticipated by Timor Gap has no significant effect on the economics of the two concepts and is not considered further.

In the SJV concept, should a higher recovery factor of 60% be achieved, production could be extended by about 6 years as more gas would be recovered. In the Timor Gap concept, a lower recovery factor of 50% would reduce the production period by approximately 5 years.

C. Timor Gap Upstream Concept

The Timor Gap upstream concept envisages a fixed platform offshore with twin gas pipelines to shore in Timor-Leste with two additional pipelines to Timor-Leste for liquids and for the return of regenerated mono ethylene glycol (“MEG”). Condensate processing and MEG regeneration takes place on shore in Timor-Leste.

The concept is technically feasible. However, the requirement for onshore condensate processing and the use of multiple pipelines across the Timor Trough increases the comparative risk of pipeline damage due to localised failure of the Timor slope and hence potentially decreases the reliability and operability of the project. The concept also carries increased risk of hydrate blockage in both the gas and liquids pipelines.¹ Timor Gap's proposed pipelines are at the limit of current industry water depth capability.

For capital expenditure, the Timor Gap well design concept, configuration, and cost estimates appear to be inconsistent with the high initial well flow rate assumed in the production profile. The Timor Gap estimate for the twin 18" gas pipelines is very close to its original estimate for a single 24" pipeline and does not appear to address the increased installation costs of multiple pipelines. The costs of a full integrated project front end engineering design ("FEED") also appear to be omitted from Timor Gap's estimate.²

For operating expenditure, Timor Gap's costs estimates for the platform appear to be reasonable, but omit the operating expenditure of the onshore liquids processing facility (which would be separate from the LNG plant and would have limited operational synergies), as well as the operations, inspection and maintenance costs of the multiple pipelines.³ Given the risks of the concept, it would be reasonable to make an economic provision for one pipeline repair in the 25 year life of the project, however this has not been added to the Timor Gap operating expenditure estimates.

D. Sunrise Joint Venture Upstream Concept

The SJV upstream concept is for all gas and liquids processing to take place offshore on an FPSO. Gas would be delivered to Darwin by a single pipeline joining the existing Bayu Undan pipeline. The SJV upstream concept is industry standard. The FPSO is large, but within industry technology for water depth, swivel, processing, topsides load, and vessel size.

For capital expenditure, the SJV's estimates for subsea costs appear to be higher than recent analogue projects. In particular, the SJV's installation costs appear to be based on vessel spread rates prevailing several years ago at the market peak. Similarly, the SJV costs estimates for drilling appear to be based on rig rates prevailing several years ago at the market peak.⁴

The SJV's estimate for operating expenditure appears reasonable, as does the project schedule.

E. Timor Gap Downstream Concept

The Timor Gap concept is for the construction of a greenfield 5 MMTpa LNG plant at Beaco on the south coast of Timor-Leste that would receive gas from the offshore project. Condensate would also be processed onshore with MEG regeneration and return to offshore.

¹ These risks could be mitigated by locating condensate processing and MEG regeneration on a second offshore platform or FPSO. As this would not meaningfully alter the economic results, however, this possibility has not been evaluated further.

² For modelling purposes, the following adjustments were made to Timor-Gap's assumptions: (a) drilling cost estimates adjusted to current market rates for drilling rigs and well services; (b) subsea cost estimates adjusted to current market rates for installation vessels; (c) gas pipeline costs re-estimated for twin lines; (d) condensate/MEG costs re-estimated for twin lines; and (e) capital provision added for integrated project FEED. Specific adjustments are set out in an annex to this paper.

³ For modelling purposes, the following adjustments were made to Timor-Gap's assumptions: (a) operating expenditure added for liquids processing facility; and (b) operating expenditure added for pipeline operations, expenditure, and maintenance. Specific adjustments are set out in an annex to this paper.

⁴ For modelling purposes, the following adjustments were made to the SJV's assumptions: (a) drilling cost estimates adjusted to current market rates for drilling rigs and well services; and (b) subsea cost estimates adjusted to current market rates for installation vessels. Specific adjustments are set out in an annex to this paper.

For capital expenditure, Timor Gap's estimates for the LNG liquefaction plant and marine facilities appear reasonable. However, Timor Gap's estimate does not appear to include the cost of direct infrastructure associated with the LNG plant, such as roads, offices, and warehousing, and excludes LNG technology licence fees. Timor Gap's concept also appears to exclude the costs for the LNG Plant FEED.⁵

Timor Gap's estimate of LNG plant operating costs (in its economic model) appears to be based on a notional figure of US\$100 million per year, rather than the US\$204 million per year estimated by Timor Gap in its Greater Sunrise Timor LNG Project Development Concept Report, which also appears to be below prevailing industry levels.⁶

While Timor Gap's overall construction schedule appears reasonable, it is based on timetable with pre-FEED work commencing in 2016, which has now slipped by some 2 years, resulting in an earliest start-up date one year later than that used by Timor Gap in its economic model. Timor Gap's concept also appears to envisage 100% production from day one, rather than the industry standard expectation for a new facility of 50% production efficiency during the first year.⁷ The Timor Gap economic model does not make any provision for operational downtime in subsequent years, which is likely to be in the order of 5% based on industry experience

F. SJV Downstream Concept

The SJV concept is for gas to be processed at the existing LNG plant at Wickham Point in Darwin, Australia. Although the existing pipeline and LNG plant are some 20 years old, industry experience indicates that they should remain serviceable and reliable for the life of the project with appropriate inspection and maintenance. It is understood that full responsibility for maintenance and repair of the existing infrastructure would be covered by the tolling fee charged by the downstream owner, limiting the risk to the upstream joint venture

As the Wickham Point facility is owned by a different corporate entity and would charge a tolling fee to process gas from Greater Sunrise, the economics of the SJV downstream concept have not been independently analysed.

G. Economic Model Assumptions

Both Timor Gap and the SJV have assumed the application of the existing fiscal terms under which 20.1% of the asset is governed by JPDA production sharing contract terms (divided 90:10 between Timor-Leste and Australia) and 79.9% is governed by Australian terms. Although this fiscal regime will be replaced under the new treaty, the treaty provides that new fiscal arrangements will provide "conditions equivalent" and the existing regimes is used for modelling purposes.

The economic models prepared by Timor Gap and the SJV, as would be expected, make several non-comparable assumptions. In the SJV model, provision is made for a notional marketing entity that is understood to reflect the specifics of the application of the Australian petroleum resources rent tax. An alternative approximation of petroleum resources rent tax is used in the Timor Gap model. For comparability, the marketing arrangement of the SJV model has been simplified, with all revenues

⁵ For modelling purposes, the following adjustments were made to Timor-Gap's assumptions: (a) costs added for roads, offices, warehousing, and licence fees; (b) costs added for LNG plant FEED. Specific adjustments are set out in an annex to this paper.

⁶ For modelling purposes, the annual operating expenditure of the LNG plant was increased to US\$250 million.

⁷ For modelling purposes, the following adjustments were made to Timor-Gap's assumptions: (a) a one-year delay in startup; and (b) 50% production for year one.

accruing to the upstream JV.⁸ For comparability, adjustments are likewise made to the Timor Gap model as follows:

- The Timor Gap model applies the tolling fee to the feedstock (*i.e.*, the gas going into the plant), rather than the LNG sales volumes (the gas coming out of the plant). The industry norm is to apply the tolling fee to LNG sales volume, and the Timor Gap model is adjusted accordingly.
- The Timor Gap model is premised upon no downtime (*i.e.*, 365 days per year operations). The industry norm is to allow for 20 days downtime, and the Timor Gap model is adjusted accordingly.

Additionally, the JV and Timor Gap models differ as to whether LNG price inflation on the tolling fee would start in 2018 or upon production. While either approach is reasonable, the same approach must be used to enable an accurate comparison and the Timor Gap model is adjusted such that escalation of the tolling fee starts upon production, in line with SJV model.

H. Comparative Economic Analysis: Upstream Concepts

For analysis purposes, the required gas price (*i.e.*, the price at entry to the LNG plant required to achieve a 15% IRR for the upstream joint venture) was calculated for each of the Timor Gap and SJV upstream concepts after adjusting costs and assumptions. The results for the SJV upstream concept are as follows:

SJV Upstream Concept	
Case	Required Gas Price for Upstream 15% IRR US\$/MMBtu
SJV Base Case	US\$5.49
Adjusted Assumptions (exclude notional marketing entity)	US\$6.11
Production Normalized to 60% recovery	US\$6.01
Costs Normalized	US\$5.19
Final Normalized Case	US\$5.19

The results for the Timor Gap upstream concept are as follows:

Timor Gap Upstream Concept	
Case	Required Gas Price for Upstream 15% IRR US\$/MMBtu
Timor Gap Base Case	US\$2.89
Apply toll to LNG sales gas Include downtime Escalate toll from production start	US\$3.04
Delay start up by 1 year 50% uptime in first year	US\$4.52
Production normalized to 60% recovery	US\$4.57
Normalize capital expenditure	US\$6.18
Normalize operational expenditure	US\$6.21
Normalized Case at 60% recovery	US\$6.21
Normalized Case at 50% recovery	US\$6.52

⁸ This adjustment slightly decreases the returns of the SJV upstream concept and increase the government tax revenue, but renders the two models more comparable.

The approximate IRR that each upstream concept could be expected to generate at different potential tolling fees (assuming a 60% recovery factor and after normalizing costs and inputs) are as follows:

Tolling Fee US\$/MMBtu	SJV Upstream Concept IRR %	Timor Gap Upstream Concept IRR %
\$1.2	17.27%	15.40%
\$2	16.08%	14.44%
\$2.5	15.32%	13.82%
\$3	14.52%	13.18%
\$3.5	13.70%	12.51%
\$4	12.83%	11.82%
\$4.5	11.92%	11.10%

I. Comparative Economic Analysis: Timor Gap Downstream Concept

For analysis purposes, the Timor Gap downstream concept was evaluated with respect to the tolling fee required for the Timor Gap downstream project to earn between 0% and 10% IRR, calculated as follows:

Timor Gap Downstream Concept				
Cases	Required Toll for 0% IRR US\$/MMBtu	Required Toll for 4% IRR US\$/MMBtu	Required Toll for 7% IRR US\$/MMBtu	Required Toll for 10% IRR US\$/MMBtu
Timor Gap Base Case	\$1.26	\$1.82	\$2.49	\$3.35
Apply toll to LNG sales gas Include downtime Escalate toll from production	\$1.72	\$2.49	\$3.41	\$4.59
Delay start up by 1 year 50% production efficiency in first year	\$1.75	\$2.67	\$3.79	\$5.30
Production normalized to 60% recovery	\$1.95	\$2.94	\$4.06	\$5.54
Normalize capital expenditure	\$1.91	\$2.79	\$3.75	\$4.99
Normalize operational expenditure	\$2.73	\$3.57	\$4.51	\$5.74
Normalized Case at 60% recovery	\$2.73	\$3.57	\$4.51	\$5.74
Normalized Case at 50% recovery	\$3.11	\$4.00	\$4.95	\$6.17

The approximate IRR that the Timor Gap downstream concept could be expected to generate at different potential tolling fees (assuming a 60% recovery factor and after normalizing costs and inputs) are as follows:

Timor Gap Downstream Concept	
Tolling Fee US\$/MMBtu	IRR %
\$2	negative 4.62%
\$3	2.69%
\$4	6.23%

J. Comparative Economic Analysis: Upstream Concepts

A further analysis was undertaken of total government take (in accumulated cash flow) for Australia and Timor-Leste under both the SJV and Timor Gap Concepts at a range of possible tolling fees.

In the case of the SJV concept, this analysis was undertaken at the US\$2.00 toll used as a base in both the SJV and Timor Gap models and at a hypothetical lower toll of US\$1.20 in the event that significant savings are achieved in negotiations with Darwin LNG JV. This analysis excludes the income to the operator of the Wickham Point plant or the corporate income taxation paid by the downstream operator to Australia:

SJV Concept			
Tolling Fee US\$/MMBtu	Total Gov. Upstream Take US\$MM	Timor-Leste Upstream Take US\$MM	Australia Upstream Take US\$MM
\$1.20	\$35,392	\$28,314	\$7,078
\$2.00	\$31,337	\$25,070	\$6,267

In the case of the Timor Gap concept, this analysis was undertaken at a range of tolling fees. This analysis includes the income to the operator of Timor-LNG and the corporate income taxation paid to Timor-Leste:

Timor Gap Concept						
Tolling Fee US\$/MMBtu	Total Upstream Gov. Take US\$MM	Australia Upstream Take US\$MM	Timor-Leste Upstream Take US\$MM	Timor-LNG Owner Take US\$MM	Timor- Leste Income Tax US\$MM	Timor-Leste + Timor-LNG Take US\$MM
\$2.00	\$28,775	\$8,632	\$20,142	neg. \$4,895	0	\$15,247
\$3.00	\$24,555	\$7,366	\$17,188	\$1,661	\$333	\$19,182
\$3.50	\$22,432	\$6,729	\$15,702	\$4,772	\$666	\$21,140
\$4.00	\$20,299	\$6,090	\$14,209	\$7,881	\$1,001	\$23,091
\$4.50	\$18,155	\$5,446	\$12,708	\$10,986	\$1,340	\$25,035

K. Economic Analysis: Financing and Subsidy

A final analysis was undertaken of the potential for Timor Gap's development concept to address the feasibility of equity participation from an experienced international operator and to secure debt financing, and to estimate the level of government subsidy that would be necessary to render the remainder of the project financeable.

Without knowing the specific financing or operator arrangements contemplated by Timor Gap, it is likely that an international operator or institutional lender would require an IRR in the order of 10%. Even if the government of Timor-Leste were willing to provide equity financing for the remainder of the project at an IRR of 0% or debt financing could be achieved at 7%, the project would still need to generate an overall IRR in the order of 4% to 5% to be sustainable (depending on the respective shares of the project). To achieve an overall IRR of 4%, (similar to the return understood to be achieved by the Timor-Leste Petroleum Fund) the LNG plant would require a tolling fee of approximately US\$3.50 per MMBtu.

In order to achieve a US\$2.00 tolling fee while preserving a 7% IRR on the overall project, it would be necessary for the government of Timor-Leste to directly subsidise the capital expenditure of the LNG facility. A subsidy on the order of US\$5.6 billion (or about 80% of capital expenditure)—with no

expectation of receiving revenue from the operation of the facility— would be required in order to render the remainder of the downstream project financeable.

L. Conclusion

The foregoing analysis supports the following conclusions on the basis of neutral economic modelling:

- (a) Timor-Leste and the SJV have analysed the Timor Gap concept both as an integrated project (i.e., with both upstream and downstream returns combined) and on a tolling basis (i.e., with a fee paid to the downstream plant for LNG processing). The SJV concept would only be on a tolling basis.
- (b) As an integrated project, the Commission anticipates that, under currently expected market conditions, Timor Gap's concept would generate a return in the order of 7.0% on a capital investment of US\$15,621,000,000. This would not be sufficient to meet the industry standard for investment by an international oil company.
- (c) As a tolling project, the upstream concept for Greater Sunrise (as envisaged either by Timor-Leste or the SJV) has a fairly high cost of production and, under currently anticipated market conditions, is limited in the tolling fee that it could pay for LNG processing while remaining economically viable. At a tolling fee of US\$2.00 per MMBtu or lower, the return on the upstream project would fall within industry investment levels. However, should the tolling fee be higher than US\$2.50 per MMBtu, the return on the upstream project would fall below industry investment levels and the Commission does not anticipate that either concept would be investable for the members of the Joint Venture or other private sector actors.
- (d) The range of tolling fees currently under negotiation with Darwin-LNG are below US\$2.00 per MMBtu, and would thus fall within the range in which the upstream concept would be economically viable.
- (e) Due to the need to construct a new LNG plant at Beaco in Timor-Leste, a Timor Gap downstream concept would require a higher tolling fee to generate an adequate rate of return. After adjusting costs estimates, the Commission estimates that, with a toll of US\$2.00 per MMBtu, Timor Gap's downstream concept would have a negative return of minus 4% on a capital investment of US\$7,142,000,000.
- (f) In order to match the target return of the Timor-Leste Petroleum Fund of 4%, it is estimated that the LNG plant in Timor-Leste would need to charge a tolling fee of at least US\$3.50. In order to achieve a return of 7% to permit debt financing or the equity participation of an experienced operator, the Commission anticipates that Timor-LNG would need to charge a tolling fee of at least US\$4.50. Both scenarios exceed the level that the upstream concept could reasonably be expected to bear.

Based on this assessment, the challenge for Timor Gap's concept would be to achieve an acceptable rate of return on the downstream project without exceeding the tolling fee that the upstream concept could actually bear. The Commission considers that this could be done, but only with a direct subsidy of the downstream project by the government of Timor-Leste or another funder. A direct subsidy of the project's capital expenditure on the order of US\$5,600,000,000 would be required in order to render the remainder of the downstream project financeable through the equity participation of an experience operator or by debt.

* * *

**ANNEX:
ADJUSTMENTS TO ECONOMIC ASSUMPTIONS**

ADJUSTMENTS TO JOINT VENTURE ECONOMIC ASSUMPTIONS FOR UPSTREAM CONCEPT	
COMMENT	ADJUSTMENT
Cost estimates for wells and drilling do not appear to reflect reduction of rates in current market conditions	Reduce capital expenditure for wells to US\$1,040 million
Cost estimates for subsea installations do not appear to reflect reduction of rates in current market conditions	Reduce capital expenditure for subsea to US\$2,080 million
ADJUSTMENTS TO TIMOR GAP ECONOMIC ASSUMPTIONS FOR UPSTREAM CONCEPT	
COMMENT	ADJUSTMENT
Cost estimates for wells appear overly optimistic	Increase capital expenditure for wells to US\$1,040 million
Cost estimates for subsea installations appear overly optimistic	Increase capital expenditure for subsea to US\$2,080 million
Cost estimates for gas pipelines for two 18" pipelines (derived from estimate for one 24" pipeline) appear overly optimistic	Increase capital expenditure for gas pipelines to US\$1,500 million
Cost estimates for two 18" MEG pipelines based on estimate for gas pipeline	Increase capital expenditure for MEG pipelines to US\$1,400 million
No provision made for costs of Upstream Front-End Engineering and Design (FEED)	Add capital expenditure of US\$300 million
Upstream operating expenditure does not include operating expenditure for onshore MEG plant and liquid processing or pipeline repair contingency	Increase upstream operating expenditure to US\$193 million per year
ADJUSTMENTS TO TIMOR GAP ECONOMIC ASSUMPTIONS FOR TIMOR-LNG CONCEPT	
COMMENT	ADJUSTMENT
Tolling fee is applied to raw gas feedstock rather than LNG sales volumes	Apply tolling fee to LNG sales volumes per industry standard
Inflation of tolling fee starts from 2017	Begin inflation of tolling fee from start of production, for comparability
Model assumes operation 365 days per year	Add assumption of 20 days per year downtime, per industry standard
LNG costs estimates do not include for infrastructure associated with the LNG plant, LNG technology licence fees, or LNG Front-End Engineering and Design (FEED) costs	Increase LNG Plant capital expenditure to US\$7,142 million
LNG plant operating expenditure appears overly optimistic	Increase LNG Plant OPEX to US\$250 million per year
Economic model is based on a schedule which has already slipped by one to two years	Add one-year delay to project schedule
Model assumes operation at 100% capacity from day 1 of operations	Assume operation at 50% capacity for first year, per industry standard

Annex 28:
Treaty signed by the Parties on 6 March 2018

TREATY BETWEEN THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE AND AUSTRALIA ESTABLISHING THEIR MARITIME BOUNDARIES IN THE TIMOR SEA

THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE (**Timor-Leste**) and THE GOVERNMENT OF AUSTRALIA (**Australia**) (hereinafter referred to as the **Parties**);

HAVING REGARD to the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982 (the **Convention**);

TAKING INTO PARTICULAR ACCOUNT Articles 74(1) and 83(1) of the Convention, regarding the delimitation of the exclusive economic zone and the continental shelf;

WISHING to delimit the maritime areas between Timor-Leste and Australia in the Timor Sea;

WISHING ALSO in this context to establish a special regime for the Greater Sunrise Fields for the benefit of both Parties;

REAFFIRMING the importance of developing and managing the living and non-living resources of the Timor Sea in an economically and environmentally sustainable manner, and the importance of promoting investment and long-term development in Timor-Leste and Australia;

HAVING REACHED, with the assistance of the Conciliation Commission established under Article 298 and Annex V of the Convention, an overall negotiated solution to the dispute between the Parties concerning the delimitation of their permanent maritime boundaries;

RECOGNISING that there exists an inextricable link between the delimitation of the maritime boundaries and the establishment of the special regime for the Greater Sunrise Fields and that both elements are integral to the agreement of the Parties to this Treaty;

CONSCIOUS of the importance of promoting Timor-Leste's economic development;

REAFFIRMING that benefits will flow to both Timor-Leste and Australia from the establishment of a stable long-term basis for Petroleum Activities in the area of seabed between Timor-Leste and Australia;

RESOLVING as good neighbours and in a spirit of co-operation and friendship, to settle finally their maritime boundaries in the Timor Sea in order to achieve an equitable solution;

ACKNOWLEDGING that the settlement contained in this Treaty is based on a mutual accommodation between the Parties without prejudice to their respective legal positions;

AFFIRMING the compatibility of this Treaty with the Convention;

AFFIRMING that nothing in this Treaty shall be interpreted as prejudicing the rights of third States with regard to delimitation of the exclusive economic zone and the continental shelf in the Timor Sea;

HAVE AGREED as follows:

Article 1: Definitions

1. For the purposes of this Treaty, including its Annexes:

- (a) "1972 Seabed Treaty Boundary" means the boundary established by Articles 1 and 2 of the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia Establishing Certain Seabed Boundaries in the Area of the Timor and Arafura Seas, supplementary to the Agreement of 18 May 1971 (Jakarta, 9 October 1972);

- (b) "Bayu-Undan Pipeline" means the export pipeline which transports gas produced from the Bayu-Undan Gas Field to the Darwin liquefied natural gas processing facility at Wickham Point;
- (c) "Bayu-Undan Gas Field" means the field which, at the time of signing of this Treaty, is subject to the Production Sharing Contracts JPDA 03-12 and JPDA 03-13;
- (d) "Buffalo Oil Field" means the field known as Buffalo which, at the time of the signing of this Treaty, lies in the WA-523-P exploration permit area;
- (e) "Commercial Depletion" means the date by which the relevant authority confirms that the contractor or titleholder has fulfilled all of its production and decommissioning obligations under the relevant development or decommissioning plan, contract or licence and that the relevant contract or licence has terminated or otherwise expired;
- (f) "Development Concept" means the basic terms on which the Greater Sunrise Fields are to be developed;
- (g) "Development Plan" means the development, exploitation and management plan for the Petroleum in the Greater Sunrise Fields consistent with Good Oilfield Practice, including, but not limited to, details of the sub-surface evaluation and facilities, production facilities, the production profile for the expected life of the project, the expected life of the fields, the estimated capital and non-capital expenditure covering the feasibility, fabrication, installation and pre-production stages of the project, which is approved and assessed in accordance with the criteria established in Article 9(3) of Annex B of this Treaty;
- (h) "Good Oilfield Practice" means such practices and procedures employed in the petroleum industry worldwide by prudent and diligent operators under conditions and circumstances similar to those experienced in connection with the relevant aspects of Petroleum operations, having regard to relevant factors including:
 - (i) conservation of Petroleum, which includes the utilisation of methods and processes to maximise the recovery of hydrocarbons in a technically and economically efficient manner, and to minimise losses at the surface;
 - (ii) operational safety, which entails the use of methods and processes aimed at preventing major accident events and occupational health and safety incidents; and
 - (iii) environmental protection, which calls for the adoption of methods and processes that minimise the impact of the Petroleum operations on the environment;
- (i) "Greater Sunrise Contractor" means all those individuals or bodies corporate holding from time to time a permit, lease, licence or contract in respect of an area within the Special Regime Area under which exploitation, including any appraisal activities related to that exploitation, and production of Petroleum may be carried out;
- (j) "Greater Sunrise Fields" means that part of the rock formation known as the Plover Formation (Upper and Lower) that underlies the Special Regime Area and contains the Sunrise and Troubadour deposits of Petroleum, together with any extension of those deposits that is in direct hydrocarbon fluid communication with either deposit;
- (k) "Greater Sunrise Production Sharing Contract" means the contract entered into in accordance with Article 4 of Annex B of this Treaty, between the Designated Authority and

the Greater Sunrise Contractor for the development of, and production from, the Greater Sunrise Fields and replacing Production Sharing Contracts JPDA 03-19 and JPDA 03-20 and Retention Leases NT/RL2 and NT/RL4;

- (l) "International Unitisation Agreement" means the Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to the Unitisation of the Sunrise and Troubadour Fields (Dili, 6 March 2003);
- (m) "Kitan Oil Field" means the field which, at the time of signing this Treaty, is subject to the Production Sharing Contract JPDA 06-105;
- (n) "Laminaria and Corallina Fields" means the fields known as Laminaria and Corallina which, at the time of the signing of this Treaty, lie partly in the AC/L5 and WA-18-L production licence areas;
- (o) "Petroleum" means:
 - (i) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state;
 - (ii) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
 - (iii) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, as well as other gaseous substances produced in association with such hydrocarbons, including, but not limited to, helium, nitrogen, hydrogen sulphide and carbon dioxide; andincludes any Petroleum as defined by sub-paragraph (i), (ii) or (iii) that has been returned to a natural reservoir;
- (p) "Petroleum Activities" means all activities undertaken to produce Petroleum, authorised or contemplated under a contract, permit or licence, and includes exploration, development, initial processing, production, transportation and marketing, as well as the planning and preparation for such activities;
- (q) "Pipeline" means any pipeline by which Petroleum is discharged from the Special Regime Area;
- (r) "Production Sharing Contract" means a contract between the Designated Authority, whether as established under this Treaty or as established under the Timor Sea Treaty, and a limited liability corporation or entity with limited liability under which production from a specified area is shared between the parties to the contract;
- (s) "Retention Leases" means the retention leases granted by Australia pursuant to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) to individuals or bodies corporate, as renewed from time to time, referred to as Retention Lease NT/RL2 and Retention Lease NT/RL4;
- (t) "Special Regime Area" means the area of the continental shelf described in Annex C of this Treaty;
- (u) "Special Regime Installation" means any installation, structure or facility located within the Special Regime Area for the purposes of engaging in or conducting Petroleum Activities;

- (v) "Timor Sea Treaty" means the Timor Sea Treaty between the Government of East Timor and the Government of Australia (Dili, 20 May 2002); and
- (w) "Valuation Point" means the point of the first commercial sale of Petroleum produced from the Special Regime Area which shall occur no later than the earlier of:
 - (i) the point where the Petroleum enters a pipeline; and
 - (ii) the marketable petroleum commodity point for the Petroleum.

2. Unless otherwise expressly provided, terms in this Treaty are to be given the same meaning as in the Convention.

Article 2: Continental Shelf Boundary

1. Subject to Article 3 of this Treaty, the continental shelf boundary between the Parties in the Timor Sea comprises the geodesic lines connecting the following points:

Point	Latitude	Longitude
TA-1	10° 27' 54.91"S	126° 00' 04.40"E
TA-2	11° 24' 00.61"S	126° 18' 22.48"E
TA-3	11° 21' 00.00"S	126° 28' 00.00"E
TA-4	11° 20' 00.00"S	126° 31' 00.00"E
TA-5	11° 20' 02.90"S	126° 31' 58.40"E
TA-6	11° 04' 37.65"S	127° 39' 32.81"E
TA-7	10° 55' 20.88"S	127° 47' 08.37"E
TA-8	10° 53' 36.88"S	127° 48' 49.37"E
TA-9	10° 43' 37.88"S	127° 59' 20.36"E
TA-10	10° 29' 11.87"S	128° 12' 28.36"E
TA-11	09° 42' 21.49"S	128° 28' 35.97"E
TA-12	09° 37' 57.54"S	128° 30' 07.24"E
TA-13	09° 27' 54.88"S	127° 56' 04.35"E

- 2. The line connecting points TA-1 and TA-2, and the lines connecting points TA-11, TA-12, and TA-13 are "Provisional", which for the purposes of this Treaty means that they are subject to adjustment in accordance with Article 3 of this Treaty.
- 3. For the purposes of this Treaty, all coordinates are determined by reference to the World Geodetic System 1984. For the purposes of this Treaty, the World Geodetic System 1984 shall be deemed equivalent to the Geodetic Datum of Australia 1994.

Article 3: Adjustment of the Continental Shelf Boundary

- 1. Should Timor-Leste and Indonesia agree an endpoint to their continental shelf boundary west of point A17 or east of point A16 on the 1972 Seabed Treaty Boundary, the continental shelf boundary between Timor-Leste and Australia shall be adjusted in accordance with paragraphs 2, 3 and 4 of this Article.
- 2. On the later of:
 - (a) the Commercial Depletion of the Laminaria and Corallina Fields; and
 - (b) the entry into force of an agreement between Timor-Leste and Indonesia delimiting the continental shelf boundary between those two States,

the continental shelf boundary between Timor-Leste and Australia shall, unless paragraph 3 of this Article applies, be adjusted so that it proceeds in a geodesic line from point TA-2, as defined in Article 2(1) of this Treaty, to a point between points A17 and A18 on the 1972 Seabed Treaty Boundary at which the continental shelf boundary agreed between Timor-Leste and Indonesia meets the 1972 Seabed Treaty Boundary.

3. In the event that the continental shelf boundary agreed between Timor-Leste and Indonesia meets the 1972 Seabed Treaty Boundary at a point to the west of point A18 on the 1972 Seabed Treaty Boundary, the continental shelf boundary shall be adjusted so that it proceeds in a geodesic line from point TA-2, as defined in Article 2(1) of this Treaty, to point A18.
4. On the later of:
 - (a) the Commercial Depletion of the Greater Sunrise Fields; and
 - (b) the entry into force of an agreement between Timor-Leste and Indonesia delimiting the continental shelf boundary between those two States,

the continental shelf boundary between Timor-Leste and Australia shall be adjusted so that it proceeds in a geodesic line from point TA-11, as defined in Article 2(1) of this Treaty, to the point at which the continental shelf boundary agreed between Timor-Leste and Indonesia meets the 1972 Seabed Treaty Boundary.

Article 4: Exclusive Economic Zone Boundary

1. The exclusive economic zone boundary between the Parties in the Timor Sea comprises the geodesic lines connecting the following points:

Point	Latitude	Longitude
TA-5	11° 20' 02.90"S	126° 31' 58.40"E
TA-6	11° 04' 37.65"S	127° 39' 32.81"E
TA-7	10° 55' 20.88"S	127° 47' 08.37"E
TA-8	10° 53' 36.88"S	127° 48' 49.37"E
TA-9	10° 43' 37.88"S	127° 59' 20.36"E
TA-10	10° 29' 11.87"S	128° 12' 28.36"E

2. The Parties may agree to extend the exclusive economic zone boundary established by paragraph 1 of this Article, as necessary.

Article 5: Depiction of Maritime Boundaries

The maritime boundaries described in Articles 2 and 4 of this Treaty are depicted for illustrative purposes at Annex A of this Treaty.

Article 6: Without Prejudice

1. Nothing in this Treaty shall be interpreted as prejudicing negotiations with third States with regard to delimitation of the exclusive economic zone and the continental shelf in the Timor Sea.
2. In exercising their rights as coastal States, the Parties shall:

- (a) provide due notice of activities conducted on the continental shelf and in the exclusive economic zone consistent with the terms of the Convention; and
- (b) not infringe upon or unjustifiably interfere with the exercise of rights and freedoms of other States as provided for in the Convention.

Article 7: Greater Sunrise Special Regime

1. The Parties hereby establish the Greater Sunrise Special Regime as set out in Annex B of this Treaty for the Special Regime Area.
2. Within the Special Regime Area, the Parties shall jointly exercise their rights as coastal States pursuant to Article 77 of the Convention.
3. The governance and exercise of jurisdiction within the Special Regime Area is as set out in the Greater Sunrise Special Regime.
4. Except as provided in this Treaty, the rights and obligations of the Parties in the Special Regime Area are governed by the Convention.
5. When the Greater Sunrise Special Regime ceases to be in force, the Parties shall individually exercise their rights as coastal States pursuant to Article 77 of the Convention on the basis of the continental shelf boundary as delimited by this Treaty.
6. Except as provided in Article 3 of this Treaty, the entry into force of an agreement between Timor-Leste and Indonesia delimiting the continental shelf boundary between those two States shall have no effect on the Greater Sunrise Special Regime.

Article 8: Straddling Deposits

If any Petroleum deposit extends across the continental shelf boundary as defined in Articles 2 and 3 of this Treaty, the Parties shall work expeditiously and in good faith to reach agreement as to the manner in which that deposit is to be most effectively exploited and equitably shared.

Article 9: Previous Agreements

1. Upon the entry into force of this Treaty, the following agreements shall cease to be in force:
 - (a) the Timor Sea Treaty; and
 - (b) the International Unitisation Agreement.
2. This Treaty shall have no effect on rights or obligations arising under the agreements set out in paragraph 1 of this Article while they were in force.

Article 10: Compensation

The Parties agree that neither Party shall have a claim for compensation with respect to Petroleum Activities conducted in the Timor Sea as a result of:

- (a) the cessation of the Joint Petroleum Development Area as established by Article 3 of the Timor Sea Treaty upon termination of that treaty;

- (b) the establishment of the continental shelf boundary under this Treaty;
- (c) an adjustment to the continental shelf boundary as a result of the application of Article 3 of this Treaty; or
- (d) the cessation of the Greater Sunrise Special Regime.

Article 11: Permanence of the Treaty

1. The Parties agree that this Treaty shall not be subject to a unilateral right of denunciation, withdrawal or suspension.
2. This Treaty may be amended only by agreement between the Parties, and by express provision to that effect.
3. The Annexes to this Treaty form an integral part thereof.
4. All of the provisions of this Treaty are inextricably linked and form a single whole. The provisions of this Treaty are not separable in any circumstances, and each provision of this Treaty constitutes an essential basis of the Parties' agreement to be bound by this Treaty as a whole.

Article 12: Settlement of Disputes

1. Without prejudice to paragraph 3 of this Article, for a period of five years following the entry into force of this Treaty, any dispute regarding the interpretation or application of this Treaty which is not settled by negotiation within six months of either Party notifying the other Party of the existence of the dispute, may be submitted by the Parties jointly to one or more members of the Conciliation Commission.
2. Once the dispute has been submitted in accordance with paragraph 1 of this Article, the member or members of the Conciliation Commission shall hear the Parties, examine their claims and objections, and make proposals to the Parties with a view to reaching an amicable settlement.
3. Subject to paragraph 4 of this Article, any dispute concerning the interpretation or application of this Treaty, which cannot be settled by negotiation within six months of either Party notifying the other Party of the existence of the dispute, may be submitted by either Party to an arbitral tribunal in accordance with Annex E of this Treaty.
4. The Parties shall not submit to an arbitral tribunal under this Article any dispute concerning the interpretation or application of Article 2, 3, 4, 5, 7 or 11, Annex A or Annex D of this Treaty, or any dispute falling within the scope of Article 8 of Annex B, which shall be settled in accordance with the provisions of that Article.

Article 13: Entry into Force

This Treaty shall enter into force on the day on which Timor-Leste and Australia have notified each other in writing through diplomatic channels that their respective requirements for entry into force of this Treaty have been fulfilled.

Article 14: Registration

The Parties shall transmit this Treaty by joint letter to the Secretary-General of the United Nations for registration in accordance with the provisions of Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

DONE at New York, on this sixth day of March, two thousand and eighteen, in two counterparts in English and Portuguese. In the event of a discrepancy, the English language version shall prevail.

His Excellency Hermenegildo Augusto Cabral Pereira

Minister in the Office of the Prime Minister for the Delimitation of Borders and the Agent in the Conciliation
For the Government of the Democratic Republic of Timor-Leste

The Hon Julie Bishop MP

Minister for Foreign Affairs

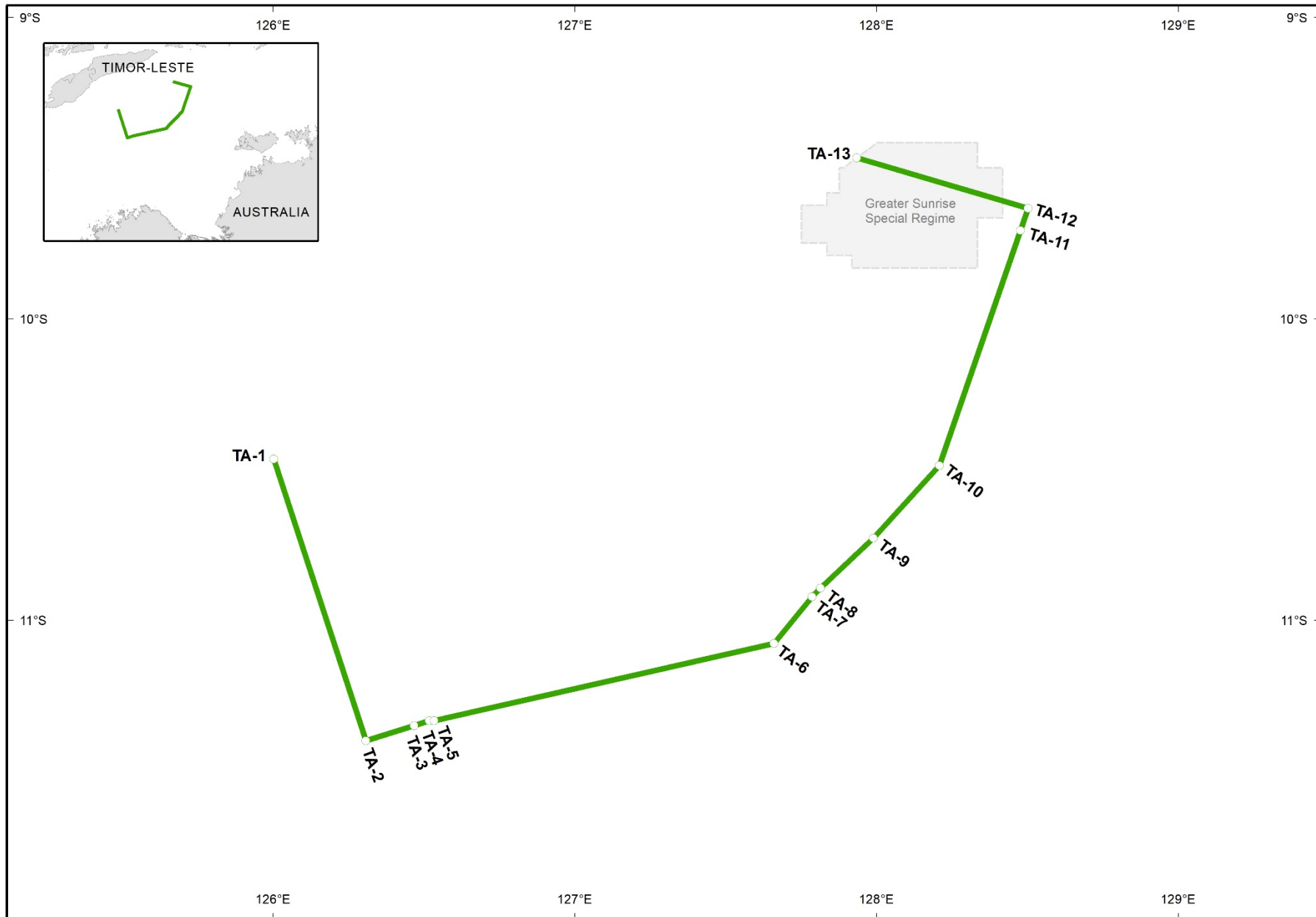
For the Government of Australia

IN THE PRESENCE OF the Chair of the Conciliation Commission,

His Excellency Ambassador Peter Taksøe-Jensen

Signed in the presence of the Secretary-General of the United Nations, His Excellency António Manuel de Oliveira Guterres.

ANNEX A: Depiction of Maritime Boundaries as Described in Articles 2 and 4 of the Treaty (Article 5)



ANNEX B: Greater Sunrise Special Regime

Article 1: Objective of the Greater Sunrise Special Regime

The objective of the Greater Sunrise Special Regime is the joint development, exploitation and management of Petroleum in the Greater Sunrise Fields for the benefit of both Parties.

Article 2: Title to Petroleum and Revenue Sharing

1. Timor-Leste and Australia shall have title to all Petroleum produced in the Greater Sunrise Fields.
2. The Parties shall share upstream revenue, meaning revenue derived directly from the upstream exploitation of Petroleum produced in the Greater Sunrise Fields:
 - (a) in the ratio of 70 per cent to Timor-Leste and 30 per cent to Australia in the event that the Greater Sunrise Fields are developed by means of a Pipeline to Timor-Leste; or
 - (b) in the ratio of 80 per cent to Timor-Leste and 20 per cent to Australia in the event that the Greater Sunrise Fields are developed by means of a Pipeline to Australia.
3. For the purposes of this Annex, upstream revenue is limited to first tranche petroleum, profit petroleum and taxation in accordance with Article 3 of this Annex.

Article 3: Taxation

1. Subject to paragraph 3 of this Article, upstream revenue includes taxation by the Parties as applicable in accordance with their respective laws. The Parties shall provide each other with a list of the applicable taxes.
2. The application of the Parties' taxation law shall be specified in the fiscal regime as agreed between the Parties and the Greater Sunrise Contractor, in accordance with obligations under Article 22 of the Timor Sea Treaty and Article 27 of the International Unitisation Agreement.
3. Taxation under paragraph 1 of this Article shall only apply in respect of Petroleum Activities and Special Regime Installations prior to the Valuation Point.
4. Timor-Leste taxation law shall apply to all other activities related to the development and exploitation of Petroleum in the Special Regime Area, unless otherwise provided for by the terms of this Treaty.

Article 4: Greater Sunrise Production Sharing Contract

As soon as practicable, the Designated Authority shall enter into the Greater Sunrise Production Sharing Contract under conditions equivalent to those in Production Sharing Contracts JPDA 03-19 and JPDA 03-20, and to the legal rights held under Retention Leases NT/RL2 and NT/RL4 in accordance with Article 22 of the Timor Sea Treaty and Article 27 of the International Unitisation Agreement.

Article 5: Regulatory Bodies

The Parties hereby establish a two-tiered regulatory structure for the regulation and administration of the Greater Sunrise Special Regime, consisting of a Designated Authority and a Governance Board.

Article 6: Designated Authority

1. The Designated Authority shall be responsible for carrying out the day-to-day regulation and management of Petroleum Activities in the Special Regime Area. In doing so, the Designated Authority acts on behalf of Timor-Leste and Australia and reports to the Governance Board.
2. The Designated Authority shall:
 - (a) be the Timor-Leste statutory authority as determined by the member of the Government of Timor-Leste responsible for the petroleum sector to act as the Designated Authority;
 - (b) regulate the Special Regime Area according to Good Oilfield Practice;
 - (c) be financed from fees collected under the applicable Petroleum Mining Code and the Greater Sunrise Production Sharing Contract; and
 - (d) subject to Articles 7 and 8 of this Annex, exercise its powers and functions, as set out in this Article, without interference by any other entity and in accordance with this Treaty.
3. The Designated Authority shall have the following powers and functions:
 - (a) day-to-day regulation and management of Petroleum Activities in the Special Regime Area in accordance with this Treaty and its functions as outlined in the applicable Petroleum Mining Code and any regulations thereunder, except with respect to Strategic Issues;
 - (b) three times a year, meeting with and reporting to the Governance Board on:
 - (i) the exercise of its powers and functions, in accordance with the applicable regulatory framework;
 - (ii) progress on the preparation of the Development Plan and, once approved, progress against the Development Plan and schedule;
 - (iii) production and revenue data from the Greater Sunrise Fields;
 - (iv) updates on issues referred to the Dispute Resolution Committee, if any;
 - (v) the Greater Sunrise Contractor's compliance with regulatory standards, including its local content obligations as set out in this Treaty, the Development Plan and the Greater Sunrise Production Sharing Contract; and
 - (vi) safety, environmental and well-integrity management;
 - (c) pursuant to Article 9 of this Annex, powers and functions with respect to the Development Plan;
 - (d) entering into the Greater Sunrise Production Sharing Contract, subject to the approval of the Governance Board, in accordance with Articles 4 and 7(3)(b) of this Annex;
 - (e) supervising, managing and agreeing on non-material amendments to the Greater Sunrise Production Sharing Contract;
 - (f) agreeing material amendments to the Greater Sunrise Production Sharing Contract as defined in that Contract or terminating the Greater Sunrise Production Sharing Contract, subject to approval of the Governance Board in accordance with Article 7(3)(b) of this Annex;

- (g) approving assignments, production plans, lifting agreements and other technical documents and agreements relating to the Greater Sunrise Production Sharing Contract;
- (h) reporting annual income and expenditure, as these relate to the Special Regime Area, to the Governance Board;
- (i) accessing, consolidating and disseminating, on an annual basis, all information pertaining to the Greater Sunrise Fields' reserves based on information provided by the Greater Sunrise Contractor or as otherwise audited by the Designated Authority;
- (j) collecting revenues received from Petroleum Activities and Special Regime Installations prior to the Valuation Point on behalf of both Parties and distribution thereof;
- (k) auditing and inspecting the Greater Sunrise Contractor's books and accounts;
- (l) inspecting Special Regime Installations in the Special Regime Area;
- (m) ensuring compliance by the Greater Sunrise Contractor with its local content obligations in accordance with this Treaty, the Development Plan and the Greater Sunrise Production Sharing Contract, including by giving directions and instructions as necessary;
- (n) issuing regulations to protect the marine environment in the Special Regime Area and monitoring compliance with them, ensuring there is a contingency plan for combatting pollution from Petroleum Activities in the Special Regime Area, and investigating safety and environmental incidents in the Special Regime Area;
- (o) issuing regulations and developing and adopting standards and procedures on occupational health and safety for persons employed on Special Regime Installations that are no less effective than those standards and procedures that would apply to persons employed on similar structures in Timor-Leste and Australia;
- (p) requesting assistance from the appropriate authorities for search and rescue operations, security threats, air traffic services, anti-pollution prevention measures, and safety and environmental incidents, or the activation of emergency procedures, in accordance with international law;
- (q) establishing safety zones to ensure the safety of navigation and Special Regime Installations, in accordance with the Convention;
- (r) controlling movements into, within and out of the Special Regime Area of vessels, aircraft, structures, and other equipment employed in exploration for and exploitation of the Greater Sunrise Fields, consistent with Articles 17, 18 and 19 of this Annex;
- (s) pursuant to Article 21 of this Annex, powers and functions with respect to the decommissioning plan, including entry into and oversight of financial arrangements for the decommissioning plan;
- (t) oversight of the abandonment and decommissioning phase of the Greater Sunrise Fields;
- (u) authorising the construction, operation and use of Special Regime Installations, subject to the provisions in this Annex; and
- (v) any other powers or functions in respect of the Special Regime Area, including regulatory powers, conferred upon it by the Governance Board.

4. The Designated Authority shall refer all Strategic Issues as defined in Article 7(3) of this Annex to the Governance Board and, in the event of a dispute between the Designated Authority and the Greater Sunrise Contractor as to whether an issue is a Strategic Issue, either the Designated Authority or the Greater Sunrise Contractor may refer that issue to the Governance Board.
5. Within 14 days of a Strategic Issue being referred to the Governance Board, the Designated Authority and the Greater Sunrise Contractor may provide any relevant information concerning the issue and the Designated Authority may provide any recommendations on the issue.

Article 7: Governance Board

1. The Governance Board shall be comprised of two representatives appointed by Timor-Leste and one representative appointed by Australia. The representatives on the Governance Board shall not have any direct financial or other commercial interest in the operation of the Greater Sunrise Special Regime that would create any reasonable perception of, or actual, conflict of interest, and they shall disclose details of any material personal interest in connection with their position on the Governance Board.
2. The Governance Board shall have the following powers and functions:
 - (a) providing strategic oversight over the Greater Sunrise Special Regime;
 - (b) establishing and overseeing an assurance and audit framework for revenue verification and offshore petroleum regulation and administration. This shall include:
 - (i) issuing an annual 'Statement of Expectation' to frame the operation and management of the Greater Sunrise Special Regime to guide the work of the Designated Authority;
 - (ii) reporting requirements of the Designated Authority in accordance with Article 6(3)(b) of this Annex; and
 - (iii) engaging an independent qualified firm to conduct an annual audit in accordance with international auditing standards so as to provide a high level of assurance over the completeness and accuracy of revenues payable from Petroleum Activities in the Special Regime Area including monthly reporting, incorporating an explanation for variances between forecast and actual revenue;
 - (c) making decisions on Strategic Issues referred to it under Article 6(4) of this Annex, in accordance with paragraphs 5 and 6 of this Article;
 - (d) approving amendments to the Interim Petroleum Mining Code and any regulations thereunder;
 - (e) approving the final Petroleum Mining Code and any regulations thereunder, and any amendments thereto;
 - (f) other than as necessary for Strategic Issues, meet three times a year with the Designated Authority and receive reports under Article 6(3)(b) of this Annex; and
 - (g) conferring any additional powers and functions on the Designated Authority.
3. Subject to paragraph 4 of this Article, the following is an exhaustive list of Strategic Issues:

- (a) assessment and approval of a Development Plan pursuant to Article 9(2) of this Annex and any material change to a Development Plan as defined in that Development Plan, pursuant to Article 9(4) of this Annex;
 - (b) approval of the decision by the Designated Authority to enter into or terminate the Greater Sunrise Production Sharing Contract, or propose any material changes to that Contract as defined in that Contract;
 - (c) approval of, and any material change to, a decommissioning plan, in accordance with Article 21 of this Annex; and
 - (d) approval of the construction and operation of a Pipeline.
4. The Governance Board may add additional Strategic Issues to those listed in paragraph 3 of this Article.
 5. In making a decision on a Strategic Issue, the Governance Board shall give due consideration to all recommendations and relevant information provided by the Designated Authority and relevant information provided by the Greater Sunrise Contractor.
 6. All decisions of the Governance Board shall be made by Consensus, within 30 days or such other period as may be agreed with both the Designated Authority and the Greater Sunrise Contractor, and be final and binding on the Designated Authority and the Greater Sunrise Contractor. For the purposes of this Treaty "Consensus" means the absence of formal objection to a proposed decision.
 7. If the Governance Board has exhausted every effort to reach Consensus on a Strategic Issue, either the Designated Authority or the Greater Sunrise Contractor may refer that issue to the Dispute Resolution Committee for resolution. Nothing in this paragraph limits the Governance Board's own right to refer any Strategic Issue to the Dispute Resolution Committee.

Article 8: Dispute Resolution Committee

1. The Dispute Resolution Committee shall:
 - (a) be an independent body with a mandate to hear any matters referred to it under Article 7(7) or Article 9(2) of this Annex or any matters as otherwise agreed by the Designated Authority and the Greater Sunrise Contractor;
 - (b) be comprised of:
 - (i) one member appointed from each of the Parties (**Party Appointees**); and
 - (ii) a third independent member, who will act as Chair, to be selected by the Party Appointees when a matter is referred to the Dispute Resolution Committee from a list of approved experts selected and maintained by Timor-Leste and Australia and refreshed every three years, and in case of disagreement, by the Secretary-General of the Permanent Court of Arbitration;
 - (c) establish its own procedures;
 - (d) make all decisions in writing and by Consensus, or where Consensus cannot be reached, by simple majority, within 60 days or as otherwise agreed with the referring party or parties;
 - (e) in making any decision, provide a reasonable opportunity for the Designated Authority and the Greater Sunrise Contractor to submit any relevant information and give due consideration to any information so provided; and

- (f) have the power to request any information from the Designated Authority and/or the Greater Sunrise Contractor which it considers reasonably necessary to make its decision.
2. Members of the Dispute Resolution Committee shall not have any direct financial or other commercial interest in the operation of the Greater Sunrise Special Regime that would create any reasonable perception of, or actual, conflict of interest, and they shall disclose details of any material personal interest in connection with their position on the Dispute Resolution Committee. Serving members of the Governance Board shall not be members of the Dispute Resolution Committee.
 3. All decisions of the Dispute Resolution Committee shall be final and binding on the Designated Authority and the Greater Sunrise Contractor.

Article 9: Development Plan for the Greater Sunrise Fields

1. Production of Petroleum from the Greater Sunrise Fields shall not commence until a Development Plan, which has been submitted by the Greater Sunrise Contractor in accordance with the Greater Sunrise Production Sharing Contract and the process provided for in this Article, has been approved in accordance with this Article.
2. The process of assessing and approving a Development Plan for the Greater Sunrise Fields is as follows:
 - (a) the Development Plan shall be assessed against the criteria listed at paragraph 3 of this Article (**Development Plan Criteria**);
 - (b) the Greater Sunrise Contractor shall submit the Development Plan to both the Governance Board and the Designated Authority;
 - (c) the Designated Authority shall consider the Development Plan and shall provide its recommendations to the Governance Board as to whether it should be approved or rejected within 180 days of receipt, if practicable. During this period, the Designated Authority may exchange views and information with the Greater Sunrise Contractor regarding the Development Plan. Any amendments agreed between the Designated Authority and the Greater Sunrise Contractor may be included in the Development Plan prior to the Designated Authority's recommendation to the Governance Board;
 - (d) the Governance Board shall consider the Development Plan, the Designated Authority's recommendation and any other information submitted by the Designated Authority;
 - (e) if the Governance Board considers that the Development Plan is both in accordance with the approved Development Concept and meets the Development Plan Criteria, the Governance Board shall approve the Development Plan within 180 days of receipt, if practicable;
 - (f) if the Governance Board does not approve the Development Plan under paragraph 2(e) of this Article, the Development Plan is rejected and the Governance Board shall specify its reasons for not approving it to the Greater Sunrise Contractor and Designated Authority. Any of these parties may, at their discretion, refer the matter to the Dispute Resolution Committee within 15 days of the Governance Board's decision;
 - (g) the Dispute Resolution Committee shall review the Development Plan, the Designated Authority's recommendation and any other information submitted pursuant to this Article. The Dispute Resolution Committee shall determine whether the Development Plan meets the Development Plan Criteria within 90 days of referral of the matter, or such other period as may be agreed with the Greater Sunrise Contractor;

- (h) if the Dispute Resolution Committee determines that the Development Plan is in accordance with the approved Development Concept and meets the Development Plan Criteria, the Dispute Resolution Committee shall approve the Development Plan;
 - (i) if the Dispute Resolution Committee determines that the Development Plan either is not in accordance with the approved Development Concept, or does not meet the Development Plan Criteria, the Dispute Resolution Committee shall reject the Development Plan, specifying its reasons for doing so; and
 - (j) the Parties shall be bound by, and give effect to, the decision of the Governance Board or, if applicable, the Dispute Resolution Committee pursuant to this Article.
3. The criteria that shall apply to the assessment of any Development Plan under paragraph 2 of this Article are as follows:
- (a) the Development Plan supports the development policy, objectives and needs of each of the Parties, while at the same time providing a fair return to the Greater Sunrise Contractor;
 - (b) the project is commercially viable;
 - (c) the Greater Sunrise Contractor is seeking to exploit the Greater Sunrise Fields to the best commercial advantage;
 - (d) the project is technically feasible;
 - (e) the Greater Sunrise Contractor has, or has access to, the financial and technical competence to carry out the development of the Greater Sunrise Fields;
 - (f) the Development Plan is consistent with Good Oilfield Practice and, in particular, documents the Greater Sunrise Contractor's quality, health, safety and environmental strategies;
 - (g) the Development Plan demonstrates clear, measurable and enforceable commitments to local content through a local content plan, in accordance with Article 14 of this Annex;
 - (h) the Greater Sunrise Contractor could reasonably be expected to carry out the Development Plan during the specified period;
 - (i) the Greater Sunrise Contractor has, as applicable, entered into binding, arms-length arrangements for the sale and/or processing of gas, including liquefied natural gas, from the Greater Sunrise Fields or has provided sufficient details of any such processing and/or sale agreements to be entered into by affiliates of the Greater Sunrise Contractor or other companies; and
 - (j) the Greater Sunrise Contractor has provided summaries of, or where applicable, the project execution plan and the petroleum production plan, including relevant engineering and cost specifications, in accordance with the applicable regulatory framework and Good Oilfield Practice.
4. The Greater Sunrise Contractor may at any time submit, and if at any time the Designated Authority so decides may be required to submit, proposals to bring up to date or otherwise amend a Development Plan. All amendments of, or additions to, any Development Plan require prior approval of the Designated Authority, which in turn requires the approval of the Governance Board.

5. The Designated Authority shall require the Greater Sunrise Contractor not to change the status or function of any Special Regime Installation in any way except in accordance with an amendment to a Development Plan in accordance with paragraph 4 of this Article.

Article 10: Pipeline

1. A Pipeline which commences within the Special Regime Area and lands in the territory of Timor-Leste shall be under the exclusive jurisdiction of Timor-Leste. A Pipeline which commences within the Special Regime Area and lands in the territory of Australia shall be under the exclusive jurisdiction of Australia. The Party exercising exclusive jurisdiction has both rights and responsibilities in relation to the Pipeline.
2. The Party exercising exclusive jurisdiction under paragraph 1 of this Article shall cooperate with the Designated Authority in relation to the Pipeline to ensure the effective management and regulation of the Special Regime Area.
3. There shall be open access to the Pipeline. The open access arrangements shall be in accordance with good international regulatory practice. If Timor-Leste has exclusive jurisdiction over the Pipeline, it shall consult with Australia over access to the Pipeline. If Australia has exclusive jurisdiction over the pipeline, it shall consult with Timor-Leste over access to the Pipeline.

Article 11: Petroleum Mining Code

1. The Interim Petroleum Mining Code, including the interim regulations, as in force at the date of entry into force of this Treaty shall govern the development and exploitation of Petroleum from within the Greater Sunrise Fields, as well as the export of such Petroleum until such a time as a final Petroleum Mining Code is approved by the Governance Board.
2. The Governance Board shall coordinate with the Designated Authority, and shall endeavour to approve and issue a final Petroleum Mining Code within six months of the entry into force of this Treaty or, if such a date is not achieved, as soon as possible thereafter.

Article 12: Audit and Information Rights

1. For the purposes of transparency, the Greater Sunrise Contractor shall include in its agreements with the operators of the downstream facilities the necessary provisions to ensure that the Designated Authority has audit and information rights from the operators of downstream facilities, and from their respective affiliates, equivalent to those audit and information rights the Designated Authority has in respect to the Greater Sunrise Production Sharing Contract. In the event of a request by the Designated Authority, the Greater Sunrise Contractor shall consult with the operators of the downstream facilities with a view to providing access to metering facilities.
2. The rights mentioned in paragraph 1 of this Article are granted to ensure that the Designated Authority is able to verify the volume and value of natural gas.

Article 13: Applicable Law

Petroleum Activities in the Special Regime Area shall be governed by this Annex, the applicable Petroleum Mining Code and any regulations issued thereunder.

Article 14: Local Content

1. The Greater Sunrise Contractor shall set out its local content commitments during the development, operation and decommissioning of the Greater Sunrise Fields through a local content plan to be included as part of the Development Plan and the decommissioning plan.
2. The local content plan shall contain clear, measurable, binding and enforceable local content commitments, including to:
 - (a) improve Timor-Leste's workforce and skills development and promote employment opportunities and career progression for Timor-Leste nationals through capacity-building initiatives, training of Timor-Leste nationals and a preference for the employment of Timor-Leste nationals;
 - (b) improve Timor-Leste's supplier and capability development by seeking the procurement of goods and services (including engineering, fabrication and maintenance services) from Timor-Leste in the first instance; and
 - (c) improve and promote Timor-Leste's commercial and industrial capacity through the transfer of knowledge, technology and research capability.
3. The Greater Sunrise Contractor shall ensure that any subcontracts entered into for the supply of goods and services for the Special Regime Area give effect to its local content commitments.
4. Failure by the Greater Sunrise Contractor to meet its local content commitments shall be deemed as non-compliance and subject to the mechanisms and penalties referred to in the local content plan as agreed between the Designated Authority and the Greater Sunrise Contractor.
5. The Parties shall consult with a view to ensuring that the exercise of jurisdiction by either Party under Articles 17, 18 and 19 does not hinder the implementation of local content commitments referred to in this Article.

Article 15: Cooperation and Coordination

In the Special Regime Area, each Party shall, as appropriate, cooperate and coordinate with, and assist, the other Party, including in relation to:

- (a) search and rescue operations with respect to Special Regime Installations; and
- (b) surveillance activities with respect to Special Regime Installations.

Article 16: Exercise of Jurisdiction

1. In exercising jointly their rights as coastal States pursuant to Article 77 of the Convention, Timor-Leste and Australia exercise jurisdiction in accordance with the Convention with respect to:
 - (a) customs and migration pursuant to Article 17 of this Annex;

- (b) quarantine pursuant to Article 18 of this Annex;
 - (c) environmental protection, management and regulation;
 - (d) marine scientific research;
 - (e) air traffic services related to Special Regime Installations;
 - (f) security and establishment of safety zones around Special Regime Installations;
 - (g) health and safety;
 - (h) management of living resources; and
 - (i) criminal jurisdiction pursuant to Article 20 of this Annex.
2. The Parties agree to consult as necessary on the cooperative exercise of the jurisdictional competencies set out in paragraph 1 of this Article.
 3. The Parties have agreed to delegate the exercise of certain jurisdictional and regulatory competencies to the Designated Authority, as specified in this Treaty.

Article 17: Customs and Migration

1. The Parties may apply their customs and migration laws to persons, equipment and goods entering their territory from, or leaving their territory for, the Special Regime Area and adopt arrangements to facilitate entry and departure.
2. Limited liability corporations or other limited liability entities shall ensure, unless otherwise authorised by Timor-Leste or Australia, that persons, equipment and goods do not enter Special Regime Installations without first entering Timor-Leste or Australia, and that their employees and the employees of their subcontractors are authorised by the Designated Authority to enter the Special Regime Area.
3. Timor-Leste and Australia may apply customs and migration controls to persons, equipment and goods entering the Special Regime Area without the authority of either country and may adopt arrangements to co-ordinate the exercise of such rights.
4. Goods and equipment shall not be subject to customs duties where they are:
 - (a) entering the Special Regime Area for purposes related to Petroleum Activities; or
 - (b) leaving or in transit through either Timor-Leste or Australia for the purpose of entering the Special Regime Area for purposes related to Petroleum Activities.
5. Goods and equipment leaving the Special Regime Area for the purpose of being permanently transferred to either Timor-Leste or Australia may be subject to customs duties of that country.

Article 18: Quarantine

1. The Parties may apply their quarantine laws to persons, equipment and goods entering their territory from, or leaving their territory for, the Special Regime Area and adopt arrangements to facilitate entry and departure.

2. The Parties shall consult with a view to reaching agreement with each other before entering into a commercial arrangement with the Greater Sunrise Contractor with respect to quarantine.

Article 19: Vessels

1. Vessels of the nationality of Timor-Leste or Australia engaged in Petroleum Activities in the Special Regime Area shall be subject to the law of their nationality in relation to safety and operating standards and crewing regulations.
2. Vessels with the nationality of other countries engaged in Petroleum Activities in the Special Regime Area shall, in relation to safety and operating standards and crewing regulations, apply:
 - (a) the laws of Australia, if the vessels are operating from an Australian port; or
 - (b) the laws of Timor-Leste, if the vessels are operating from a Timor-Leste port.
3. Such vessels engaged in Petroleum Activities in the Special Regime Area that do not operate out of either Timor-Leste or Australia shall under the law of both Timor-Leste and Australia be subject to the relevant international safety and operating standards.
4. The Parties shall, promptly upon the entry into force of this Treaty and consistent with their laws, consult with a view to reaching the agreement required for swift recognition of any international seafarer certifications issued by the other Party, so as to allow their national seafarers to have access to employment opportunities aboard vessels operating in the Special Regime Area.

Article 20: Criminal Jurisdiction

1. A national or permanent resident of Timor-Leste or Australia shall be subject to the criminal law of that country in respect of acts or omissions occurring in the Special Regime Area connected with or arising out of Petroleum Activities, provided that a permanent resident of Timor-Leste or Australia who is a national of the other country shall be subject to the criminal law of that country.
2. Subject to paragraph 4 of this Article, a national of a third State, not being a national or permanent resident of either Timor-Leste or Australia, shall be subject to the criminal law of both Timor-Leste and Australia in respect of acts or omissions occurring in the Special Regime Area connected with or arising out of Petroleum Activities. Such a person shall not be subject to criminal proceedings under the law of either Timor-Leste or Australia if he or she has already been tried and discharged or acquitted by a competent tribunal or already undergone punishment for the same act or omission under the law of the other country or where the competent authorities of one country, in accordance with its law, have decided in the public interest to refrain from prosecuting the person for that act or omission.
3. In cases referred to in paragraph 2 of this Article, Timor-Leste and Australia shall, as and when necessary, consult each other to determine which criminal law is to be applied, taking into account the nationality of the victim and the interests of the country most affected by the alleged offence.
4. The criminal law of the flag State shall apply in relation to acts or omissions on board vessels, including seismic or drill vessels in, or aircraft in flight over, the Special Regime Area.
5. Timor-Leste and Australia shall provide assistance to and co-operate with each other, including through agreements or arrangements as appropriate, for the purposes of enforcement of criminal law under this Article, including the obtaining of evidence and information.

6. Both Timor-Leste and Australia recognise the interest of the other country where a victim of an alleged offence is a national of that other country and shall keep that other country informed to the extent permitted by its law, of action being taken with regard to the alleged offence.
7. Timor-Leste and Australia may make arrangements permitting officials of one country to assist in the enforcement of the criminal law of the other country. Where such assistance involves the detention of a person who under paragraph 1 of this Article is subject to the jurisdiction of the other country that detention may only continue until it is practicable to hand the person over to the relevant officials of that other country.

Article 21: Decommissioning

1. The Greater Sunrise Contractor shall submit to the Designated Authority a preliminary decommissioning plan and, in so far as possible, preliminary decommissioning cost estimate as part of the Development Plan.
2. As soon as practicable, but in any case no later than seven years after commencement of production of Petroleum in the Special Regime Area, the Greater Sunrise Contractor shall be required to submit to the Designated Authority a decommissioning plan and total estimate of decommissioning costs for approval in accordance with Articles 6(3)(s) and 7(3)(c) of this Annex, which shall be updated in accordance with the Development Plan and the applicable Petroleum Mining Code.
3. The Designated Authority and the Greater Sunrise Contractor shall enter into an agreement on the holding of decommissioning cost reserves to meet the costs of fulfilling decommissioning obligations. This agreement shall be incorporated into the Greater Sunrise Production Sharing Contract. Any reserves remaining after decommissioning shall be divided between the Parties in the same ratio as their upstream revenue share pursuant to Article 2 of this Annex.
4. Following Commercial Depletion of the Greater Sunrise Fields, the Parties shall consult with a view to reaching agreement on arrangements as necessary with regard to access and monitoring of any remaining structures, including partially remaining structures, for the purposes of environmental protection and compliance with either Party's domestic laws or regulations.

Article 22: Special Regime Installations

1. The Greater Sunrise Contractor shall inform the Designated Authority of the exact position of every Special Regime Installation.
2. For the purposes of exploiting the Greater Sunrise Fields and subject to Articles 17 and 18 of this Annex and to the requirements of safety, neither Government shall hinder the free movement of personnel and materials between Special Regime Installations and landing facilities on those structures shall be freely available to vessels and aircraft of Timor-Leste and Australia.

Article 23: Duration of the Greater Sunrise Special Regime

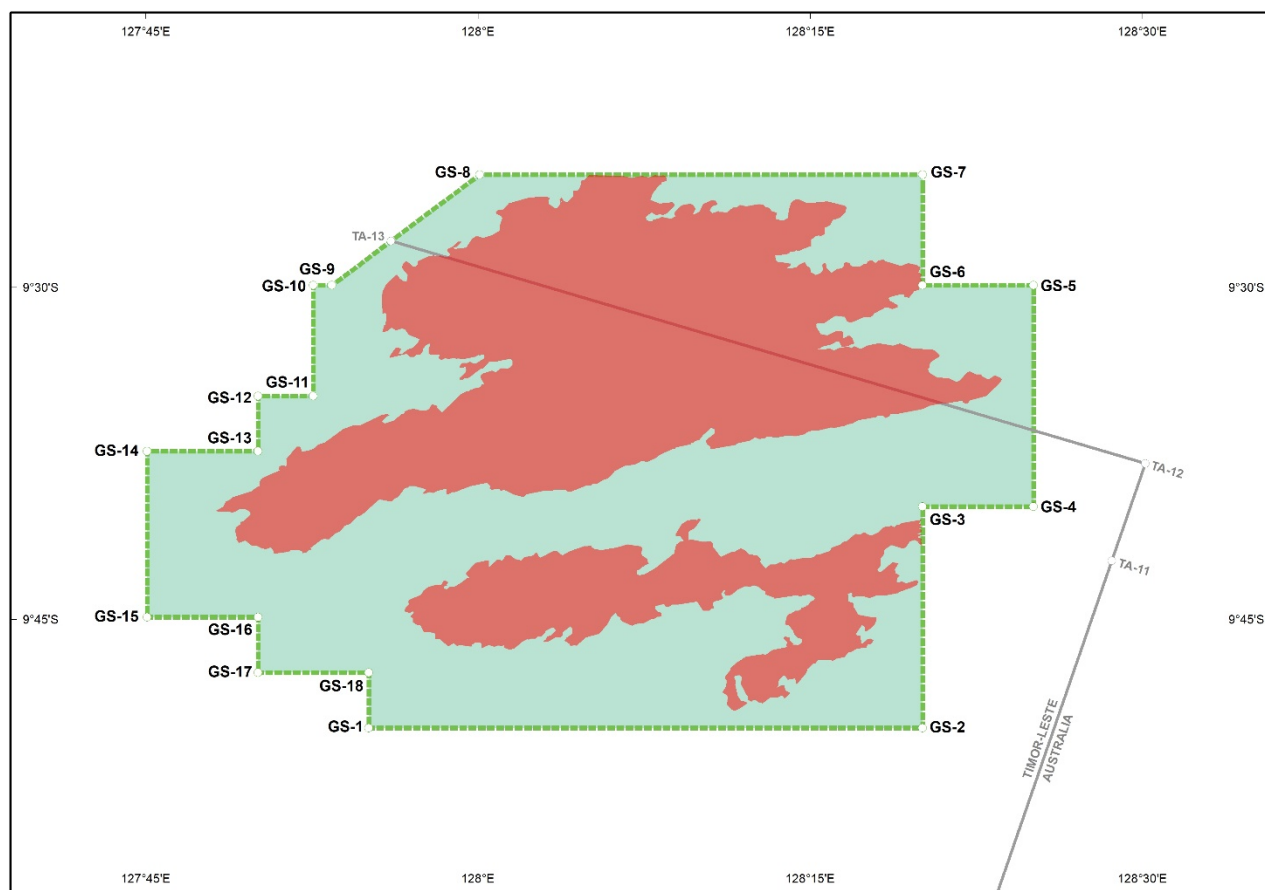
1. The Greater Sunrise Special Regime shall cease to be in force following the Commercial Depletion of the Greater Sunrise Fields.
2. The Parties shall confirm their common understanding that the Greater Sunrise Fields have been commercially depleted and that the Greater Sunrise Special Regime has ceased to be in force by an exchange of notes through diplomatic channels.

ANNEX C: Special Regime Area

- The Special Regime Area consists of the area of the continental shelf contained within the rhumb lines connecting the following points:

Point	Latitude	Longitude
GS-1	09° 49' 54.88"S	127° 55' 04.35"E
GS-2	09° 49' 54.88"S	128° 20' 04.34"E
GS-3	09° 39' 54.88"S	128° 20' 04.34"E
GS-4	09° 39' 54.88"S	128° 25' 04.34"E
GS-5	09° 29' 54.88"S	128° 25' 04.34"E
GS-6	09° 29' 54.88"S	128° 20' 04.34"E
GS-7	09° 24' 54.88"S	128° 20' 04.34"E
GS-8	09° 24' 54.88"S	128° 00' 04.34"E
GS-9	09° 29' 54.88"S	127° 53' 24.35"E
GS-10	09° 29' 54.88"S	127° 52' 34.35"E
GS-11	09° 34' 54.88"S	127° 52' 34.35"E
GS-12	09° 34' 54.88"S	127° 50' 04.35"E
GS-13	09° 37' 24.88"S	127° 50' 04.35"E
GS-14	09° 37' 24.89"S	127° 45' 04.35"E
GS-15	09° 44' 54.88"S	127° 45' 04.35"E
GS-16	09° 44' 54.88"S	127° 50' 04.35"E
GS-17	09° 47' 24.88"S	127° 50' 04.35"E
GS-18	09° 47' 24.88"S	127° 55' 04.35"E

- The following is a depiction of the outline of the Special Regime Area and the Greater Sunrise Fields for illustrative purposes only:



ANNEX D: Transitional Provisions

Article 1: Obligations under Previous Agreements

1. Pursuant to the terms of Article 22 of the Timor Sea Treaty and Article 27 of the International Unitisation Agreement, the Parties agree that any Petroleum Activities entered into under the terms of the Timor Sea Treaty or the International Unitisation Agreement shall continue under conditions or terms equivalent to those in place under those agreements as applicable.
2. Paragraph 1 of this Article shall apply to those Petroleum Activities undertaken or still to be undertaken pursuant to the terms of the following Production Sharing Contracts and/or licences:
 - (a) Production Sharing Contract JPDA 03-12;
 - (b) Production Sharing Contract JPDA 03-13;
 - (c) Production Sharing Contract JPDA 03-19;
 - (d) Production Sharing Contract JPDA 03-20;
 - (e) Production Sharing Contract JPDA 06-105;
 - (f) Production Sharing Contract JPDA 11-106;
 - (g) Retention Lease NT/RL2; and
 - (h) Retention Lease NT/RL4.
3. From the date of entry into force of this Treaty, the Parties agree that Timor-Leste shall receive all future upstream revenue derived from Petroleum Activities from the Bayu-Undan Gas Field and Kitan Oil Field.

Article 2: Arrangements for Existing Joint Petroleum Development Area Activities

1. The transitional arrangements for the Bayu-Undan Gas Field and the Kitan Oil Field are implemented in accordance with the Exchange of Correspondence on Bayu-Undan and Kitan Transitional Arrangements.
2. The Parties agree to maintain the fiscal regime relating to both the upstream and downstream components for the exploitation of the Bayu-Undan Gas Field, as applicable at the time this Treaty enters into force.
3. Goods and equipment leaving Timor-Leste or Australia for purposes related to Petroleum Activities relating to the Bayu-Undan Gas Field or the Kitan Oil Field shall not be subject to customs duties.
4. Nothing in this Treaty shall affect the ongoing application of commercial agreements entered into by the contractor for the Bayu-Undan Gas Field relating to the sale, transportation and/or processing of Petroleum from the Bayu-Undan Gas Field.
5. The relevant Timor-Leste statutory authority shall provide information to the Governance Board established under Article 7 of Annex B of this Treaty on an annual basis regarding the operation and decommissioning of the Bayu-Undan Gas Field and the decommissioning of the Kitan Oil Field. Such information shall include an update on progress against the relevant development plan, progress against the relevant decommissioning plan and information on any safety or environmental issues.

6. The Parties shall agree on arrangements for cooperation between their relevant regulatory authorities for the safe and efficient regulation of the Bayu-Undan Gas Field having regard to the integrated nature of the upstream and downstream component of that field.
7. The Parties shall agree on arrangements for cooperation between their relevant regulatory authorities for the purposes of the safe and efficient decommissioning of the Bayu-Undan Gas Field, including the Bayu-Undan Pipeline, consistent with terms of the Bayu-Undan Gas Field and Bayu-Undan Pipeline decommissioning plans.

Article 3: Bayu-Undan Pipeline

1. The Parties agree that Australia shall exercise exclusive jurisdiction over the Bayu-Undan Pipeline, including for the purposes of taxation. Australia has both rights and responsibilities in relation to the Bayu-Undan Pipeline.
2. The fiscal regime applicable to the Bayu-Undan Pipeline at the time this Treaty enters into force shall apply until the commencement of decommissioning in accordance with the Bayu-Undan Pipeline decommissioning plan.
3. In exercising its exclusive jurisdiction in accordance with paragraph 1, Australia shall cooperate with the relevant Timor-Leste statutory authority in relation to the Bayu-Undan Pipeline.

Article 4: Arrangements for other Existing Activities outside Joint Petroleum Development Area

1. The Parties recognise that pursuant to Articles 2 and 3 of this Treaty, the Buffalo Oil Field will be situated on the continental shelf of Timor-Leste.
2. The Parties agree that for the portion of Australian exploration permit WA-523-P, including the Buffalo Oil Field, which previously fell within the continental shelf of Australia and which now falls within the continental shelf of Timor-Leste pursuant to Article 2 of this Treaty, the security of title and any other rights held by the titleholder shall be preserved through conditions equivalent to those in place under Australian domestic law and as determined by agreement between the Parties and the titleholder.
3. Pursuant to paragraph 2 of this Article, Timor-Leste agrees that it will enter into a Production Sharing Contract with the titleholder to replace the Australian exploration permit WA-523-P in respect of that portion.
4. Timor-Leste shall indemnify Australia in respect of liability arising from an act or omission which contravenes its obligations under paragraphs 2 or 3 of this Article.
5. Upon entry into a Production Sharing Contract in accordance with paragraph 3 of this Article, the Parties affirm that Timor-Leste will not assume any liability arising out of, or in relation to, Australia's exercise of jurisdiction over the Buffalo Oil Field prior to entry into the Production Sharing Contract.

Article 1: Institution of Proceedings

Pursuant to Article 12 of this Treaty, either Party may submit the dispute to the arbitral procedure provided for in this Annex by written notification addressed to the other Party. The notification shall be accompanied by a statement of the claim and the grounds on which it is based.

Article 2: Constitution of Arbitral Tribunal

The arbitral tribunal shall, unless the Parties agree otherwise, be constituted as follows:

- (a) it shall consist of three members;
- (b) the Party instituting the proceedings shall appoint one member. The appointment shall be included in the notification of arbitration under Article 1 of this Annex;
- (c) the other Party shall, within 30 days of receipt of the notification of arbitration, appoint one member;
- (d) the Parties shall, within 60 days of the appointment of the second arbitrator, appoint the third member who shall act as President of the tribunal;
- (e) if an appointment is not made within the time limits provided for in paragraphs (c) and (d) of this Article, either Party may request the Secretary-General of the Permanent Court of Arbitration to make the necessary appointment. If the Secretary-General is a national of either Timor-Leste or Australia or is otherwise prevented from discharging this function, the role of the appointing authority shall be carried out by the Deputy Secretary-General or by the official of the International Bureau of the Permanent Court of Arbitration next in seniority who is not a national of either Timor-Leste or Australia; and
- (f) any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 3: Registry

Unless the Parties otherwise agree, the International Bureau of the Permanent Court of Arbitration shall act as registry to administer the arbitral proceedings.

Article 4: Procedure

1. The arbitral tribunal shall decide all questions in relation to its competence.
2. Unless the Parties otherwise agree, the arbitral tribunal shall determine its own procedure, assuring to each Party a full opportunity to be heard and to present its case.

Article 5: Duties of the Parties

The Parties shall facilitate the work of the arbitral tribunal and, in particular, in accordance with their law and using all means at their disposal, shall:

- (a) provide it with all relevant documents, facilities and information; and
- (b) enable it when necessary to call witnesses or experts and receive their evidence and to visit the localities to which the case relates.

Article 6: Expenses

Unless the arbitral tribunal decides otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the Parties in equal shares.

Article 7: Required Majority for Decisions

Decisions of the arbitral tribunal shall be taken by a majority vote of its members. The absence or abstention of one member shall not constitute a bar to the tribunal reaching a decision. In the event of an equality of votes, the President of the tribunal shall have a casting vote.

Article 8: Default of Appearance

If one of the Parties does not appear before the arbitral tribunal or fails to defend its case, the other Party may request the arbitral tribunal to continue the proceedings and to make its award. Absence of a Party or failure of a Party to defend its case shall not constitute a bar to the proceedings. Before making its award, the arbitral tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law.

Article 9: Award

The award of the arbitral tribunal shall be confined to the subject-matter of the dispute and state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the award. Any member of the tribunal may attach a separate or dissenting opinion to the award.

Article 10: Finality of Award

The award shall be final and without appeal. It shall be complied with by the Parties.

Article 11: Applicable Law

The arbitral tribunal shall reach its award in accordance with the terms of this Treaty and relevant international law.