# REPORTS OF INTERNATIONAL ARBITRAL AWARDS

# RECUEIL DES SENTENCES ARBITRAL

**Timor Sea Conciliation (Timor-Leste/Australia) --**
**Conciliation relative à la mer de Timor (Timor-Leste/Australie)**

19 September 2016 – 19 septembre 2016

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# PART III

## Timor Sea Conciliation (Timor-Leste/Australia)

### Decision on competence of 19 September 2016

### Report and recommendations of 9 May 2018

# PARTIE III

## Conciliation relative à la mer de Timor (Timor-Leste/Australie)

### Décision sur la compétence du 19 septembre 2016

### Rapport et recommandations du 9 mai 2018

# Timor Sea Conciliation (Timor-Leste/Australia)

# Conciliation relative à la mer de Timor (Timor-Leste/Australie)

*Decision on competence of 19 September 2016*

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PCA CASE Nº 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

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# DECISION ON AUSTRALIA'S OBJECTIONS TO COMPETENCE

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**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

## Representatives of the Parties

### Democratic Republic of Timor-Leste

*Agent*

— H.E. Hermenegildo Pereira, Minister of State and of the Presidency of the Council of Ministers

*Deputy Agent*

— Ms. Elisabeth Exposto, Chief Executive Officer, Maritime Boundary Office

*Representatives*

— H.E. Kay Rala Xanana Gusmão, Minister of Planning and Strategic Investment, Chief Negotiator for Maritime Boundaries

— H.E. Joaquim da Fonseca, Ambassador to the Court of St. James

— 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

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— Sir Michael Wood KCMG, 20 Essex Street Chambers

— Mr. Eran Sthoeger

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— Ms. Janet Legrand

— Mr. Stephen Webb

— Ms. Gitanjali Bajaj

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— Mr. Simon Fenby

— Ms. Sadhie Abayasekara

**Commonwealth of Australia**

*Agent*

— Mr. John Reid, 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

*Representatives*

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

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

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— Mr. Justin Gleeson SC, Solicitor General of Australia

— Sir Daniel Bethlehem KCMG QC, 20 Essex Street Chambers

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— Amelia Telec

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— Justin Whyatt

— Todd Quinn

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## Glossary of Defined Terms

| *Term* | *Definition* |
|---|---|
| **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 |

## 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 Unit-

ed 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.

## 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.

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[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).

[4] Procedural Meeting Tr. 125:5–6.

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, 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

[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.

[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,

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.

## B. 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]

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 future … .[12]

Accordingly, Australia considers that the Commission's competence is precluded by Article 281 of the Convention, which "recognises the CMATS agree-

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.

[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.

ment as a relevant choice by the Parties that that is the way their dispute is to be determined."[13]

18. Fourthly, Australia submits 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 conciliation proceedings until the Tribunal constituted to hear [a related arbitration concerning the validity of CMATS] has reached a decision."[18]

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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

[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.

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

[19] Competence Hearing Tr. (Final) 446:16–23.

[20] Competence Hearing Tr. (Final) 348:8–10.

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 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]

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[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.

[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.

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]

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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 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."

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[31] Competence Hearing Tr. (Final) 349:1–9.

[32] Competence Hearing Tr. (Final) 35:11–18.

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

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, 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. Sadhie 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 compulso-

[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, 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*

ry 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.
>
> 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

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*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. 193291.

[36] Emphasis added.

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

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[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.

exclusion on further 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 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

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[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.

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.

## 2. 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 Arbitration48* 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,

[48] Competence Hearing Tr. (Final) 333:12–14.

[49] Competence Hearing Tr. (Final) 356:10–19.

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 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.

## B. 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]

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[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.

## 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 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

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[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).

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 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.

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[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 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

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 Conference[64] 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,

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qualification in circumstances which appear to refer necessarily to the entry into force of the Convention as a whole, rather than for specific parties.

[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.

invoking the presumption of the non-retroactivity of treaties.[66] Ultimately, for the reasons set out in this section, the Commission agrees with the interpretation put forward by Timor-Leste.

### 2. 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 the Parties regarding CMATS between Sep-

[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).

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

tember 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.

## C. 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 Conven-

[68] Australia's Objection to Competence, paras. 165–167.

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

> tion and which do not affect the 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.

## D. 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 CMATS[73] 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 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*

[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.

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

*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.

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.

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[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) 394:515.

## E. 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:

> *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.

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

[83] Competence Hearing Tr. (Final) 70:10–13.

> 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.

## F. 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:

> 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.

[84] Notification, para. 5.

[85] Procedural Meeting Tr. 100:16–21.

> 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. If 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 2016[88] 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.

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

[86] Procedural Meeting Tr. 118:4–14.

[87] Procedural Meeting Tr. 118:18–23.

[88] Procedural Meeting Tr. 129:8–13.

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 12month 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.

* * *

Done this 19th day of September 2016,

[*Signed*]
Dr. Rosalie Balkin

[*Signed*]
Judge Abdul G. Koroma

[*Signed*]
Professor Donald McRae

[*Signed*]
Judge Rüdiger Wolfrum

[*Signed*]
H.E. Ambassador Peter Taksøe-Jensen
[Chairman]

[*Signed*]
Mr. Garth Schofield
[Registrar]

PCA CASE Nº 2016-10

In the matter of the Maritime Boundary Between Timor-Leste and Australia (The "Timor Sea 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

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# Report and Recommendations of the Compulsory Conciliation Commission between Timor-Leste and Australia on the Timor Sea

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**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

9 May 2018

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## Glossary of Defined Terms

| *Term* | *Definition* |
|---|---|
| 1958 Continental Shelf Convention | Convention on the Continental Shelf, 29 April 1958, 499 U.N.T.S. 311 |
| 1972 Seabed Treaty | 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, 9 October 1972, 974 U.N.T.S. 319 |
| 30 August Agreement | The Comprehensive Package Agreement reached between the Parties in Copenhagen on 30 August 2017 |
| ANPM | Autoridade Nacional do Petróleo e Minerais: Timor-Leste's National Authority for Petroleum and Minerals |
| Area A | The area of the Timor Sea established by the Timor Gap Treaty in which Australia and Indonesia exercised joint control over petroleum operations through a joint authority |
| Article 8(*b*) Arbitration | The arbitration proceedings initiated by Timor-Leste with Australia pursuant to the Timor Sea Treaty on 15 September 2015 |
| 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 U.N.T.S. 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 |
| Consolidated Draft Treaty | The Parties' consolidated draft treaty, circulated on 25 September 2017 |
| Convention | United Nations Convention on the Law of the Sea, 10 December 1982, 1833 U.N.T.S. 3 |
| Darwin LNG | The concept of developing Greater Sunrise by way of a pipeline to the LNG plant located at Wickham Point in Darwin, Australia |
| Final Draft Treaty | The Parties' agreed draft treaty, initialled by the Agents of the Parties at the Peace Palace in The Hague, the Netherlands on 13 October 2017 |

| *Term* | *Definition* |
|---|---|
| Greater Sunrise | The Sunrise and Troubadour gas fields, located in the Timor Sea |
| INTERFET | International Force for East Timor |
| Joint Venture | The Greater Sunrise Joint Venture |
| JPDA | The Joint Petroleum Development Area established pursuant to the Timor Sea Treaty |
| LNG | Liquefied natural gas |
| Parties | Timor-Leste and Australia |
| PCA | The Permanent Court of Arbitration |
| PCA Conciliation Rules | The *Optional Conciliation Rules* adopted by the Permanent Court of Arbitration on 1 July 1996 |
| Perth Treaty | Treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an Exclusive Economic Zone Boundary and Certain Seabed Boundaries, 14 March 1997, [1997] Australian Treaties (not in force) 4, *reproduced in* 36 I.L.M. 1053. |
| Petroleum Fund | The Petroleum Fund for Timor-Leste |
| PSCs | Production Sharing Contracts |
| Third UN Conference | Third United Nations Conference on the Law of the Sea |
| Timor Gap Treaty | Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia, 11 December 1989, 1654 U.N.T.S. 105 |
| Timor LNG | The concept of developing Greater Sunrise by way of a pipeline to the south coast of Timor-Leste and the construction of a new LNG plant at Beaço |
| Timor Sea Arrangement | The "Memorandum of Understanding of Timor Sea Arrangement" concluded between Australia and UNTAET on 5 July 2001 |
| Timor Sea Treaty | Timor Sea Treaty between the Government of East Timor and the Government of Australia, 20 May 2002, 2258 U.N.T.S. 3 |
| Timor Sea Treaty Arbitration | The arbitration proceedings initiated by Timor-Leste with Australia pursuant to the Timor Sea Treaty on 23 April 2013 |
| Timor-Leste | The Democratic Republic of Timor-Leste |

| *Term* | *Definition* |
|---|---|
| Treaty | The Treaty Between the Democratic Republic of Timor-Leste and Australia establishing their Maritime Boundaries in the Timor Sea, signed on 6 March 2018 |
| UN Conciliation Rules | United Nations Model Rules for the Conciliation of Disputes between States of 29 January 1996 |
| 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 U.N.T.S. 317 |
| UNTAET | United Nations Transitional Administration in East Timor |

## I. Introduction

1. This Report is issued in completion of the compulsory conciliation proceedings initiated by the Democratic Republic of Timor-Leste ("Timor-Leste") with the Commonwealth of Australia ("Australia") (together, the "Parties") pursuant to Article 298(1)(*a*)(i) and Annex V of the United Nations Convention on the Law of the Sea (the "Convention"). These proceedings concern a dispute between the Parties regarding the delimitation of a permanent boundary between their respective maritime zones in the Timor Sea. This is the first occasion on which the compulsory conciliation provisions of the Convention have been invoked.

2. On 11 April 2016, Timor-Leste decided to invoke the compulsory conciliation provisions of the Convention with the objective of achieving a permanent maritime boundary, following several unsuccessful attempts by the Parties to reach agreement on a permanent maritime boundary through negotiations since Timor-Leste's re-emergence as an independent State on 20 May 2002. Annex V of the Convention provides for the establishment of a five-member conciliation commission to "hear the parties, examine their claims and objections, and make proposals to the parties with a view to reaching an amicable settlement." Such a conciliation commission is entitled to "determine its own procedure", decide on any "disagreement as to whether a conciliation commission acting under [Section 2 of Annex V] has competence", and "draw the attention of the parties to any measures which might facilitate an amicable settlement of the dispute."

3. Between July 2016 and February 2018, the present conciliation commission (the "Commission") met regularly with the Parties: initially to resolve the objection by Australia to the Commission's competence and, thereafter, for extensive discussions regarding the delimitation of a maritime boundary and related matters. On 30 August 2017, on the basis of a proposal made by

the Commission, the Parties reached agreement on a comprehensive package of measures (the "30 August Agreement", see paragraphs 254 to 267 below), including (*a*) a maritime boundary; (*b*) a mechanism that would enable the possible adjustment of certain segments of that boundary, following the establishment by Timor-Leste and Indonesia of a boundary between their respective maritime zones; (*c*) a special regime for the joint development, exploitation, and management of the largest known resource, the Sunrise and Troubadour gas fields (collectively, "Greater Sunrise"), and the sharing of the resulting revenue; (*d*) a process to formalize the Parties' agreement in the form of a treaty; and (*e*) a process of intensive engagement between the Parties and the Greater Sunrise Joint Venture, the private holder of the commercial licence to Greater Sunrise (the "Joint Venture"), with the objective of reaching agreement on the overall approach, or development concept, to be taken for the development of the resource.

4. In order to assist the Parties in reaching a complete settlement and in light of the progress made in the proceedings, the Parties agreed that the mandate of the Commission should be extended beyond the one-year period envisaged in Annex V. In October 2017, with the assistance of the Commission, the Parties reached agreement on the text of a draft treaty formalizing the 30 August Agreement. A copy of this draft treaty was initialled at the Peace Palace in The Hague by the Agent of each Party and deposited with the Permanent Court of Arbitration, which serves as the Registry to the Commission. Between September and December 2017, the Parties met regularly with the Joint Venture regarding the development of Greater Sunrise. In December 2017, the Commission noted the Parties' conclusion that the two governments had been unable, on the basis of the information before them, to take a decision on the development concept for Greater Sunrise by 15 December 2017. Accordingly, between December 2017 and February 2018, the Commission proceeded 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 competing development concepts would be available to the Parties and to assist the Parties in taking a decision.

5. Pursuant to Annex V to the Convention, at the close of conciliation proceedings, the Commission is mandated to prepare a report, deposited with the Secretary-General of the United Nations, to record any agreements reached between the Parties or, in the absence of agreement, to communicate the Commission's "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."

6. In the present matter, the Commission's Report comes at the conclusion of a conciliation process in which the Parties have already reached a comprehensive agreement regarding their maritime boundaries in the Timor Sea. Under these circumstances, the Commission considers that its mandate no longer requires that it provide the Parties with recommendations concerning the resolution of their dispute. The Parties have, themselves, achieved a resolution of that dispute. Rather, the Commission considers that the purpose of this Report is to provide background

and context to the process through which the Parties' agreement was reached. While the Parties' Treaty stands on its own as the legal resolution of the dispute over their maritime boundaries, the Commission considers that both governments, as well as the peoples of Timor-Leste and Australia, will benefit from a neutral elaboration by the Commission of the manner in which this agreement was reached.

7. Accordingly, in the sections that follow, the Commission has set out the background to the dispute submitted to conciliation, the purpose of conciliation, the Commission's understanding of its mandate, the steps taken in the course of these proceedings, the positions held by each Party at the outset, and the Commission's engagement with the Parties regarding their positions. In this context, the Commission has set out the Comprehensive Package Agreement reached in Copenhagen on 30 August 2017 and the details of the Parties' further engagement on the development of Greater Sunrise. Finally, and conscious that this is the first occasion on which the conciliation provisions of the Convention have been invoked, the Commission has set out what, in its view, constituted the key elements of its engagement with the Parties that made possible the achievement of an agreement on maritime boundaries.

* * *

## II. Geography of the Area to be Delimited

8. Timor-Leste and Australia are neighbouring States, separated from one another by the Timor Sea at the nearest distance of approximately 243 nautical miles.

9. Timor-Leste consists of the eastern portion of the island of Timor, as well as the island of Atauro, to the north of Timor, the island of Jaco less than 1km off the eastern tip of the main island of Timor, and the enclave of Oe-Cusse Ambeno in the western portion of the island of Timor. The island of Timor is one of the easternmost of the Sunda Islands and was formed from the collision of the Australian and Eurasian continental plates. The land territory of Timor-Leste covers an area of approximately 15 thousand square kilometres.

10. Australia consists principally of the continent of Australia and surrounding islands. The land territory of Australia covers an area of approximately 7.7 million square kilometres.

11. The western portion of the island of Timor is part of Indonesia, where it forms the province of East Nusa Tenggara. Other islands of the Indonesian archipelago lie to the north and east of Timor, with the islands of Leti, Moa, and Lakor lying immediately to the east of Timor-Leste.

12. The Timor Sea lies between the Arafura sea to the east and the Indian Ocean to the west, and covers a relevant area of approximately 250 thousand square kilometres. The Timor Sea is generally quite shallow, with the exception of the Timor Trough, a topographical depression in which the ocean

floor descends abruptly to an average depth of 2,840 metres. The seabed of the Timor Sea is known to contain significant deposits of oil and gas.

13. The general geographic configuration of the two States and the region is set out in Map 1 [reproduced below].

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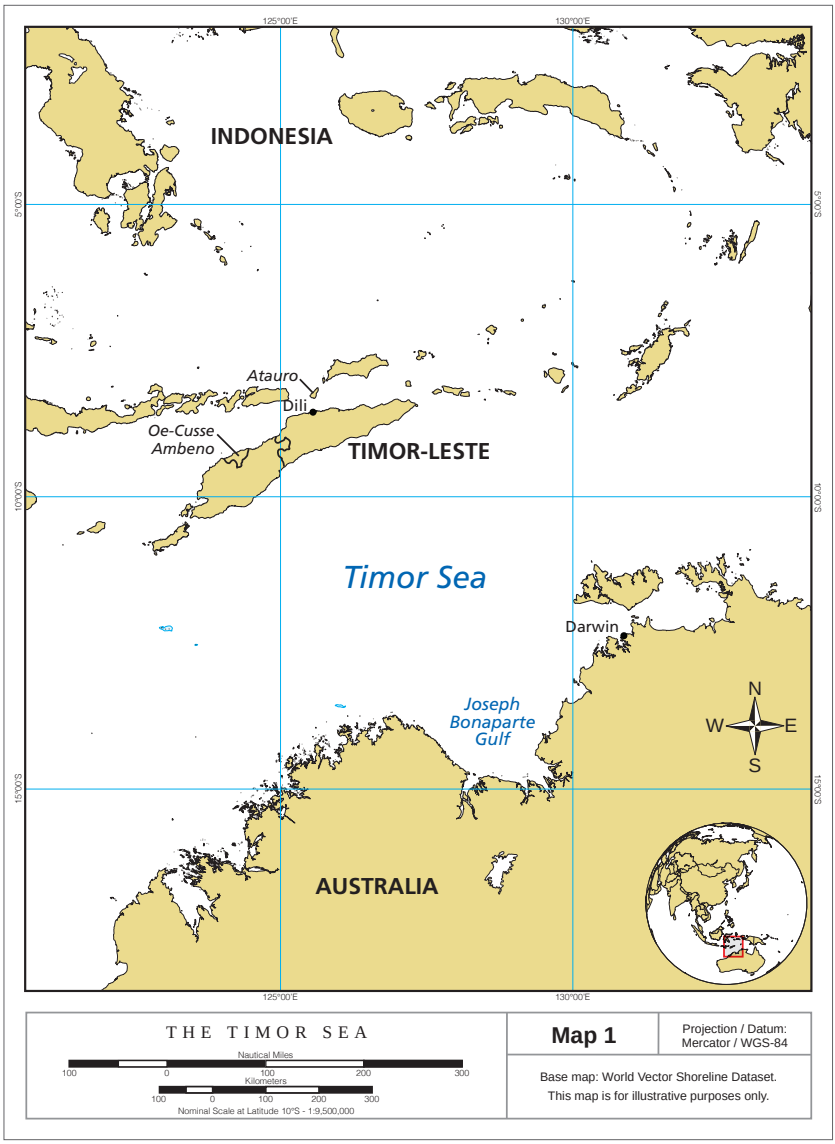

## III. Background to the Parties' Dispute Concerning Maritime Boundaries

14. In the following paragraphs, the Commission has set out the history of maritime boundaries in the Timor Sea and the background to the dispute at issue in these proceedings. In the Commission's view, an understanding of this background is essential to appreciating the Parties' dispute and the eventual agreement reached by the Parties. This is due both to the continuing relevance of existing treaties in the Timor Sea and to the prominence of history in the Parties' understanding of their dispute. Timor-Leste has made clear to the Commission that it considers the achievement of permanent maritime boundaries as part of the completion of its sovereignty as an independent State and essential to enable the resources of its territory to be developed for the benefit of the Timorese people.

* *

15. 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.[1]

16. As neighbours, the peoples of Timor-Leste and Australia have a long history of close relations, in particular with the Timorese fighting side-by-side with Australian and Dutch forces on the island of Timor during the Second World War. By the end of the war, over 40,000 Timorese lives were lost on home soil.

17. In the 1950s Australia and Portugal respectively asserted their rights over the continental shelf. On 11 September 1953, Australia issued a Proclamation, declaring its sovereign rights over the seabed and subsoil of the continental shelf contiguous to its coast.[2] On 21 March 1956, Portugal adopted legislation declaring the continental shelf adjacent to Portuguese territory to form part of the public domain of the State.[3]

18. On 29 April 1958, the First United Nations Conference on the Law of the Sea concluded with the adoption of the 1958 Convention on the Continental Shelf (the "1958 Continental Shelf Convention").[4]

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[1] *See generally* F.B. Durand, *History of Timor-Leste* (2016).

[2] Commonwealth of Australia Gazette, No. 56, 11 September 1953, *reproduced in* United Nations Legislative Series, Vol. 8, UN Doc. ST/LEG/SER.B/8 at p. 3 (1959).

[3] Act No. 2080 relating to the Continental Shelf, 21 March 1956, *reproduced in* United Nations Legislative Series, Vol. 8, UN Doc. ST/LEG/SER.B/8 at p. 16 (1959). Pursuant to Section V of the Act, "[t]his Act shall be applicable to the whole of Portuguese territory," which as defined by Article 1 of the Constitution of 1933, applicable in 1956, included the territory of Timor-Leste.

[4] Convention on the Continental Shelf, 29 April 1958, 499 U.N.T.S. 311.

19. Portugal ratified the 1958 Continental Shelf Convention on 8 January 1963; Australia on 14 May 1963.[5] This convention entered into force on 10 June 1964, in accordance with the terms of its Article 11.

20. On 9 October 1972, Australia and Indonesia concluded 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* (the "1972 Seabed Treaty").[6] In broad terms, the 1972 Seabed Treaty delimited the seabed between Australia and Indonesia along a line generally following the southern edge of the Timor Trough. The Timor Trough is a topographical depression in the floor of the Timor Sea, in which the ocean floor descends abruptly from relatively shallow depths to an average depth of 2,840 metres. The 1972 Seabed Treaty did not purport to delimit the seabed adjacent to what is now Timor-Leste, but anticipated that this would be the subject of a future treaty between Australia and Portugal. Article 3 of the 1972 Seabed Treaty anticipates the possible need to adjust certain portions of the Indonesia-Australia seabed boundary to the east and west of (then) Portuguese Timor, following the conclusion of further delimitation agreements in respect of the area.

21. Although Australia and Portugal engaged in some communications in the early 1970s concerning the continental shelf in the Timor Sea, no formal treaty negotiations were ever commenced.

22. In April 1974, the "Carnation Revolution" in Portugal initiated a transition to democracy in Lisbon and movement towards independence throughout Portugal's colonial territories.

23. In November 1975, the people of Timor-Leste declared their independence from Portugal. Promptly thereafter, Timor-Leste was occupied by the armed forces of Indonesia, which administered Timor-Leste as a province of Indonesia until 1999. The Indonesian occupation was strongly resisted by the Timorese people, and a long-running guerrilla conflict ensued. Conservative estimates put the loss of Timorese lives, both military and civilian, at over 100,000 during this period.[7]

24. Although Australia initially did not recognise Indonesia's annexation of Timor-Leste, on 20 January 1978 Australia recognised Timor-Leste as *de facto* part of Indonesia, stating that "the Government has decided that

[5] Instruments of Ratification or Accession, 499 U.N.T.S. 312 n. 1.

[6] 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, 9 October 1972, 974 U.N.T.S. 319.

[7] *See* Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR), *Chega! The Final Report of the Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR)*, p. 488 (31 October 2005). CAVR reached a minimum conservative estimate for the number of deaths between 1974 and 1999 of 102,800 persons (+/- 12,000). CAVR did not attempt to specify a maximum estimate, although it noted that deaths due to hunger and illness could have been as high as 183,000 persons. *See ibid*., p. 1338.

although it remains critical of the means by which integration was brought about it would be unrealistic to continue to refuse to recognise *de facto* that East Timor is part of Indonesia."[8]

25. In March 1978, Australia and Indonesia announced that they would begin negotiations on the delimitation of a seabed boundary in the area adjacent to the coast of Timor-Leste.[9]

26. In December 1978, the Minister for Foreign Affairs of Australia announced that Australia would grant *de jure* recognition of Indonesia's sovereignty over Timor-Leste early the next year through the formal commencement of negotiations on a boundary, stating that "[t]he negotiations when they start, will signify *de jure* recognition by Australia of the Indonesian incorporation of East Timor."[10] Formal boundary negotiations between Indonesia and Australia regarding the seabed adjacent to Timor-Leste began in February 1979.[11]

27. Protracted negotiations continued throughout the 1980s, and on 11 December 1989 Australia and Indonesia concluded the *Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia* (the "Timor Gap Treaty").[12] Rather than delimit a maritime boundary, the Timor Gap Treaty established a zone of cooperation and an area ("Area A") in which Australia and Indonesia would together exercise control over petroleum operations through a joint authority and share the resulting revenue equally. The Timor Gap Treaty also established two adjacent areas in which Australia and Indonesia, respectively, would exercise exclusive control over petroleum operations, but would nevertheless share ten percent of the resulting revenue with the other party.

28. On 10 December 1982, the Third United Nations Conference on the Law of the Sea concluded with the adoption of the Convention.[13]

29. On 16 November 1994, the Convention entered into force and thus became applicable as between Australia and Indonesia.[14]

30. On 14 March 1997, Australia and Indonesia concluded the *Treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an Exclusive Economic Zone Boundary and Certain Sea-*

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[8] Statement by the Minister for Foreign Affairs of Australia, Comm. Rec. 1978, 25–6, *reproduced in* "Australian Practice in International Law 1978–1980," *Australian Yearbook of International Law*, Vol. 8, p. 279 (1983).

[9] *See* Parliament of the Commonwealth of Australia, *East Timor: Final Report of the Senate Foreign Affairs, Defence and Trade References Committee*, para. 7.18 (December 2000).

[10] "East Timor Takeover to be Recognized", *Canberra Times*, 16 December 1978, p. 1.

[11] *See Senate Hansard*, 8 March 1979, p. 720, *reproduced in* "Australian Practice in International Law 1978–1980," *The Australian Year Book of International Law*, Vol. 8, pp. 281–282.

[12] Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia, 11 December 1989, 1654 U.N.T.S. 105.

[13] United Nations Convention on the Law of the Sea, 10 December 1982, 1833 U.N.T.S. 3.

[14] Instruments of Ratification or Accession, 1833 U.N.T.S. 397–398.

*bed Boundaries* (the "Perth Treaty").[15] In broad terms, the Perth Treaty delimits the water column between Australia and Indonesia in the Timor Sea. The delimitation line generally follows the median line between the two States, at some distance from the 1972 Seabed Treaty boundary. The treaty includes certain provisions in relation to areas in which Australian rights to the seabed are overlapped by Indonesian rights to the water column. The Perth Treaty has never entered into force, but the Commission was informed by Australia that its provisions are observed in practice by the governments of Australia and Indonesia.

31. On 30 August 1999, in a referendum supervised by the United Nations, the people of Timor-Leste voted in favour of independence from Indonesia.

32. The results of the referendum were immediately met with widespread violence, over one thousand deaths, the destruction of most of Timor-Leste's infrastructure, and the flight of the population from the capital of Dili. On 20 September 1999, international troops under the International Force for East Timor ("INTERFET") were deployed in Timor-Leste to help prevent further violence. This deployment was organized and led by Australia, which also contributed the largest contingent of forces to the international effort. On 25 October 1999, the United Nations established the United Nations Transitional Administration in East Timor ("UNTAET"). UNTAET assumed command of international military operations on 28 February 2000 and temporarily administered Timor-Leste until it became an independent State on 20 May 2002.

33. On 10 February 2000, Australia and UNTAET concluded an exchange of notes to continue the terms of the Timor Gap Treaty as between Australia and UNTAET (acting on behalf of Timor-Leste),[16] since the treaty had ceased to apply as between Australia and Indonesia following Indonesia's renunciation on 19 October 1999 of its claim to the territory of Timor-Leste.

34. On 5 July 2001, Australia and UNTAET concluded a *Memorandum of Understanding of Timor Sea Arrangement* (the "Timor Sea Arrangement").[17] The Timor Sea Arrangement established a Joint Petroleum Development Area (the "JPDA") with boundaries that correspond to Area A of the Timor Gap Treaty (the area of joint control). However, whereas the Timor Gap Treaty divided petroleum revenue from within Area A equally between Australia and Indonesia, the Timor Sea Arrangement provided for a 90:10 division, in favour of Timor-Leste, within the JPDA. The area of the JPDA and the location of Indonesia's boundaries with Australia are set out in Map 2 [reproduced on page 260].

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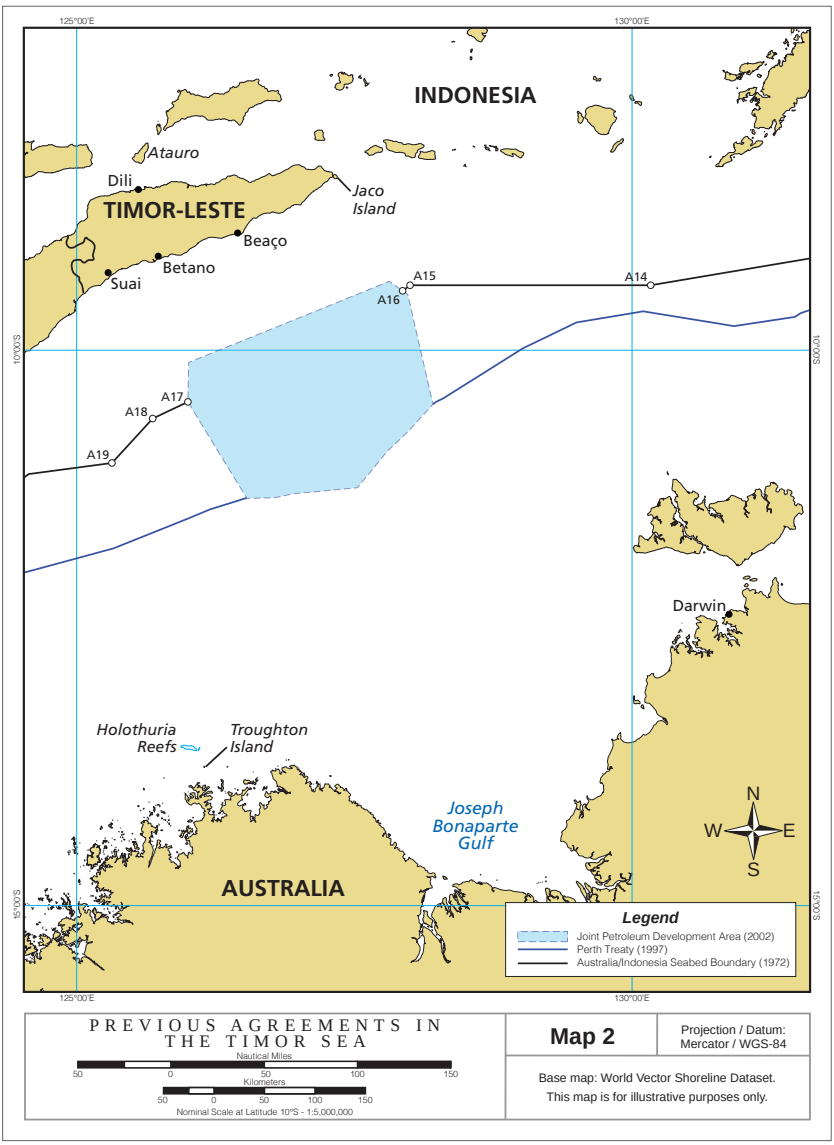
[15] Treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an Exclusive Economic Zone Boundary and Certain Seabed Boundaries, 14 March 1997, [1997] Australian Treaties (not in force) 4, *reproduced in* 36 I.L.M. 1053.

[16] Exchange of Notes constituting an Agreement between the Government of Australia and the United Nations Transitional Administration in East Timor (UNTAET) concerning the continued Operation of the Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia of 11 December 1989, 10 February 2000, [2000] A.T.S. 9.

[17] Memorandum of Understanding of Timor Sea Arrangement, 5 July 2001, *available at* <www.austlii.edu.au/au/other/dfat/special/MOUTSA.html>.

35. On 20 May 2002, 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").[18] In broad terms, the Timor Sea Treaty provided for the formal application as between Timor-Leste and Australia of the Timor-Sea Arrange-




[18] Timor Sea Treaty, 20 May 2002, 2258 U.N.T.S. 3.

ment, including the continued division of petroleum revenue on a 90:10 basis, pending the delimitation of a permanent maritime boundary. Through an exchange of notes on 20 May 2002, Timor-Leste and Australia agreed to provisionally continue the Timor Sea Arrangement, pending ratification of the Timor Sea Treaty.[19] The Timor Sea Treaty was ratified by Timor-Leste on 17 December 2002 and by Australia on 2 April 2003, and entered into force with retroactive effect to the date of signature, *i.e.*, 20 May 2002.[20]

36. In Annex E of the Timor Sea Treaty, Timor-Leste and Australia agreed "to unitise the Sunrise and Troubadour deposits (collectively known as 'Greater Sunrise') on the basis that 20.1% of Greater Sunrise lies within the JPDA. Production from Greater Sunrise shall be distributed on the basis that 20.1% is attributed to the JPDA and 79.9% is attributed to Australia." On this basis, on 6 March 2003, Timor-Leste and Australia signed 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") with respect to Greater Sunrise.[21] Notwithstanding this division of Greater Sunrise, the Unitisation Agreement recorded that "Australia and Timor-Leste have, at the date of this agreement, made maritime claims, and not yet delimited their maritime boundaries, including in an area of the Timor Sea where Greater Sunrise lies" and further provided that nothing in the agreement could be interpreted as prejudicing the position of either Party with respect to maritime claims and boundaries.

37. Following the signature of the Unitisation Agreement and ratification of the Timor Sea Treaty, Timor-Leste and Australia began negotiations on the establishment of a permanent maritime boundary, with initial meetings in November 2003 and April 2004. The focus of these negotiations changed, however, leading to the signature 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").[22] In broad terms, 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 within the JPDA; and (*c*) provided that revenues derived directly from the production of petroleum from Greater Sunrise would be shared equally between

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[19] Exchange of Notes Constituting an Agreement between the Government of Australia and the Government of the Democratic Republic of East Timor Concerning Arrangements for Exploration and Exploitation of Petroleum in an Area of the Timor Sea between Australia and East Timor, 20 May 2002, [2002] A.T.S. 11.

[20] Resolução No. 2/2003 de 1 de Abril Que Ratifica o Tratado do Mar de Timor entre o Governo de Timor-Leste e o Governo da Austrália, Assinado em 20 de Maio de 2002 (Aprovada em 17 de Dezembro de 2002); Petroleum (Timor Sea Treaty) Act 2003, No. 9, 2003 (Assented to 2 April 2003).

[21] 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 U.N.T.S. 317.

[22] Treaty between Australia and the Democratic Republic of Timor-Leste on certain maritime arrangements in the Timor Sea, 12 January 2006, 2483 U.N.T.S. 359.

the two States (rather than according to the percentages set out in the Timor Sea Treaty and Unitisation Agreement). CMATS also included in Article 4 a moratorium on the settlement of permanent maritime boundaries.[23]

38. CMATS and the Unitisation Agreement were both ratified and entered into force on 23 February 2007.[24]

* *

39. Through the various agreements concluded between Australia and UNTAET and between Australia and Timor-Leste, Timor-Leste agreed to continue existing contracts and licences for petroleum operations issued to private actors pursuant to the Timor Gap Treaty on equivalent terms.

40. To date, the largest petroleum development within the JPDA has involved gas and condensate from the Bayu-Undan field. Discovered in 1995, Bayu-Undan commenced commercial production of condensate and liquid petroleum gas (LPG) in 2004. In 2006, the Bayu-Undan Joint Venture completed a 500 km pipeline to supply natural gas to the newly established plant for liquefied natural gas ("LNG") at Wickham Point in Darwin, Australia. As of early 2017, Bayu-Undan had generated approximately US$23.5 billion in upstream revenue for Timor-Leste and approximately US$2.4 billion in upstream revenue for Australia. The precise quantification of downstream economic benefits, which have largely accrued to Australia, is the subject of some debate. Production from Bayu-Undan is expected to continue until 2022.

41. Other petroleum operations within the JPDA have been undertaken on a smaller scale at the Kitan, Kuda Tasi, Jahal, and Elang Kakatua-Kakatua North oil fields. Although CMATS and the Unitisation Agreement were intended to facilitate the development of Greater Sunrise, no agreement on the development concept for Greater Sunrise was reached prior to these proceedings and exploitation of the Sunrise and Troubadour fields has not yet commenced.

42. Timor-Leste has allocated all of the revenue derived from petroleum operations to the Petroleum Fund for Timor-Leste (the "Petroleum Fund"), intended to "contribute to a wise management of the petroleum resources for the benefit of both current and future generations."[25] Pursuant to the relevant legislation, the Parliament of Timor-Leste may appropriate funds from the Petroleum Fund and

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[23] The text of Article 4 of CMATS is reproduced and analyzed at paragraphs 59 and following of the Commission's *Decision on Competence*, included at Annex 9 of this Report.

[24] Resolução do Parlamento Nacional No. 4/2007 de 8 de Março Que Ratifica o Tratado entre o Governo da República Democrática de Timor-Leste e o Governo da Austrália sobre Determinados Ajustes Marítimos no Mar de Timor (Aprovada em 20 de Fevereiro de 2007), *published in* Jornal da República, Serie I, No. 4 at p. 1692; Resolução do Parlamento Nacional No. 5/2007 de 8 de Março Que Ratifica o Acordo Entre o Governo da Austrália e o Governo da República Democrática de Timor-Leste Relativo a Unitização dos Campos do Sol Nascente e do Travador (Aprovada em 20 de Fevereiro de 2007) *published in* Jornal da República, Serie I, No. 4 at p. 1699; Minister for Foreign Affairs of Australia, "Entry into Force of Greater Sunrise Treaties with East Timor," Media Release.

[25] Petroleum Fund Law, Law No. 9/2005 of 3 August 2005, *as amended by* First amendment to Law no. 9-2005, of 3rd August, Petroleum Fund Law, Law No. 12/2011 of 19 September 2011.

has done so to supplement the government budget in recent years. Revenue from the Petroleum Fund constituted 82 percent of the government budget in 2016.

43. Over the same period, Australia authorized the development of the Corallina, Laminaria, and Buffalo fields located immediately to the west of the JPDA, as permitted under Article 4(2) of CMATS. The locations of known petroleum resources in the relevant portion of the Timor Sea are shown on Map 3 [reproduced below].

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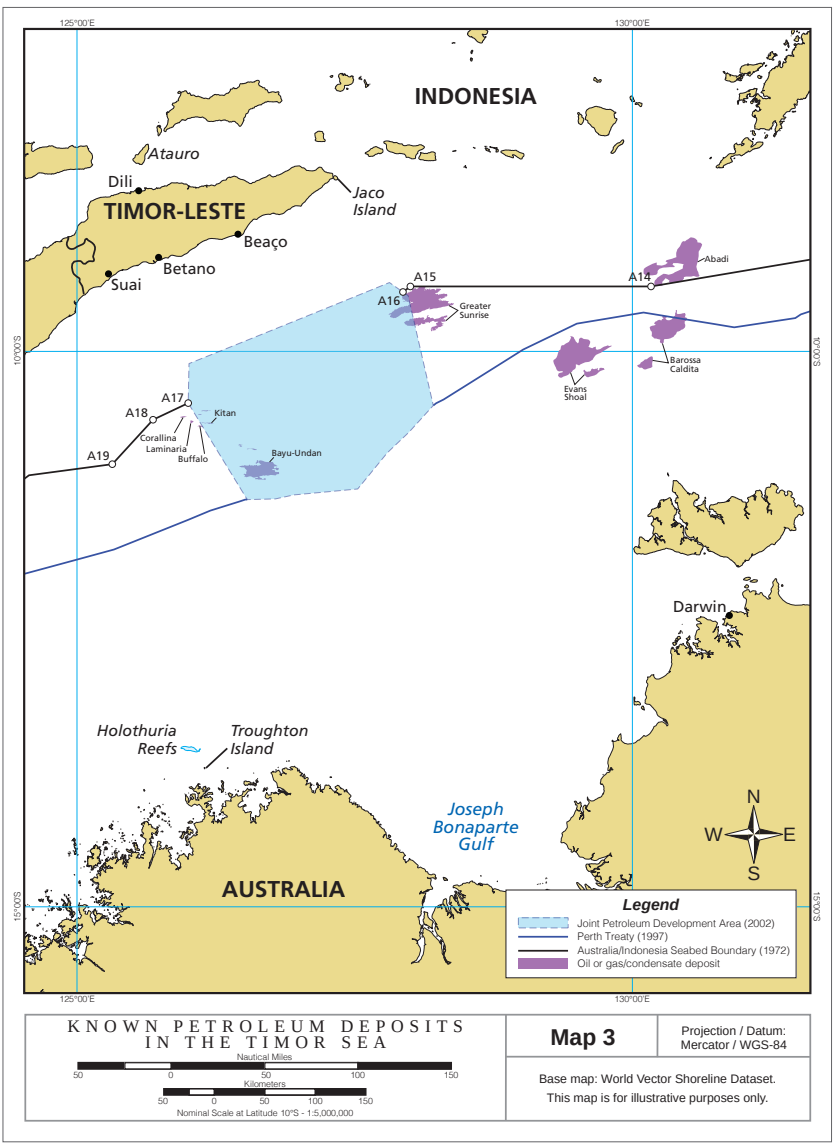

44. On 8 January 2013, Timor-Leste acceded to the Convention, with effect as from 7 February 2013.[26]

45. On 23 April 2013, Timor-Leste initiated arbitration proceedings against Australia pursuant to the dispute resolution provisions of the Timor Sea Treaty (the "Timor Sea Treaty Arbitration").[27] The Commission was informed that the subject matter of the arbitration generally concerned the circumstances under which CMATS was concluded and, correspondingly, the validity of that treaty, including its extension of the life of the Timor Sea Treaty. The Commission was also informed that the arbitration proceedings were the subject of several suspensions while the Parties pursued the possibility of settlement, such that they remained pending at the commencement of these conciliation proceedings.

46. On 17 December 2013, Timor-Leste initiated proceedings against Australia before the International Court of Justice with regard to the seizure and subsequent detention of certain documents and data from the offices of one of Timor-Leste's legal advisers in Canberra. According to Timor-Leste, the seized documents and data contained correspondence between the Government of Timor-Leste and its legal advisers relating to the Timor Sea Treaty Arbitration. On 3 March 2014, the Court indicated provisional measures, and on 25 March 2015, Australia indicated that it wished to return the documents and data in question. Timor-Leste thereafter discontinued the proceedings on 11 June 2015.

47. On 15 September 2015, Timor-Leste initiated arbitration proceedings against Australia pursuant to the dispute resolution provisions of the Timor Sea Treaty (the "Article 8(*b*) Arbitration").[28] The Commission was informed that the subject matter of the arbitration generally concerned whether the provision of the Timor Sea Treaty giving Australia jurisdiction over any pipeline landing in Australia should be understood as conveying exclusive jurisdiction and precluding the exercise of jurisdiction by Timor-Leste over portions of the pipeline lying within the JPDA.

48. Both the *Timor Sea Treaty Arbitration* and *Article 8(b) Arbitration* were subsequently suspended and then terminated in the context of the present proceedings (see paragraphs 96 and 106 below).

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[26] United Nations Convention on the Law of the Sea, Accession by Timor-Leste, 8 January 2013, U.N.T.S. 1833, I-31363; Republicação Resolução do Parlamento Nacional No. 17/2012 de 27 de Dezembro Ratifica, para Adesão, a Convenção das Nações Unidas sobre o Direito do Mar e o Acordo Relativo à Aplicação da Parte XI da mesma Convenção, adotado pela Assembleia Geral das Nações Unidas em 28 de Julho de 1994, *published in* Jornal da República, Serie I, No. 4 at p. 1.

[27] *Arbitration under the Timor Sea Treaty (Timor-Leste v. Australia)*, PCA Case No. 2013–16. Publicly available details concerning the arbitration may be found at <pca-cpa.org/en/cases/37/>.

[28] *Arbitration under the Timor Sea Treaty (Timor-Leste v. Australia)*, PCA Case No. 2015–42. Publicly available details concerning the arbitration may be found at <pca-cpa.org/en/cases/141/>.

49. Timor-Leste has made substantial progress in developing the country and establishing a stable economic and political environment in the 15 years since it achieved independence. Despite these accomplishments, many challenges remain. Timor-Leste has emphasized to the Commission that it sees its petroleum resources, and in particular Greater Sunrise, as critical to its Strategic Development Plan 2011–2030 and its intention to build up a petroleum sector on the South Coast as part of the overall economic development of the country.

50. For its part, Australia has made clear to the Commission that it views the stability and prosperity of its regional neighbours as matters of high importance and very much in Australia's interest. Australia is conscious that the dispute over maritime boundaries has negatively affected its broader relationship with Timor-Leste and inhibited the development of natural resources that would benefit both the Australian and Timorese peoples. Australia has come to see these proceedings as an opportunity to establish its partnership with Timor-Leste on a new footing. The achievement of agreement on maritime boundaries may provide a foundation for a strong and effective partnership for the future.

* * *

## IV. The Commission's Mandate, Establishment, and Rules of Procedure

### A. The Purpose of Conciliation and the Commission's Mandate

51. Compulsory conciliation proceedings are governed by Annex V to the Convention. In such proceedings, a neutral commission is established to hear the parties, examine their claims and objections, make proposals to the parties, and otherwise assist the parties in reaching an amicable settlement. Conciliation is not an adjudicatory proceeding, nor does a conciliation commission have the power to impose a legally binding solution on the parties; instead, a conciliation commission may make recommendations to the parties.[29]

52. Conciliation has a long tradition in international law and developed in the early twentieth century from both the fact-finding commissions of enquiry and good offices procedures envisaged under the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes.[30] Provisions for conciliation were included in many of the bilateral conventions for the settlement of disputes concluded during the 1920s and 1930s, and in 1945 conciliation was recognized in Article 33 of the Charter of the United Nations among the

[29] Convention, Annex V, Art. 7(2).

[30] For a general overview of the history of conciliation, see S.M.G. Koopmans, *Diplomatic Dispute Settlement: The Use of Inter-State Conciliation* (2008); J.P. Cot, *La conciliation internationale* (1968).

peaceful means for the settlement of international disputes.[31] Other multilateral treaties, including the Vienna Convention on the Law of Treaties and the UN Convention on the Law of the Sea, introduced the possibility of compulsory conciliation—conciliation in which participation in the process is mandatory but the results are nevertheless non-binding—as an alternative, for example, for issues considered too sensitive to submit to binding dispute settlement.[32] Procedurally, conciliation seeks to combine the function of a mediator with the more active and objective role of a commission of inquiry.[33]

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[31] Charter of the United Nations, Art. 33.

[32] On the adoption of compulsory conciliation as a compromise procedure for the resolution of sea boundary disputes pursuant to the Convention, see generally S. Rosenne & L. Sohn (eds.), *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. V, pp. 12–15, 109–114 (M. Nordquist, gen. ed. 2012).

During the preparation of the Convention, extensive consideration was given to the categories of disputes that would be subject to procedures entailing a binding decision. Sea boundary disputes were identified early in the conference as a category of disputes for which agreement on third-party adjudication was unlikely to be broadly acceptable, and a proposal for an optional exemption for such disputes was proposed in 1974. *See* Australia, Belgium, Bolivia, Colombia, El Salvador, Luxembourg, Netherlands, Singapore and United States of America, "Working Paper on the Settlement of Law of the Sea Disputes," UN Doc. A/CONF.62/L.7 (27 August 1974), *Official Records of the Third United Nations Conference on the Law of the Sea, Volume III (Documents of the Conference, First and Second Sessions)*, p. 85 at p. 92. Early versions of what became Article 298 permitted States to exclude disputes relating to sea boundary delimitation from the dispute resolution provisions of the Convention, but required States exercising this option to "indicate therein a regional or other third party procedure, entailing a binding decision which it accepts for the settlement of such disputes." Revised Single Negotiating Text, Part IV, Art. 18, UN Doc. A/CONF.62/WP.9/Rev.2 (23 November 1976), *Official Records of the Third United Nations Conference on the Law of the Sea, Volume VI (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fifth Session)*, p. 144 at p. 148.

This approach, however, met with objections both from States opposed to the compulsory submission of sea boundary disputes to any form of binding dispute settlement, as well as from States opposed to any exception of boundary disputes from the dispute resolution provisions otherwise applicable pursuant to the Convention. An informal note from the President of the Conference recorded that "[t]he main criticism of article 18 centered around paragraph l(*a*) in relation to sea boundary delimitations. The opposing positions were on the one hand that the words 'entailing a binding decision' should be deleted, and on the other, that boundary delimitations be brought totally within the compass of section II of part IV." *Informal Note from the President of the Third United Nations Conference on the Law of the Sea to All Delegations*, para. 3 (25 March 1977) *reproduced in* S. Rosenne & L. Sohn (eds.), *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. V, p. 112 (M. Nordquist, gen. ed. 2012).

A special Negotiating Group was thereafter created to give particular attention to the dispute resolution provisions applicable to the resolution of boundary disputes. In 1979, the Chairman of this Negotiating Group 7 noted his "understanding that only a proposal based upon the procedure of compulsory conciliation is consistent with a realistic view of the possibilities, if any, to reach a compromise on this controversial issue." *Report of the Chairman of Negotiating Group 7*, UN Doc. NG7/45 (22 August 1979) in *Reports to the Plenary Conference*, UN Doc. A/CONF.62/91, *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XII (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Resumed Eighth Session)*, p. 71 at p. 107. Compulsory conciliation for sea boundary disputes was then incorporated into the negotiating text in 1980. *Informal Composite Negotiating Text, Revision 2*, Art. 298, UN Doc. A/CONF.62/WP.10/Rev.2 (11 April 1980).

[33] *See* J.P. Cot, *La conciliation internationale*, pp. 29–57 (1968). As a method for the pacific settlement of international disputes, conciliation emerged from the combination of elements of

53. As an entity established pursuant to the Convention, the Commission looked first to that instrument to define the basis for its engagement with the Parties. In that respect, the Convention provides that the delimitation of a maritime boundary for the continental shelf and exclusive economic zone "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."[34]

54. Annex V to the Convention, in turn, defines a commission's objectives and establishes certain principles for the conduct of the proceedings. Articles 4 through 7 of Annex V provide as follows:

> *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.

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mediation and of international commissions of enquiry. Historically, international mediation was generally carried out by another sovereign power. Thus, while focused on the achievement of an amicable settlement, mediation was generally characterized by the independent political authority (and, potentially, interest in the dispute) of the mediating power. International commissions of enquiry, in contrast, largely replicated the arbitration procedures of the 1899 Hague Convention for the Pacific Settlement of International Disputes, but were focused solely on the determination of disputed facts. In contrast to mediation, the hallmark of a commission of enquiry was the absence of any independent political authority or interest in the dispute and the commission's reliance instead on its expertise and judgment in considering the facts at hand. In practice, early commissions of enquiry, as in the *Dogger Bank Case*, were sometimes mandated to go beyond a strict presentation of facts and address the apportionment of responsibility between the parties, *de facto* engaging in conciliation. This combination of inquiry, combined with recommendations as to the amicable settlement of the dispute was then codified as conciliation in the many bilateral treaties on the resolution of international disputes concluded in the 1920s and 1930s.

[34] Convention, Arts. 74(1), 83(1).

*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.

55. The full text of Annex V is attached as Annex 2 to this Report.

56. The Commission sought to elaborate on these principles in the preparation of its Rules of Procedure, which it adopted following consultations with the Parties in July 2016. The development of the Commission's Rules of Procedure was usefully informed by reference to the *Optional Conciliation Rules* adopted by the Permanent Court of Arbitration on 1 July 1996 (the "PCA Conciliation Rules") and to the *United Nations Model Rules for the Conciliation of Disputes between States* of 29 January 1996 (the "UN Conciliation Rules"). A copy of the Commission's Rules of Procedure is attached as Annex 8 to this Report.

57. In preparing the Rules of Procedure, the Commission and the Parties sought to maintain a flexible and informal approach to enable the Commission to follow the path that it considered most likely to lead to an amicable settlement. In particular, the Parties agreed that the Commission should not hesitate to meet with the Parties separately. In practice, most of the Commission's meetings with the Parties were held separately, and the Commission considers that its most important discussions with each Party would not have occurred in a joint setting.

58. The Parties further agreed that the Commission could authorize its Chairman or a delegation of the Commission to confer or meet with either Party and report to the full Commission. In the Commission's view, this flexibility was essential to the process in two respects: first, in enabling the Commission's engagement with the Parties to continue between meetings through regular, informal discussions by telephone and e-mail exchanges and, second, by facilitating discrete discussions with the political leadership of each Party that could not have occurred in a larger or more formal setting. The Commission also made extensive use of the Registry as a channel for informal communications with the Parties, both between and on the margins of the Commission's meetings with the Parties.

59. In order to enable an open discussion with each Party, the Commission sought to ensure that the Parties' legal positions would not be jeopardized by their participation in the proceedings and that the Parties would have complete control over the further disclosure, either to the other Party or to

the public, of anything they revealed in the course of the conciliation. In order to preserve the Parties' legal positions, Article 25 of the Rules of Procedure prohibits the members of the Commission from any involvement—whether as arbitrator, counsel, representative, or witness—in any subsequent judicial or arbitral proceedings in respect of a dispute that is the subject of the conciliation proceedings.[35] Article 26 goes further and builds on corresponding provisions of the PCA Conciliation Rules to ensure that documents or materials introduced in the conciliation proceedings, or views expressed in the course of discussions with the Commission, may not be used in any such subsequent proceedings. The Rules of Procedure also adopt the provision of the UN Conciliation Rules that expressly provides that a Party may accept a settlement on the basis of the Commission's recommendations without being considered to have accepted the legal or factual premise of those recommendations.

60. With respect to confidentiality, the Commission's Rules of Procedure establish comprehensive procedures in Article 16 and in Article 18(6) to ensure that the Parties would retain control over the further disclosure of information and documents made available to the Commission. These provisions on transparency and confidentiality were extensively discussed during the Commission's July 2016 procedural meeting with the Parties. In crafting these provisions, the Commission sought to balance two competing considerations. On the one hand, the Commission considered that engagement with the Parties could not be effective if conducted in a public setting, in which the Parties' comments and positions would be intended as much for public or domestic consumption as for a frank discussion with the Commission. The Commission also anticipated that each Party would be less forthcoming with the Commission if there were any significant risk that documents or information would be communicated to the other Party or made public without its consent. On the other hand, the Commission was acutely conscious that the delimitation of maritime boundaries has an impact on others than the Parties to the dispute.

61. The Commission sought to balance these competing interests by ensuring that the majority of the Commission's discussions with the Parties would take place in a confidential setting and that each Party would have complete control over information and documents submitted by it, including with respect to whether they were communicated to the other Party or made public. The Commission has observed that restriction, including with respect to this Report, which conveys the substance of the Parties' communications with the Commission only to the extent that the Parties have themselves agreed. At the same time, the Commission itself has sought to ensure that the public of both Timor-Leste and Australia, as well as other stakeholders with interests in the Timor Sea, have been kept informed of progress in the proceedings, including through the public opening session conducted in August 2016 that was

[35] This prohibition would not, however, apply the procedure contemplated in Article 12 of the Treaty, which mirrors the functions of the Conciliation Commission itself and would not constitute a judicial or arbitral proceeding.

webcast on the website of the Permanent Court of Arbitration (the "PCA")[36] and through the issuance of regular press releases by the Registry.[37] However, in adopting its Rules of Procedure, the Commission declined to decide at the outset whether this Report should be issued publicly, leaving this to be decided in consultation with the Parties in the course of the proceedings.[38] Indeed, the Rules of Procedure also contemplated the possibility of supplementing its official report with supplemental reports to be provided confidentially to each side.

62. The terms of the Convention and Timor-Leste's request for conciliation identified the Commission's initial mandate as being 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."[39] Article 5 of Annex V to the Convention, however, empowers the Commission to recommend "any measures which might facilitate an amicable settlement of the dispute." On its own terms, this provision is extremely broad and, for the Commission, emblematic of the flexible pragmatism that lies at the heart of conciliation: the Commission's mandate is to take the steps necessary to assist the Parties in resolving their dispute. Over the course of these proceedings, the Commission's engagement with the Parties progressed through a number of issues, from the Commission's proposal of confidence-building measures in October 2016, to the location of the boundary, to the consideration of revenue-sharing and the resource governance mechanisms now forming part of the Greater Sunrise Special Regime. Rather than restrict itself to the most immediate or prominent elements of the Parties' dispute identified at the outset of the proceedings, the Commission has sought to comprehensively engage with the Parties to address the issues necessary to achieve an amicable and durable settlement. The Commission's mandate has also been prolonged through the Parties' request, on the basis of the 30 August Agreement, for the Commission to remain involved with respect to the development of Greater Sunrise and to engage with the Parties and the Joint Venture with a view to facilitating agreement on the development concept.

63. The Commission also notes that conciliation proceedings may differ in the extent to which they seek to mediate an agreement between the parties

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[36] The Commission understands that the opening session was also broadcast live on television in Timor-Leste.

[37] Copies of the English version of these press releases are attached (in chronological order) as Annexes 4, 7, 11, and 13 to this Report. The same press releases were also regularly issued in French and Portuguese.

[38] The Commission consulted the Parties with respect to the form and content of the Report in October 2017 and provided the Parties with the opportunity to comment on a draft of this report in March 2018. In the course of the proceedings, both Parties made clear their expectation that the Report would be made public. In connection with their comments, the Commission invited the Parties to indicate whether any portion of the Report should be redacted. Having considered the Parties' comments, the Commission has finalized the present Report.

[39] Timor-Leste's Notice of Conciliation also anticipated the need to establish appropriate transitional arrangements.

or to leave the parties with a report containing the commission's recommendations and conclusions. Historically, conciliation procedures have set out differing expectations regarding a commission's role in the course of proceedings, and conciliation commissions have taken different approaches with respect to this aspect of their mandate.[40] In the Commission's view, Annex V to the Convention anticipates both possibilities. Article 7 expressly anticipates that, in the absence of agreement, the Commission shall issue a report recording "its conclusions on all questions of fact and law relevant to the matter in dispute and such recommendations as the commission may deem appropriate for an amicable settlement."[41] At the same time, the structure of Annex V makes clear that this possibility is secondary to the possibility of agreement and the Commission's objective to assist the Parties in reaching an amicable settlement.

64. In the present proceedings, the Commission discussed with the Parties their expectations for the conciliation and whether the Parties wished the Commission to concentrate on recommendations or to seek to reach an agreement within the conciliation process. At the procedural meeting in July 2016, both Parties were in agreement that, in the words of Timor-Leste's counsel "the primary goal and aim is to try to reach an agreement before any report is issued." The Parties expressed the same view in October 2016, when the Commission revisited the question following its *Decision on Competence*. In the course of the proceedings, the Commission has sought to be guided by this objective. At the same time, the Commission considered it to be of great importance to the conciliation process that the possibility of a substantive report remain and that the Commission have the opportunity to offer conclusions and recommendations, whether in the course of discussions or in the report. Even where both parties are actively engaged, an agreement may

[40] For a summary of this aspect of historical conciliations, see J.P. Cot, *La conciliation internationale,* pp. 217–226 (1968). Based on the approach of commissions of enquiry, the earliest conciliation procedures anticipated that a commission would hear the parties' positions and proceed to issue a report with its recommendations. In such an approach, the report itself would constitute the mechanism to bring the parties' positions together. Subsequent conventions provided greater flexibility and anticipated that a commission might make proposals for settlement at an earlier stage of the proceedings and proceed with a report and recommendations only in the event that its proposals were not accepted. Other conciliation procedures, including the PCA Conciliation Rules, go further and focus entirely on achieving agreement between the parties, omitting even the possibility of a report and trending somewhat in the direction of mediation. *See* S.M.G. Koopmans, *Diplomatic Dispute Settlement: The Use of Inter-State Conciliation* pp. 112–114 (2008). In this respect, Annex V to the Convention strikes a middle ground, providing that a commission shall prepare a report that will be deposited with the UN Secretary-General, but may also "make proposals to the parties with a view to reaching an amicable settlement" throughout the proceedings. This flexibility leaves a commission with significant discretion as to the conduct of the procedure, and the most appropriate approach may well depend upon the identity of the parties, the nature of their dispute, and the likely receptiveness of the parties to proposals for a genuine settlement.

[41] Convention, Annex V, Art. 7(1). Indeed, given that the Convention's provisions for compulsory conciliation anticipate the possibility that a party may fail to participate and provide that this "shall not constitute a bar to the proceedings," a commission must have the power to set out its recommendations and conclusions in a report in the event that party declines to participate.

prove elusive and the willingness to make the difficult decisions and compromises necessary to secure agreement may rise and fall over the course of the proceedings. The report is a necessary component of this conciliation process.

65. The fact that the Convention provides for compulsory conciliation raises further the question of how a commission should proceed in the event that its competence is called into question. The Commission addressed this in its Rules of Procedure and considered several aspects of its mandate in the context of its *Decision on Competence* of 19 September 2016. At the outset of the proceedings, Australia objected to the competence of the Commission and sought to have the question of competence determined as a preliminary matter. Timor-Leste opposed Australia's objection, as well as its request for a preliminary decision on competence. The Commission's Rules of Procedure provided that the Commission would decide "whether or not to rule on its competence as a preliminary question." The Commission invited the Parties to address this point, as well as that of competence itself, during the hearing on competence and ultimately decided to address the issue of competence before proceeding with the conciliation.

66. Although the Commission does not exclude the hypothetical possibility of objections to competence that would need to be addressed in conjunction with the substance of a dispute, it does consider that the engagement required for effective conciliation would ordinarily require that doubts as to the competence of a commission be promptly resolved. Additionally, the Commission notes that considerations of due process were of particular importance to the proceedings on competence—where, in contrast to the remainder of the proceedings, the Commission's decision had binding legal effect—and that distinct procedures were established in Article 17 for the proceedings on competence. In the present case, the Commission does not see that it could properly have conducted these proceedings in the flexible manner otherwise necessary for conciliation without first dealing with Australia's objections. The Commission is also of the view that the agreement reached by the Parties would have been impossible had Australia's objections to competence not been addressed as a preliminary matter. In this respect, the Commission considers the proceedings on competence to have been, not an ancillary matter, but essential to establishing trust for successful discussions with the Parties.

67. The Commission also recalls that, in its *Decision on Competence*, it was called on to interpret the interaction of the 12-month deadline in Article 7 of Annex V with the Commission's duty, under Article 13 thereof, to decide on any disagreement regarding its competence. Reviewing the text and structure of Annex V, the Commission concluded as follows:

> 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.
>
> 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.[42]

68. The Commission notes that the Parties have in fact extended these proceedings by agreement well beyond 19 September 2017. The Commission considers this to have been essential for the conclusion of the proceedings. In the Commission's view, the Parties would not have been able to reach agreement had the Commission been constrained to issue its Report by 25 June 2017. Accordingly, the Commission considers that the 12-month period set out in Annex V should be understood not as the timeframe in which a successful conciliation can likely be concluded, but rather as a safeguard to ensure that an unproductive conciliation is not unduly prolonged. Therefore, notwithstanding the salutary effect of deadlines to focus parties' consideration of acceptable outcomes, parties to a conciliation that appears to be making progress should anticipate that at least some extension by agreement beyond the 12-month period may likely be necessary.

69. Finally, the Commission observes that there is a question regarding the extent to which a conciliation commission should engage with the parties concerning questions of international law. This was the subject of some discussion with the Parties in the course of the proceedings. It is also an issue on which conciliation commissions have historically taken varying approaches.[43] In the Commission's view, this question is answered for an Annex V commission by the Convention itself. The Convention provides for compulsory conciliation with respect to maritime boundaries, the delimitation of which, Articles 74 and 83 provide, "shall be effected by agreement on the basis of international law … in order to achieve an equitable solution." Article 7 of Annex V further requires a commission, in the absence of an agreement, to

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[42] *Decision on Competence* of 19 September 2016, paras. 109–110.

[43] In the *Jan Mayen Conciliation*, for instance, the commission noted that:

> In order to submit recommendations to the two governments, such recommendations must be unanimously agreed upon by the Conciliation Commission. It follows from the mandate that the Conciliation Commission shall not act as a court of law. Its function is to make recommendations to the two governments which in the unanimous opinion of the Commission will lead to acceptable and equitable solutions of the problems involved.
>
> *Jan Mayen Conciliation (Iceland/Norway)*, Decision of June 1981, R.I.A.A. Vol. XXVII, p. 1.

The *Jan Mayen* commission went on to note that, although it had examined state practice and judicial decisions on maritime boundary delimitation, it considered it "inappropriate" to address them. Similarly, the UN Conciliation Rules provide in Article 20(1) that a conciliation commission shall refrain "from ruling formally on issues of law, unless the Parties have jointly asked it to do so."

report on its "conclusions on all questions of … law relevant to the matter in dispute." For the Commission, it follows from these provisions that it cannot be inappropriate for a conciliation commission to engage with the parties' legal views regarding the delimitation of maritime boundaries.

70. At the same time, the Commission recognizes that Annex V anticipates the possibility of a commission setting out its conclusions on questions of law only where the parties are unable to reach agreement. The function of a commission is to assist the parties to reach an amicable settlement, not to pronounce for its own sake on questions of international law, and the Commission has frequently noted that it is not an arbitral tribunal with the power to make a binding ruling. It follows, for the Commission, that a conciliation commission need not as a matter of course engage with the parties on their legal positions, but may engage with these matters to the extent that so doing will likely facilitate the achievement of an amicable settlement. It also follows, for the Commission, that a conciliation commission should not encourage parties to reach an agreement that it considers to be inconsistent with the Convention or other provisions of international law. The Commission has sought to be guided by these principles in its discussions with the Parties, in particular in responding to the Parties' positions and in elaborating the Commission's options and ideas.

71. In the paragraphs that follow, the Commission has set out the procedure followed in the course of these proceedings, before turning to the Parties' views on maritime boundaries and manner in which the 30 August Agreement was reached.

## B. Establishment of the Commission and Rules of Procedure

72. 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.

73. 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.

74. On 11 May 2016, the Parties wrote jointly to the PCA, requesting that it act as the Registry for these conciliation proceedings.

75. On 25 June 2016, after the party-appointed conciliators had consulted with the Parties, H.E. Ambassador Peter Taksøe-Jensen was appointed to serve as Chairman of the Conciliation Commission. The Commission was accordingly constituted with effect from 25 June 2016.

76. 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."

77. 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."

78. 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.[44] At the procedural meeting, the Commission and the Parties discussed the rules of procedure and the organization of the proceedings and agreed that, 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.

79. During the course of the procedural meeting, the Commission and the Parties also concluded Terms of Appointment to confirm the appointment of the Commission and the basis for the conduct of the proceedings. The Terms of Appointment also confirmed the Parties' agreement that the PCA act as the Registry for the proceedings. Further to the Terms of Appointment, the Secretary-General of the PCA appointed Mr. Garth Schofield, Senior Legal Counsel of the PCA, to serve as Registrar to the Commission. Mr. Martin Doe, Senior Legal Counsel of the PCA, was also assigned to assist the Commission in these proceedings.

80. Over the course of August 2016, the Commission provided the Parties with draft Rules of Procedure, sought and responded to their comments in respect of this draft, and adopted final Rules of Procedure on 22 August 2016. A copy of the Commission's Rules of Procedure is included as Annex 8 to this Report.

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## V. The Conciliation Proceedings

81. In the paragraphs that follow, the Commission has set out the steps taken in the course of these proceedings. Conscious of the potential relevance of these proceedings for future recourse to Annex V, the Commission has elected to set out its procedure in some detail. For coherence, these details are grouped roughly on a thematic basis.

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[44] The following persons participated in the procedural meeting:

For Timor-Leste: H.E. Minister Kay Rala Xanana Gusmão, H.E. Ambassador Joaquim da Fonseca, H.E. Ambassador Milena Pires, Ms. Elizabeth Exposto, Mr. Simon Fenby, Ms. Sadhie Abayasekara, Professor Vaughan Lowe QC, Mr. Eran Sthoeger, Ms. Janet Legrand QC (Hon), Mr. Stephen Webb, and Ms. Gitanjali Bajaj.

For Australia: Mr. John Reid PSM, H.E. Ambassador Brett Mason, Sir Daniel Bethlehem KCMG QC, Ms. Amelia Telec, Mr. Justin Whyatt, Ms. Indra McCormick, and Mr. Will Underwood.

For the Registry: Mr. Garth Schofield, Mr. Martin Doe, and Ms. Pem Chhoden Tshering.

## A. Proceedings on Competence

82. On 29 July 2016, the Commission wrote to the Parties, fixing the schedule for the Parties' written submissions on competence and setting out the procedure for the hearing on competence and for an opening session that would be webcast on the website of the PCA. At the same time, and without prejudice to the Commission's decision on competence, the Commission invited the Parties to reserve dates in January 2017 for a potential meeting.[45]

83. On 12 August 2016, Australia submitted its *Objection to Competence*. On 25 August 2016, Timor-Leste submitted its *Written Submission in Response to Australia's Objection to Competence*.[46] 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.[47] 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.[48] 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. Elizabeth Exposto, Deputy Agent for Timor-Leste; Professor Vaughan Lowe QC; and Sir Michael Wood KCMG made oral submissions for Timor-Leste. Mr. John Reid PSM, Agent for Australia; Mr. Justin Gleeson SC, Solicitor General of Australia; Sir Daniel Bethlehem KCMG QC; Mr. Bill Campbell QC PSM; Professor Chester Brown; and Mr. Gary Quinlan AO made oral submissions for Australia.

84. 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.

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[45] Following its *Decision on Competence*, the Commission in fact convened a meeting with the Parties in October 2016.

[46] The substance of Australia's objection and Timor-Leste's response are addressed in the Commission's *Decision on Competence*, included as Annex 9 to this Report.

[47] The following persons participated in the opening session and hearing on competence:

For Timor-Leste: H.E. Minister Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, H.E. Ambassador Joaquim da Fonseca, H.E. Ambassador Abel Guterres, H.E. Ambassador Milena Pires, Mr. Simon Fenby, Ms. Sadhie Abayasekara, , Professor Vaughan Lowe QC, Sir Michael Wood KCMG, Mr. Eran Sthoeger, Dr. Robin Cleverly, Ms. Janet Legrand QC (Hon), Mr. Stephen Webb, Ms. Gitanjali Bajaj.

For Australia: Mr. John Reid PSM, Ms. Katrina Cooper, Solicitor-General Justin Gleeson SC, Sir Daniel Bethlehem KCMG QC, Mr. Bill Campbell QC PSM, 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, and Ms. Christina Hey-Nguyen.

For the Registry: Mr. Garth Schofield, Mr. Martin Doe, and Ms. Pem Tschering.

A transcript of the opening session and hearing on competence was produced. This transcript and the Parties' presentation materials are available at https://pca-cpa.org/en/cases/132/.

[48] Video of the opening session is available at the website of the Permanent Court of Arbitration.

85. On 15 September 2016, the Commission informed the Parties that it would issue its *Decision on Competence* on 19 September 2016 and requested the Parties to keep the decision confidential until made public in accordance with the Rules of Procedure.

86. On 19 September 2016, the Commission issued to the Parties its *Decision on Competence* and concluded 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.

87. A copy of the Commission's *Decision on Competence* is included as Annex 9 to this Report.

88. Following the rendering of its *Decision on Competence*, the Commission provided the Parties with the opportunity to indicate whether they considered necessary the redaction of any potentially confidential information included in the decision. As neither Party indicated a wish for redactions, the Commission published its *Decision on Competence* on 26 September 2016 on the website of the PCA.

## B. Confidence-Building Measures

89. After completing its *Decision on Competence*, the Commission gave consideration to the approach to be followed in the further conduct of the proceedings. The Commission identified the following four objectives:

> (*a*) to map out and understand the Parties' objectives and interests, as well as their formal positions;
>
> (*b*) to manage the process for all stakeholders in the Timor Sea, including other governments and private actors with interests in the area;
>
> (*c*) to provide for a suitable interim arrangement that would provide stability and permit the Parties to concentrate their energies on a comprehensive resolution of their dispute; and
>
> (*d*) to advance a proposal capable of achieving agreement between the Parties on all elements of their dispute, including other matters closely related to the issue of boundaries.

90. On 21 September 2016, the Commission wrote to the Parties regarding the next steps to be taken in the proceedings. The Commission's letter stated as follows:

> Dear Colleagues,
>
> I write with respect to the next steps in this conciliation process.
>
> By now the Parties will have received the Commission's Decision on Competence. My hope with this Decision is that we will now be able to

turn to the question of how the Commission can best assist the Parties in finding an amicable resolution to the matters that separate them.

I have noted during both of our meetings that this is a conciliation process and not arbitration proceedings. I take the opportunity of this letter to do so again, and will continue to emphasize this point as we proceed. I believe that it is crucial to the success of the process that the Parties not be bound to litigation-style positions and statements and will do my utmost to encourage a flexible and open-minded way forward in which the Parties will feel free to explore possible avenues for engagement without fear that such flexibility will later be held against them. For its part, the Commission will be similarly flexible in organizing this process and will endeavor to accommodate the wishes and suggestions it may receive from the Parties.

The Commission looks forward to exploring with the Parties their ideas as to what the objectives of this process should be. At this point, however, I believe that it would be helpful to set out the Commission's initial view of four objectives that could guide our collective efforts:

First, to comprehensively inform the Commission regarding the issues in relation to boundaries in the Timor Sea, as well as the Parties' interests and objectives in this context.

Second, to manage this process with respect to all stakeholders, including nongovernmental entities and investors with interests in the Timor Sea, to ensure that these proceedings do not themselves become a cause of uncertainty or disruption.

Third, to develop with the Parties a mutually acceptable interim arrangement for the Timor Sea pending the final resolution of the Parties' differences.

Fourth, for the Commission to provide the Parties, at the close of this process, with an informed proposal for the final resolution of the Parties' differences that is in keeping with the principles underpinning the UN Convention on the Law of the Sea and sensitive to the interests and concerns expressed by the Parties in the course of this conciliation process.

As for concrete next steps, the Commission's first objective is to gain a better understanding of objectives and interests of the Parties. Although the Commission learned a great deal from the Parties' presentations during the opening session, there is still much that we do not know or may not understand. In keeping with the Commission's desire to avoid entrenching fixed positions, I do not wish, for the time being, to ask the Parties to inform the Commission through written memorials or formal submissions. Rather, the Commission would like to meet separately with each Party for an open-ended and informal exploration of the issues and of the Parties' interests and objectives.

In order not to lose the momentum developed during the proceedings on competence, the Commission wishes to meet with the Parties in Singapore during the period of 10 to 13 October 2016. I envisage that the Commission would spend at least one full day with the represent-

atives of each Party, which could take place on 10 and 11 October, but would ask that the Parties' representatives remain in Singapore on 12 and 13 October for potential further discussions or a joint meeting with the Commission. Although the Commission does not wish to restrict the Parties' representation for these meetings, I would encourage the Parties to consider keeping their delegations small, in order to facilitate a free-flowing discussion with the Commission.

In addition to preparing themselves for discussions with the Commission, there are two steps that the Commission would like the Parties to take between now and the October meetings in Singapore:

First, I believe that the Commission's separate discussions with the Parties would benefit from an indication, prior to the October meetings, of the full range of issues that the Parties believe could usefully be considered by the Commission in relation to the issue of boundaries in the Timor Sea. Accordingly, I would ask each Party to prepare a list for the Commission of the issues that it considers relevant to the process. This should not be a lengthy document or a statement of the Parties' positions on the issues to be addressed, but rather a checklist for the Commission's interactions with the Parties, to ensure that important issues are not overlooked.

Second, in the interest of managing the process for all stakeholders, the Commission would invite the Parties to consider the possibility of issuing a joint public statement after the October meetings. If helpful, the Commission would be available to confer with the Parties regarding the formulation of such a statement.

Going forward, I note that it will be important for the conciliation process to have a stable point of departure on the basis of which discussions can meaningfully be held. Accordingly, the Commission would ask the Parties to refrain for the time being from any steps that would alter the *status quo* in the Timor Sea and intends to explore this issue with the Parties in the course of discussions in October.

Finally, the Commission notes that it will be of critical importance for the proceedings that the Parties feel able to speak freely, both with the Commission and with each other. In this respect, I recall that the Rules of Procedure include provisions for the Parties to designate information as confidential or to provide information to the Commission on the condition that it not be shared with the other Party. The Rules also provide that information relating to this conciliation process that has not been made public shall not be relied on in other arbitral or judicial proceedings. The Commission takes these commitments seriously, and I encourage the Parties to make use of them as necessary in order to communicate freely with the Commission. Although the recent decision on competence will soon be made public, in keeping with the Rules of Procedure, I anticipate that the next phases of these proceedings will be (largely) confidential as the Commission seeks to explore the issues with the Parties and establish a constructive basis for discussions.

> I and my colleagues in the Commission look forward to the cooperation and assistance of the Parties in the conduct of the conciliation process ahead of us and to seeing the representatives of the Parties in person in Singapore in a few weeks.
>
> Yours faithfully,
>
> Peter Taksøe-Jensen
> Chairman

91. On 28 September 2016, the Commission wrote to the Parties regarding the organization of the October meetings in Singapore, noting that it intended to meet with the Parties separately. In order to encourage the Parties to speak freely, the Commission indicated that it would treat any statements made by either Party as confidential pursuant to Article 18(6) of the Rules of Procedure unless otherwise indicated. The Commission also requested each Party to convey its respective issues list, as requested in the Chairman's letter of 21 September 2016, to the Commission only.

92. On 7 October 2016, each of the Parties wrote confidentially to the Commission, enclosing a list of issues for discussion, as requested in the Chairman's letter of 21 September 2016.

93. On 9 October 2016, Australia wrote confidentially to the Commission, supplementing its list of issues and outlining its objectives for the conciliation process.

94. Between 10 and 13 October 2016, the Commission met separately with the Parties in Singapore.[49] To encourage the Parties to speak freely in their discussions with the Commission and explore avenues for settlement without fear of commitment, no formal written record was kept of these or subsequent meetings.

95. During the October 2016 session, both Parties provided the Commission with additional documents and materials on a confidential basis. The Commission also discussed with the Parties various steps that could be taken to build confidence between them and lay the groundwork for a productive discussion on maritime boundaries. Following these discussions, the Commission on 13 October 2016 provided the Parties with the following *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

[49] The following persons participated in the October 2016 session:

For Timor-Leste: H.E. Minister Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, H.E. Ambassador Abel Guterres, Ms. Elizabeth Exposto, Mr. Stephen Webb, Ms. Sadhie Abayasekara, Ms. Iriana Ximenes, Mr. Simon Fenby, Ms. Gitanjali Bajaj.

For Australia: Sir Daniel Bethlehem KCMG QC, Mr. Bill Campbell QC PSM, Mr. Gary Quinlan AO, Mr. Bruce Wilson, Mr. Justin Whyatt, Ms. Angela Robinson, Mr. Mark Alcock, Ms. Esther Harvey, Mr. Benjamin Huntley, and Ms. Hailee Adams.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

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;

96. On 21 October 2016, the Parties jointly wrote to the arbitral tribunals in the *Timor Sea Treaty Arbitration* and the *Article 8(b) Arbitration*, requesting the suspension of those proceedings until 20 January 2017, as anticipated in the Commission's confidence-building measures.

97. On 8 November 2016, Timor-Leste wrote confidentially to the Commission, providing copies of a number of background documents referred to during the October meetings.

98. On 6 December 2016, Timor-Leste wrote to the Commission, conveying a letter from the Prime Minister of Timor-Leste, H.E. Dr. Rui Maria de Araújo, formally confirming Timor-Leste's commitment to negotiate permanent maritime boundaries with Australia.

99. On 8 December 2016, Australia wrote to the Commission confirming (*a*) its commitment to negotiate permanent maritime boundaries with Timor-Leste; (*b*) that its delegation had been provided with the necessary mandate to negotiate permanent maritime boundaries in the Timor Sea; and (*c*) that the area identified by Timor-Leste as being covered by its claim would be removed from the 2016 Offshore Petroleum Exploration Acreage Release area W16–2.

100. In its letter of 8 December 2016, Australia further indicated that it had decided not to jointly terminate the CMATS Treaty. Australia confirmed, however, that following the termination of CMATS by Timor-Leste, "the Timor Sea Treaty will apply in its original form, prior to amendment by CMATS," that "Articles 12(3) and 12(4) of CMATS would no longer apply," and that "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."

101. On 14 December 2016, Australia wrote confidentially to the Commission regarding the modalities of the joint statement anticipated by the Commission's Proposal on Confidence-Building Measures to be issued concurrently with the termination of CMATS.

102. Throughout December 2016, the Commission communicated informally with both Parties regarding the content of the joint statement to be issued concurrently with the termination of CMATS.

103. On 9 January 2017, the Commission and the Foreign Ministers of Timor-Leste and Australia simultaneously issued a Trilateral Joint Statement concerning the termination of CMATS and the Parties' shared understanding of the legal effects of such termination, as follows:

> *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.[50]

104. On 10 January 2017, Timor-Leste's Minister for Foreign Affairs and Cooperation, H.E. Hernâni Coelho da Silva, wrote to the Minister for Foreign Affairs of Australia, The Honourable Julie Bishop MP, conveying notice of Timor-Leste's wish to terminate CMATS in accordance with Article 12(2) of the treaty and restating the Parties' shared understanding regarding the legal effect of such termination.

105. On 12 January 2017, Australia wrote to the Commission to report on the steps taken by Australia to fulfil its undertakings in relation to the Australian Government's 2016 Offshore Petroleum Acreage Release W16–2.

106. On 20 January 2017, Timor-Leste wrote to the arbitral tribunals in the *Timor Sea Treaty Arbitration* and the *Article 8(b) Arbitration*, requesting the termination of those proceedings, as anticipated in the Commission's confidence-building measures.

107. On 9 March 2017, Australia wrote to the Commission, providing an update on steps taken with respect to its domestic constitutional processes for the termination of CMATS and discussions between the Parties on a formal exchange of diplomatic notes, coincident with the termination of the treaty.

108. On 7 April 2017, the Parties exchanged diplomatic notes concerning the termination of CMATS.

109. On 10 April 2017, Australia wrote to the Commission, advising it of the Parties' exchange of diplomatic notes and confirming that, as of 10 April 2017, CMATS had ceased to be in force in its entirety, thereby completing the Commission's confidence-building measures.

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[50] A copy of this Trilateral Joint Statement is enclosed as Annex 16 to this Report.

## C. Organization of the Proceedings

110. In connection with the *Commission Proposal on Confidence-Building Measures*, the Commission adopted a schedule for the remainder of the conciliation proceedings, leading up to the 19 September 2017 deadline established by Annex V to the Convention.[51] The Commission determined to convene a series of week-long sessions and reserved dates with the Parties in January, March, June, July, August, and September 2017.

111. During these sessions, the Commission met at various times with each Party, generally alternating between the Parties for short, separate meetings on discrete topics.

## D. Exploration of the Parties' Positions on Maritime Boundaries

112. On 20 December 2016, each of the Parties provided the Commission with a *Written Submission on the Delimitation of Maritime Boundaries*. As agreed during the October meeting, each Party's Written Submission was also shared with the other Party.

113. On 9 January 2017, the Commission wrote to the Parties regarding the organization of the upcoming meetings in Singapore.

114. Between 16 and 20 January 2017, the Commission met separately with the Parties in Singapore.[52] In keeping with the Commission's practice, no formal written record was kept of the session.

115. At the close of January 2017 session, the Commission convened a short joint meeting with both Parties and invited the Parties' delegations to an informal social gathering. The Commission also provided the Parties with the following *Commission Proposal on Next Steps*:

> The Commission has now had the opportunity to confer with the Parties in two rounds of face-to-face discussions regarding the position papers submitted in December 2016. In the course of so doing, the Commission

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[51] As discussed below (see paragraphs 146 & 164), the Parties subsequently decided to extend this deadline by agreement, as permitted by Annex V.

[52] The following persons participated in the January 2017 session:

For Timor-Leste: H.E. Minister Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, H.E. Ambassador Abel Guterres, Sir Michael Wood KCMG, Mr. Eran Sthoeger, Dr. Robin Cleverly, Mr. Simon Fenby, Ms. Sadhie Abayasekara, Ms. Adelsia Coelho da Silva, Ms. Janet Legrand QC (Hon), Mr. Stephen Webb, and Ms. Gitanjali Bajaj.

For Australia: Sir Daniel Bethlehem KCMG QC, Mr. Bill Campbell QC PSM, Mr. Gary Quinlan AO, Ms. Katrina Cooper, Mr. John Reid PSM, Mr. Bruce Wilson, Ms. Lisa Schofield, Mr. Justin Whyatt, Ms. Angela Robinson, Mr. Mark Alcock, Ms. Amelia Telec, Dr. Thomas Bernecker, Mr. Todd Quinn, Mr. Benjamin Huntley, Ms. Esther Harvey, Ms. Natalie Taffs, and Mr. Ben O'Sullivan.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

has gained a significantly better understanding of the Parties' legal positions and also of the Parties' motivations and interests.

From the vantage point of having consulted with both Parties, the Commission is of the view that it is time to consider in more detail factors relevant to delimitation, as well as options and ideas that might bring the Parties closer together, all of which will require further work and careful consideration. The Commission believes that the next step, as set out below, is to move from having the Parties explain their positions to the Commission to having the Commission indicate more precisely the issues to be taken into consideration in maritime boundary delimitation between the Parties, as well as the specific issues where further options and ideas might be explored.

In their communications with the Commission regarding its responses, guidance and proposals, the Parties are invited to bear in mind the principle that nothing is agreed until everything is agreed. The Parties are encouraged to take advantage of their ability to communicate with the Commission in confidence to provide the Commission with frank responses or to propose possible alternative approaches in the knowledge that such communications will not be treated as concessions.

With the above in mind, the Commission proposes the following steps leading up to the next session of meetings in March 2017:

1. Steps with respect to guidance on Parties' positions:
    - Commission to provide each Party separately by *1 February 2017* with a confidential non-paper setting out what the Commission considers at this stage to be the issues and concerns that are relevant for that Party that should be taken into consideration in maritime boundary delimitation between the Parties.
    - Each Party to provide the Commission with a confidential written response to the Commission's non-paper by *22 February 2017*.
    - Commission to provide the Parties by *3 March 2017* with a non-paper setting out what the Commission considers at this stage to be the issues and concerns relevant for both Parties that should be taken into consideration in maritime boundary delimitation between the Parties.
2. Continuing education of the Commission:
    - Parties to provide the Commission in confidence with working papers on topics arising out of the January meetings or any other submission they wish to make by *22 February 2017*.
3. Steps with respect to March meetings:
    - Commission to provide each Party with an annotated agenda for the March meetings by *10 March 2017*, which includes a general indication of the elements of the dispute on which the Commission intends to advance options and ideas during the March meetings.

- Parties to meet with the Commission during the week of *27 March to 1 April 2017.*

116. Following the January 2017 session, the Commission and the Parties issued a Trilateral Joint Statement concerning the completion by the Parties of the Commission's confidence-building measures and the Parties' commitment to maintaining a stable framework for existing petroleum operations in the Timor Sea, as follows:

> *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.[53]

117. On 6 February 2017, the Commission wrote separately to each Party, enclosing a confidential *Issues Paper* setting out what the Commission considered to be the issues and concerns that were relevant to that Party that should be taken into consideration in the course of the conciliation proceedings. The Commission invited each Party to provide the Commission with a confidential written response in order (*a*) to provide its comments on the formulation of the issues identified by the Commission; (*b*) to identify any issues not included by the Commission that it considered relevant; and (*c*) to indicate if it considered the Commission to have misunderstood its position. The Commission also invited each Party to indicate if it would object to any element of the Commission's *Issues Paper* being shared with the other Party in a subsequent joint paper.

118. On 27 February 2017, each Party wrote to the Commission, setting out its confidential comments on the *Issues Paper* provided to that Party by the Commission and agreeing to the Commission consolidating these papers into a single joint issues paper for both Parties. At the same time, each Party provided the Commission with a number of additional confidential background papers and documents as anticipated in the Commission's *Proposal on Next Steps*. The Parties also provided the Commission with their confidential views on the further conduct of the conciliation.

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[53] A copy of this Trilateral Joint Statement is enclosed as Annex 18 to this Report.

## E. The Commission's Elaboration of Options and Ideas

119. In early March 2017, the Commission met for internal deliberations to consider the materials received from the Parties and to identify the Commission's intended approach for further meetings with the Parties. The Commission noted that the Parties had clearly elaborated their positions and that further engagement in this respect was likely to further entrench their positions on issues where the two Parties were diametrically opposed and already strongly committed. The Commission determined that it would complete the process by providing the Parties with a *Joint Issues Paper*, but would treat this document as a reference, rather than as the subject of further debate. Instead, the Commission would endeavour to shift the Parties' focus away from seeking to reinforce their legal positions and towards a search for a potential settlement. The Commission would engage with the Parties to indicate where it found their positions not convincing, but would also provide the Parties with a paper outlining the Commission's own options and ideas.

120. On 9 March 2017, the Commission wrote jointly to the Parties, enclosing a *Joint Issues Paper* setting out the Commission's understanding of the issues relevant to both Parties.

121. Also on 9 March 2017, the Commission wrote separately to each Party, enclosing an *Annotated Agenda* for that Party for the meetings scheduled for 27 to 31 March 2017. In these documents, the Commission noted that it intended to continue meeting separately with each Party and identified a number of issues that the Commission considered essential to explore further if the Parties were to find a potential agreement. The Commission also identified a number of issues on which it considered that it fully understood the Parties' respective legal positions and did not, for the time being, wish to explore further. The Commission indicated its intention to advance additional options and ideas in the course of the March meetings, on the basis of initial discussions with each Party.

122. Over the course of March 2017, the Chairman of the Commission engaged in a number of informal telephone consultations with representatives of each Party.

123. Between 27 and 31 March 2017, the Commission met separately with the Parties in Washington, D.C.[54] In keeping with the Commission's practice, no formal written record was kept of the session.

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[54] The following persons participated in the March 2017 session:

For Timor-Leste: H.E. Minister Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, H.E. Minister Alfredo Pires, Ms. Elizabeth Exposto, H.E. Ambassador Abel Guterres, Mr. Gualdino do Carmo da Silva, Mr. Francisco da Costa Monteiro, Mr. Ricardo Alves Silva, Sir Michael Wood KCMG, Professor Vaughan Lowe QC, Mr. Eran Sthoeger, Dr. Robin Cleverly, Mr. Simon Fenby, Ms. Sadhie Abayasekara, Ms. Adelsia Coelho da Silva, Mr. Stephen Webb, Ms. Gitanjali Bajaj.

For Australia: Sir Daniel Bethlehem KCMG QC, Mr. Gary Quinlan AO, Ms. Katrina Cooper, Mr. John Reid PSM, Mr. Bruce Wilson, Ms. Lisa Schofield, Mr. Justin Whyatt, Ms. Megan

124. During the March 2017 session, following initial discussions regarding certain aspects of the positions taken by each Party, the Commission provided the Parties with a *Commission Non-Paper* setting out options and ideas for a possible comprehensive agreement on maritime boundaries in the Timor Sea, including a sketch map of a possible boundary. The *Non-Paper* invited the Parties to consider a single maritime boundary as set out in an attached sketch map. In the east, the *Non-Paper* raised the possibility of seabed boundaries that would partially run through Greater Sunrise. The *Non-Paper* also invited the Parties to give consideration to the need for a shared regime for Greater Sunrise and agreement on the development of the resource as part of reaching an agreement on the maritime boundary. A copy of the *Commission Non-Paper* is enclosed as Annex 19 to this Report.

125. In presenting the *Non-Paper*, the Commission emphasized that it did not consider the package outlined therein to represent the only solution or to foreclose other possibilities. Rather, the package represented where the Commission could see a potential comprehensive solution that it wished the Parties to seriously consider. The Commission engaged in discussions with each Party regarding the *Commission Non-Paper* for the remainder of the session.

126. At the close of the March 2017 session, the Commission requested both Parties to give serious consideration to the ideas advanced by the Commission and to engage with all elements of the package identified in the *Commission Non-Paper*, including those that the Parties found difficult to accept or that would involve a departure from long-held positions. Without prejudice to the location of the boundary, the Commission invited both Parties to give further consideration to arrangements for the joint management of resources in the Timor Sea that could lessen the difficulties the Parties had encountered in previous instances of joint management. The Commission also requested the Australian delegation to confer with its political level regarding its negotiating mandate if the delegation considered that its mandate would prevent it from engaging on the basis of the *Commission Non-Paper*. The Commission also noted that the Chairman would, as necessary, be available for informal consultations with the Parties between sessions.

## F. Informal Consultations at the Political Level

127. Over the course of April and May 2017, the Commission sought to engage with the Parties regarding their reactions to ideas set out in the *Commission Non-Paper*, in particular the ideas of seabed boundaries beyond the limits of the JPDA and the development of Greater Sunrise in a joint manner. The Commission also began to engage with the Parties at multiple levels and to

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Jones, Ms. Amelia Telec, Ms. Esther Harvey, Mr. Mark Alcock, Dr. Thomas Bernecker, Mr. Benjamin Huntley, Ms. Natalie Taffs, Ms. Negah Rahmani, Ms. Hailee Adams, and Mr. Ben O'Sullivan.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

increase the frequency of informal contacts, with its Chairman meeting with the Parties' leadership in Singapore, Sydney, and Canberra.

128. In April and May 2017, the Chairman of the Commission engaged in a number of informal telephone consultations with representatives of each Party.

129. On 5 May 2017, Timor-Leste wrote confidentially to the Commission, providing it with an *Initial Response to the Commission's Non-Paper of 31 March 2017*.

130. On 20 May 2017, the Chairman of the Commission met informally in Singapore with Timor-Leste's Agent, H.E. Minister Hermenegildo Pereira. Also present at this meeting were Mr. Stephen Webb, Ms. Greta Bridge, and Messrs. Schofield and Doe of the Registry.

131. On 21 May 2017, the Chairman of the Commission met informally in Sydney with Mr. Gary Quinlan AO and Australia's Co-Agent, Ms. Katrina Cooper. Also present at this meeting were Messrs. Schofield and Doe of the Registry.

132. On 22 May 2017, the Chairman of the Commission met informally in Canberra with the Foreign Minister of Australia, the Honourable Julie Bishop MP, and the Attorney-General of Australia, the Honourable George Brandis QC. Also present at this meeting were Australia's Agent, Mr. John Reid PSM, Australia's Co-Agent, Ms. Katrina Cooper, and Messrs. Schofield and Doe of the Registry. No formal written record was kept of these meetings.

133. On 1 June 2017, following consultations at the political level, Australia wrote confidentially to inform the Commission that its delegation had been mandated to engage in negotiations on the basis of the *Commission Non-Paper*.

## G. Discussions on Resource Sharing, Broader Economic Benefits, and Governance

134. On 2 June 2017, Australia wrote confidentially to the Commission, providing an *Australian Non-Paper on a Greater Sunrise Special Regime* regarding the joint management of resources, as requested by the Commission at the close of the March 2017 session.

135. Between 6 and 9 June 2017, the Commission met separately with the Parties in Copenhagen.[55] In keeping with the Commission's practice, no

[55] The following persons participated in the June 2017 session:

For Timor-Leste: H.E. Minister Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, H.E. Ambassador Abel Guterres, Sir Michael Wood KCMG, Professor Vaughan Lowe QC, Mr. Eran Sthoeger, Dr. Robin Cleverly, Mr. Simon Fenby, Ms. Sadhie Abayasekara, Ms. Adelsia Coelho da Silva, Ms. Iriana Ximenes, Mr. Stephen Webb, Ms. Gitanjali Bajaj.

For Australia: Sir Daniel Bethlehem KCMG QC, Mr. Gary Quinlan AO, Ms. Katrina Cooper, Mr. John Reid PSM, Ms. Lisa Schofield, Mr. Justin Whyatt, Ms. Megan Jones, Ms. Angela Robinson, Ms. Amelia Telec, Ms. Esther Harvey, Mr. Mark Alcock, Mr. Benjamin Huntley, Ms. Natalie Taffs, and Ms. Negah Rahmani.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

formal written record was kept of the meetings. On 8 June 2017, the Commission and the Parties attended an informal social reception hosted by the Danish Foreign Ministry.

136. During the June 2017 session, the Commission's discussions with the Parties focused on the potential governance arrangements for a special regime in respect of the Greater Sunrise gas field. Timor-Leste agreed for its delegation to participate in these discussions on an exploratory basis, without abandoning its position regarding the location of maritime boundaries. Each Party also provided the Commission with various papers regarding aspects of possible governance arrangements for a special regime for Greater Sunrise.

137. At the close of the June 2017 session, the Commission provided each Party with a separate paper containing the Commission's *Inter-Session Guidance* for that Party. These papers addressed four issues:

(*a*) First, the Commission noted that many aspects of the governance of a possible special regime were not issues in respect of which there were significant differences between the Parties. The Commission provided each Party with a Non-Paper setting out what the Commission understood to be uncontroversial elements of a special regime for Greater Sunrise and invited each Party to prepare a detailed paper on governance that could be shared with the other Party.

(*b*) Second, the Commission noted that the Parties' positions regarding the eastern seabed boundary were irreconcilable and deeply held on both sides. The Commission invited each Party to give further consideration to its position in the event that agreement on its preferred position could not be reached and to explore potential creative solutions in respect to the location of the boundary.

(*c*) Third, the Commission noted that both Parties had expressed a strong concern that any agreement must be sustainable. The Commission invited each Party to give consideration to steps that could be taken to increase the "legal durability" and political sustainability of a potential agreement. The Commission also invited the Parties to give further consideration to potential formulations for the legal status of areas within a possible special regime.

(*d*) Finally, the Commission requested the Parties to prepare for discussions on the revenue implications of the development of Greater Sunrise, including the revenue derived from downstream operations and the broader economic benefits accruing to the country in which the LNG plant for the field was located. The Commission also requested the Parties to prepare for discussions regarding the remaining production and revenue to be generated from petroleum resources within the existing JPDA.

138. In the course of June and July 2017, the Chairman of the Commission continued to engage in informal telephone consultations with representatives of each Party.

139. On 14 July 2017, Timor-Leste wrote confidentially to the Commission, transmitting five non-papers regarding (*a*) elements of a Greater Sunrise special regime, (*b*) the development plan for Greater Sunrise and its relationship to a comprehensive agreement, (*c*) the location of the eastern seabed boundary, (*d*) the status of the area within a special regime, legal durability, and political sustainability, and (*e*) elements to be considered with respect to revenue from Greater Sunrise.

140. On 17 July 2017, Australia wrote confidentially to the Commission, transmitting four non-papers regarding (*a*) elements of a Greater Sunrise special regime; (*b*) the development plan for Greater Sunrise and its relationship to a comprehensive agreement; (*c*) the status of the area within a special regime, legal durability, and political sustainability; and (*d*) elements to be considered with respect to revenue from Greater Sunrise. At the same time, Australia wrote to the Commission with a confidential proposal regarding the location of maritime boundaries.

141. On 19 July 2017, as anticipated in the Commission's *Inter-Session Guidance* at the end of the June meetings, the Commission shared each Party's non-paper regarding elements of a Greater Sunrise Special Regime with the other Party.

142. Between 24 and 28 July 2017, the Commission met separately with the Parties in Singapore.[56] In keeping with the Commission's practice, no formal written record was kept of the meetings. At the close of the July 2017 session, the Commission also invited the Parties' delegations to attend an informal social reception.

143. During the July 2017 session, the Commission's discussions with the Parties focused on their differing understandings of the broader economic benefits that had resulted from the downstream operations in Australia of previous petroleum development in the Timor Sea and the corresponding implications of different scenarios for the future development of other fields in the area to be delimited, in particular Greater Sunrise. The Commission also continued discussions with the Parties on the governance structure for a potential special regime for Greater Sunrise. At the Commission's invitation, the Parties organized a joint working group to seek agreement on governance arrangements, working in parallel with the Parties' separate discussions with

[56] The following persons participated in the July 2017 session:

For Timor-Leste: H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, H.E. Ambassador Abel Guterres, Professor Vaughan Lowe QC, Mr. Eran Sthoeger, Dr. Robin Cleverly, Mr. Alfredo Pires, Mr. Gualdino da Silva, Mr. Francisco Monteiro, Mr. Ricardo Alves Silva, Mr. Simon Fenby, Ms. Sadhie Abayasekara, Ms. Adelsia Coelho da Silva, Mr. Stephen Webb, Ms. Gitanjali Bajaj, and Ms. Greta Bridge.

For Australia: Sir Daniel Bethlehem KCMG QC, Mr. Gary Quinlan AO, Ms. Katrina Cooper, Ms. Lisa Schofield, Mr. Justin Whyatt, Ms. Megan Jones, Mr. Todd Quinn, Ms. Angela Robinson, Ms. Amelia Telec, Ms. Esther Harvey, Mr. Mark Alcock, Mr. Benjamin Huntley, Ms. Natalie Taffs, Ms. Negah Rahmani, Mr. Geoffrey Francis, and Ms. Anastasia Phylactou.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

the Commission on other issues. This discussion was conducted on the basis that it was without prejudice to the Parties' differing positions on the location of the seabed boundary in relation to Greater Sunrise.

144. During that same session, the Commission, at the request of both Parties, wrote to the Greater Sunrise Joint Venture, the licence holder to Greater Sunrise, to invite the Joint Venture "to provide the governments and the Conciliation Commission with a comparative analysis of the Timor LNG and Darwin LNG development concepts, showing the Joint Venture's views as to costs, revenue and likely timing of each concept, as well as any additional information that you think the governments, and the Conciliation Commission, may find useful to know."

145. In addition, the Commission provided the Parties over the course of the week with a *Non-Paper on Political Sustainability* and a *Non-Paper on Legal Security*, consolidating the various ideas advanced by the Parties regarding steps that could be taken and elements that could be included in a potential agreement on maritime boundaries. At the close of the meetings, the Commission also provided each Party with a separate paper containing the Commission's *Inter-Session Guidance* for that Party. These papers identified "what the Commission sees as the principal issues that continue to separate the Parties" as follows:

> (*a*) The location of the eastern seabed boundary;
>
> (*b*) The legal status of the seabed within a Greater Sunrise Special Regime area;
>
> (*c*) The allocation of upstream revenue from the development of Greater Sunrise;
>
> (*d*) The scope of the broader economic benefits that would follow from the development of Greater Sunrise and the extent to which such benefits would be reflected in potential revenue-sharing arrangements for Greater Sunrise.

The Commission invited each Party to consider its position on these issues and to indicate to the Commission in writing in advance of the August meetings its views regarding the elements that would be necessary to forge a comprehensive package agreement.

146. The Commission and the Parties agreed during the July meetings that the conciliation process had so far been productive and should therefore continue beyond the 19 September 2017 deadline provided for in Annex V to the Convention and in the Commission's *Decision on Competence*. The Commission and the Parties also agreed that the deadline for the Commission to submit its report should be extended to occur only after the conclusion of the Commission's engagement with the Parties, so as to permit the Commission to devote its full attention to assisting the Parties in reaching a comprehensive agreement. The Parties agreed that the meeting scheduled for August 2017 would be the final substantive session between the Parties and the Commission, but that there would be an additional meeting in October 2017 to ena-

ble the Parties to come back to the Commission regarding the results of the August meetings after engaging in internal consultations. The Parties also agreed that the deadline for the Commission's report would be extended to 15 December 2017. These agreements were subsequently confirmed in correspondence exchanged on 7, 8, and 11 August 2017.

## H. Further Informal Consultations at the Political Level

147. Over the course of the July meetings, Australia outlined to the Commission a number of areas where it considered that it could show significant flexibility in the interest of reaching a compromise with Timor-Leste. This flexibility from Australia was instrumental in enabling the Commission to engage effectively with the political leadership of Timor-Leste.

148. Following the conclusion of the July meetings, a delegation from the Commission composed of the Chairman and Judge Koroma travelled to Timor-Leste for informal consultations at the political level.

149. On 29 July 2017, the Chairman and Judge Koroma met in Dili with Timor-Leste's Chief Negotiator, H.E. Kay Rala Xanana Gusmão; Timor-Leste's Agent, H.E. Mr. Hermenegildo Pereira; and H.E. Ambassador Abel Guterres. Also present during this meeting were Messrs. Schofield and Doe of the Registry.

150. On 30 July 2017, the Chairman and Judge Koroma travelled to Suai on the south coast of Timor-Leste with H.E. Mr. Alfredo Pires, Minister of Petroleum and South Coast Development, and a delegation of representatives of Ministry of Petroleum, the Autoridade Nacional do Petróleo e Minerais (the "ANPM"), TIMOR GAP, the Timor-Leste Maritime Boundary Office, and the Registry. During the course of the visit, the Chairman and Judge Koroma inspected the infrastructure development in and around Suai.

151. Later on 30 July 2017, the Chairman and Judge Koroma met again with Timor-Leste's Chief Negotiator, H.E. Kay Rala Xanana Gusmão, and its Agent, H.E. Mr. Hermenegildo Pereira in Dili. Also present during this meeting were H.E. Ambassador Abel Guterres and Messrs. Schofield and Doe of the Registry.

152. On 1 August 2017, the Chairman and Judge Koroma met separately with the President of Timor-Leste, Dr. Francisco Guterres Lu-Olo; the Prime Minister, Dr. Rui Maria de Araújo; the Secretary-General of FRETILIN, Dr. Mari Alkatiri; and the former President, Dr. José Ramos Horta. Also present during these meetings were H.E. Ambassador Abel Guterres and Messrs. Schofield and Doe of the Registry.

153. During the course of these meetings, Timor-Leste's political leadership outlined for the Commission the elements of a package agreement that Timor-Leste could accept, modifying certain elements of its position in the interest of achieving an amicable settlement. These meetings represented a breakthrough in the proceedings. They provided both Parties with an opportunity and grounds to move away from established positions and allowed the

Commission to identify the core elements of an agreement that it anticipated that both Parties would ultimately be able to accept.

154. On 5 August 2017, the Chairman of the Commission conferred by telephone with Mr. Gary Quinlan AO. Thereafter, the Commission conveyed to Australia a paper setting out the elements of a package identified for possible agreement by the political leadership in Dili.

## I. Discussions Leading to the Comprehensive Package Agreement

155. On 15 August 2017, the Chairman of the Commission conferred by telephone with representatives of the Australian delegation regarding Australia's initial reaction to the paper resulting from the consultations that had taken place in Dili.

156. On 18 August 2017, the Joint Venture wrote to the Commission and to the Parties, responding to the Commission's letter of 26 July 2017 (see paragraph 144 above) and providing a submission on the development of the Greater Sunrise gas field by way of either a pipeline to Darwin, Australia ("Darwin LNG"), or a pipeline to Beaço on the south coast of Timor-Leste ("Timor LNG").

157. Also on 18 August 2017, the representative of ConocoPhillips, one of the members of the Joint Venture, wrote separately to the Commission and to the Parties regarding time constraints on the possible development of Greater Sunrise by way of a Darwin LNG concept.[57]

158. In the course of August 2017, the Chairman of the Commission engaged in a number of informal telephone consultations with representatives of each Party.

159. On 27 August 2017, Australia wrote to the Commission with a proposal for a comprehensive agreement and requested the Commission to transmit this proposal to Timor-Leste. Australia also wrote confidentially to the Commission, elaborating on the rationale behind aspects of its proposal.

160. Between 28 August and 1 September 2017, the Commission met separately with the Parties in Copenhagen.[58] In keeping with the Commission's practice, no formal written record was kept of the meetings.

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[57] ConocoPhillips is both a participant in the Greater Sunrise Joint Venture and a participant in the joint venture that operates the LNG plant at Wickham Point in Darwin, Australia (a separate commercial entity). Certain measures were thus taken by the Greater Sunrise Joint Venture participants to exclude the other members of the Joint Venture from ConocoPhillips' representations on behalf of the Wickham Point facility and to exclude ConocoPhillips from the Joint Venture's discussions regarding potential tolling arrangements for the Wickham Point facility.

[58] The following persons participated in the August 2017 session:

For Timor-Leste: H.E. Minister Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, H.E. Minister Alfredo Pires, Ms. Elizabeth Exposto, H.E. Ambassador Abel Guterres, Mr. Gualdino do Carmo da Silva, Mr. Francisco da Costa Monteiro, Sir Michael Wood KCMG, Mr. Eran Sthoeger, Dr. Robin Cleverly, Mr. Simon Fenby, Ms. Sadhie Abayasekara, Ms. Adelsia

161. During the August 2017 session, the Commission's discussions with the Parties focused on each Party's proposal for a comprehensive package, on the allocation of revenue from Greater Sunrise, on the submission received from the Joint Venture concerning the development of Greater Sunrise, and on a procedure and timeline to engage with the Joint Venture and settle the issue of the approach to be taken to developing Greater Sunrise.

162. On 30 August 2017, on the basis of its discussions with the Parties, the Commission circulated a *Non-Paper on a Comprehensive Package Agreement*, outlining what the Commission considered to be the elements of a comprehensive package that would be acceptable to both Parties and compatible with the Convention's requirement that the delimitation of the maritime boundaries achieve an equitable solution.

163. On 31 August 2017, the Commission circulated a *Commission Non-Paper on Approach on the Greater Sunrise Development Concept*, along with a proposed action plan for engagement with the Joint Venture on the development of Greater Sunrise.

164. On 31 August and 1 September 2017, the Parties engaged in internal consultations at the political level, confirmed their agreement to the elements of the 30 August package, and finalized an agreed Action Plan for engagement with the Joint Venture (which documents collectively constituted the 30 August Agreement). The Parties also agreed that the Commission would remain involved to facilitate the Parties' engagement with the Joint Venture. A copy of the 30 August Agreement is enclosed as Annex 21 to this Report.

165. At the close of the meetings on 1 September 2017, the Commission convened a joint session with both Parties and invited the Parties to attend a social reception to celebrate the agreement reached.

166. At the close of the meetings, the Commission provided both Parties with the following *Inter-Session Guidance*:

> **General**
>
> The Commission considers that this week represents a breakthrough in these proceedings and that the Parties' agreement to the Proposal of 30 August 2017 addresses the core elements of a comprehensive solution to the issue of maritime boundaries in the Timor Sea. This achievement has only been possible through a great deal of hard work and good will on both sides, efforts that bode well for future relations between Timor-Leste and Australia.

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Coelho da Silva, Ms. Iriana Ximenes, Mr. Stephen Webb, Ms. Gitanjali Bajaj, Ms. Lena Chapple, Mr. Ricardo Alves Silva.

For Australia: Sir Daniel Bethlehem KCMG QC, Ms. Katrina Cooper, Mr. John Reid PSM, Ms. Lisa Schofield, Mr. Geoffrey Francis, Mr. Justin Whyatt, Ms. Megan Jones, Ms. Diana Nelson, Ms. Angela Robinson, Ms. Amelia Telec, Ms. Esther Harvey, Mr. Mark Alcock, Mr. Benjamin Huntley, Ms. Natalie Taffs, Mr. Ben O'Sullivan, Ms. Emily Stirzaker.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

In order to give concrete form to this agreement in principle, a large number of steps must now be taken.

**The 30 August 2017 Agreement**

The Parties' agreement to the Commission's Proposal of 30 August 2017 (the "30 August 2017 Agreement") will constitute the basis for the Commission's further engagement with the Parties and for the preparation of a draft treaty.

Other papers previously circulated by the Commission (in particular those concerning legal security and political sustainability) may usefully contribute to the further progress of the conciliation and the preparation of a treaty on the basis of 30 August 2017 Agreement.

**Engagement with the Sunrise Joint Venture**

As part of the 30 August 2017 Agreement, the Parties will now begin joint engagement with the Joint Venture, with a view to a timely and informed decision on the development concept for Greater Sunrise. The Parties are requested to immediately commence implementation of the first elements of the Action Plan, including (*a*) the provision of information to the Sunrise Joint Venture, (*b*) the formulation of an agreed timeline for a response from the Sunrise Joint Venture, and (*c*) the preparation of a detailed request for further and more comprehensive information from the Sunrise Joint Venture (to be sent through a letter from the Commission).

**Preparation for September 2017 Meetings with the Commission**

In order for the Parties and Commission to prepare for meetings in October 2017, the Parties are requested to take the following inter-sessional steps.

(1) *Issues Register:* In order to ensure that important issues or points of detail are not missed in the Commission's further work with the Parties or in the preparation of a treaty, each Party is requested to review its files and to provide to the Commission a list of all outstanding issues or points of detail that, in that Party's view, remain to be addressed. The Parties are requested to provide their separate lists to the Commission by *Monday, 11 September 2017*. Thereafter, the Commission will compile the Party's lists, along with any other issues or points of detail the Commission may identify, and circulate a common issues register.

(2) *Treaty Drafting:* The Commission understands that both Parties have draft treaties that are well advanced and believes that it would be helpful for the Parties to exchange their respective draft treaties and engage in informal consultations to identify areas of agreement and disagreement. The Commission considers, however, that in light of the large number of details to be resolved in October, the formulation of a common working text will need to be finalized through the Commission. The Parties are requested to exchange their respective draft

treaties and to confer bilaterally to identify areas of agreement and disagreement. By *Monday, 25 September 2017*, the Parties are requested to provide the Commission with their joint or separate draft treaty texts, together with whatever commentary or explanatory memoranda each considers appropriate regarding areas of agreement and disagreement. To the extent necessary, the Commission will consolidate the Parties' drafts into a common working text, identify points of disagreement for resolution during the October session, and prepare a recommendation on outstanding issues.

(3) *Political Sustainability:* In the discussions in Singapore, the Parties were in significant agreement on a number of steps that would contribute to the political sustainability of any agreement. Such steps were captured in the Commission's Non-Paper on Political Sustainability of 26 July 2017, and some (*e.g.*, signing ceremonies, or the presence of certain individuals to witness the conclusion of the treaty) may require advance planning. The Parties are requested to revisit this issue and to confer bilaterally regarding the political sustainability arrangements that they would consider appropriate and to begin making any necessary logistical arrangements. The Commission requests the Parties to provide it with an update on these discussions during the October session. Should it prove necessary, however, either Party may request that the Commission join the Parties' discussions on these issues to facilitate resolving any points of disagreement.

## J. Formalization of the 30 August Agreement and Initial Engagement with the Joint Venture

167. In the course of September 2017, the Chairman of the Commission engaged in a number of informal telephone consultations with representatives of each Party.

168. Between 5 and 8 September 2017, the Parties and the Commission exchanged correspondence regarding engagement with the Joint Venture.

169. On 11 September 2017, the Commission wrote to the Joint Venture, outlining the Action Plan for engagement on the development of Greater Sunrise agreed to as part of the 30 August Agreement. The Chairman also indicated that he would shortly be writing to the Joint Venture regarding additional information sought by the Parties in respect of the development of Greater Sunrise.

170. On 12 and 18 September 2017, the Parties each wrote to the Commission, providing an initial register of outstanding issues, as anticipated in the Commission's *Inter-Session Guidance*.

171. On 12 September 2017, the Commission wrote to the Parties, requesting that they provide the Commission with complete details on (*a*) the information sought from the Joint Venture and (*b*) the areas where each Party considered that the Joint Venture's analysis regarding either Timor LNG or

Darwin LNG was incorrect or should be reconsidered. The Commission also invited Timor-Leste to provide a document setting out for the Joint Venture how Timor-Leste envisaged the development of Greater Sunrise proceeding and how the Greater Sunrise project could best integrate with Timor-Leste's broader development goals under each of the Timor LNG and Darwin LNG scenarios.

172. On 15 and 19 September 2017, the Parties each wrote to the Commission, providing the information requested in the Commission's letter of 12 September 2017.

173. Between 19 and 25 September 2017, the Parties engaged in bilateral consultations, in consultations with the Chairman of the Commission, and in discussions with representatives of the Joint Venture regarding engagement on the development of Greater Sunrise.

174. Between 13 and 22 September 2017, the Parties engaged in bilateral negotiations on the text of a draft treaty on maritime boundaries to formalise the content of the 30 August Agreement.

175. On 25 September 2017, the Parties wrote jointly to the Commission, enclosing the Parties' joint draft treaty text (the "Consolidated Draft Treaty"), as anticipated in the Commission's *Inter-Session Guidance*.

176. On 27 September 2017, the Commission wrote to the Joint Venture enclosing the Parties' agreed *Protocol to Meet Commission's Action Plan* and a preliminary list of further information required from the Joint Venture for the assessment of the Timor LNG and Darwin LNG development concepts. The Chairman also extended an invitation for Joint Venture to join the Parties and the Commission in The Hague in October for meetings devoted to the development of Greater Sunrise.

177. On 28 September 2017, the Commission wrote to the Parties, noting its appreciation for the extent to which the Parties had succeeded in reaching agreement on the Consolidated Draft Treaty and indicating that the Commission did not consider it constructive to address the outstanding issues before meeting with the Parties in October. Instead, the Commission invited each Party to "provide, in advance of the October meetings, a short written submission setting out the rationale for the position it has taken on each of the principal points of the draft treaty that remain outstanding between the Parties and identifying any considerations of which the Commission should be aware." The Commission also invited the Parties to provide updated versions of the issues registers submitted earlier in the month.

178. On 2 October 2017, the Joint Venture wrote to the Commission regarding the engagement process envisaged in the Chairman's letter of 27 September 2017. On the same day, ConocoPhillips wrote to the Commission offering to brief the Commission and the Parties (independently from the other members of the Joint Venture in order to prevent a conflict of interest) regarding time constraints on the possible development of Greater Sunrise by way of a Darwin LNG concept.

179. On 5 October 2017, the Parties each wrote to the Commission, enclosing a written submission on outstanding issues and points of detail in the Consolidated Draft Treaty.

180. On 6 October 2017, the Commission wrote to the Joint Venture regarding the agenda for the Commission and Parties' meetings with the Joint Venture. On the same day the Commission also wrote to the Joint Venture regarding the confidentiality of the proceedings and of information shared in the course of engagement between the Parties and the Joint Venture. The Commission also accepted ConocoPhillips offer of a separate briefing on time constraints on a Darwin LNG approach.

181. Between 9 and 13 October 2017, the Commission met jointly and separately with the Parties in The Hague.[59] In keeping with the Commission's practice, no formal written record was kept of the meetings.

182. On 10 October 2017, the Commission and the Parties met with the Joint Venture regarding the development of Greater Sunrise and, separately, with ConocoPhillips regarding time constraints on a Darwin LNG approach. On the margins of this meeting the Parties also reached agreement with the Joint Venture on a *Timeline for Greater Sunrise Deliverables* to elaborate on the 27 September 2017 Protocol to the Commission's *Action Plan*. Following those discussions, the Commission further wrote to the Joint Venture on 11 October 2017, setting out a confidentiality regime for the Parties' further engagement with the Joint Venture.

183. During the October 2017 session, the Parties continued to negotiate on a bilateral basis in respect of outstanding issues in the Consolidated Draft Treaty. On 12 October 2017, the Parties informed the Commission that they had reached complete agreement on the text of a *Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea* (the "Final Draft Treaty"). On 13 October 2017, the Agents of the

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[59] The following persons participated in the October 2017 session:

For Timor-Leste: H.E. Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, Mr. Alfredo Pires, H.E. Ambassador Abel Guterres, Mr. Gualdino do Carmo da Silva, Mr. Francisco da Costa Monteiro, Sir Michael Wood KCMG, Mr. Eran Sthoeger, Dr. Robin Cleverly, Mr. Simon Fenby, Ms. Sadhie Abayasekarae, Ms. Erin Michelle Gourlay, Ms. Adelsia Coelho da Silva, Ms. Iriana Ximenes, Ms. Janet Legrand QC (Hon), Mr. Stephen Webb, Ms. Gitanjali Bajaj, Ms. Lena Chapple, and Mr. Ricardo Alves Silva.

For Australia: Sir Daniel Bethlehem KCMG QC, Mr. Gary Quinlan AO, Mr. John Reid PSM, Mr. James Larsen, Ms. Lisa Schofield, Mr. Justin Whyatt, Ms. Diana Nelson, Ms. Angela Robinson, Ms. Amelia Telec, Ms. Esther Harvey, Mr. Simon Winckler, Mr. Mark Alcock, Mr. Benjamin Huntley, Ms. Natalie Taffs, Mr. Todd Quinn, Mr. Patrick Mullins, Ms. Indra McCormick, and Ms. Christina Hey-Nguyen.

For the Greater Sunrise Joint Venture: Mr. Mike Nazroo, Ms. Michelle Clark, and Ms. Larina Taylor of ConocoPhillips; Mr. Robert Edwardes, Mr. Hendrik Snyman, and Mr. John Prowse of Woodside Petroleum; Mr. Julian von Fumetti of Royal Dutch Shell; Ms. Patricia Lim of Osaka Gas; and Mr. Sam Luttrell of Clifford Chance LLP.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

Parties, H.E. Mr. Hermenegildo Pereira and Mr. John Reid PSM, initialled a copy of the Final Draft Treaty, which was deposited with the Registry for safe-keeping.

184. During the course of the week, it became evident that the Parties were not in agreement in respect of the timetable for signature of the Treaty or its relationship with the procedure for engagement with the Joint Venture regarding the development of Greater Sunrise. Accordingly, the Commission and the Parties agreed to revisit this question during a stock-taking meeting in November 2017 and to tentatively schedule two further meetings in December 2017 and January 2018 to consider the process of engagement with the Joint Venture and the Parties' decisions regarding the development of Greater Sunrise. At the close of the meeting, the Commission and the Parties agreed to the following *Draft Scheduling Protocol* regarding next steps:

> In July 2017, the Parties and Commission reached agreement on a schedule for the remainder of these proceedings, anticipating a meeting from 9 to 13 October 2017 and the completion of the Commission's report by 15 December 2017. This timeline has now been overtaken by the Parties' conclusion of the Comprehensive Package Agreement on 30 August 2017 and the included Action Plan for engagement with the Greater Sunrise Joint Venture.
>
> The Commission considers that the Report cannot be issued in the midst of the Parties' engagement with the Joint Venture and that it is essential that the Parties be given the opportunity to review the report in draft before it is made public or transmitted to the UN Secretary General as required by Annex V to the Convention. The Commission also considers that scheduling arrangements should be put in place for the Commission to engage with the Parties regarding the Development Concept as necessary, as anticipated in the Comprehensive Package Agreement. Accordingly, the Commission proposes the following timetable:
>
> **Disclosure of the Draft Treaty**
>
> - Parties to disclose details of the agreement to stakeholders during November 2017 in a manner to be agreed
> - Further details of the agreement to be made public during November as agreed between the Parties
>
> **Signature of the Treaty**
>
> - Parties to initial draft Treaty today in The Hague; PCA to hold initialled copy in vault.
> - Parties to pursue their domestic approval processes with a view to signing the treaty
> - Parties to meet in Singapore before the end of November with the Commission / Commission Chair, as appropriate, in order to review progress on the Comprehensive Package Agreement pathway to the development of the resource and set a date for

signing of the Treaty by the end of the year or early 2018 if satisfied with progress

**Engagement with the Greater Sunrise Joint Venture:**

- Parties to engage with Joint Venture according to the attached Timeline for Greater Sunrise Deliverables
- Parties to provide the Commission with informal weekly updates (by telephone, through the Registry) regarding the status of engagement with the Greater Sunrise Joint Venture
- Commission to confer with the Parties (and the Joint Venture as necessary) upon the request or if the Commission considers that the Parties' informal updates indicate a need for Commission engagement
- Dates reserved for a meeting between the Parties and the Commission regarding engagement with the Joint Venture and the Development Concept from 12–14 December 2017 in Singapore. The Commission will confer with the Parties by 30 November regarding whether to go ahead with this meeting.
- Dates reserved for a meeting between the Parties and the Commission regarding engagement with the Joint Venture and the Development Concept from 29–31 January 2018 in a location to be agreed. The Commission will confer with the Parties by 10 January 2018 regarding whether to go ahead with this meeting.

**Procedure for the Commission's Report Unless Otherwise Agreed**

- Commission's Report will follow the completion of the Action Plan for engagement with the Joint Venture.
- If the approach to the Development Concept is agreed by 15 December 2017: The Commission will transmit the Report to the Parties in draft by 10 January 2018. The Parties will provide any comments on the draft Report by 31 January 2018. The Commission will then consider Parties' comments and transmit the Report to the Parties and UN Secretary-General by 14 February 2018.
- If that is not the case: The Commission will transmit the Report to the Parties in draft by 14 February 2018. The Parties will provide any comments on the draft Report by 7 March 2018. The Commission will then consider the Parties' comments and transmit Report to the Parties and UN Secretary-General by 21 March 2018.
- Parties to confirm in writing, by Friday, 20 October 2017, their agreement to these new deadlines for the completion of the Report.

185. On 20 October 2017, Australia wrote to the Commission, confirming its agreement to the dates set out in the Draft Scheduling Protocol and to

the corresponding extension of the Commission's mandate. On 25 October 2017, Timor-Leste wrote to the Commission, confirming the same.

## K. Engagement with the Greater Sunrise Joint Venture

186. On 17 October 2017, the Joint Venture wrote to the Commission regarding confidentiality. With its e-mail communication, the Joint Venture enclosed a counter-signed version of the Chairman's letter of 11 October 2017, but indicated that it wished to pursue a more comprehensive information-sharing agreement with the governments of Timor-Leste and Australia.

187. The Joint Venture subsequently wrote to the Parties on 19 October 2017, proposing a draft of a possible information-sharing agreement.

188. On 20 October 2017, Timor-Leste provided the Joint Venture and Australia access to a data room containing documents and data prepared by Timor-Leste in relation to the development of Greater Sunrise.

189. The Parties conducted a series of preliminary discussions with the Joint Venture by videoconference on 23 October 2017 concerning the modelling of reserve estimates for Greater Sunrise and the Joint Venture's ideas concerning potential initiatives to ensure Timorese local content and the development of the south coast of Timor-Leste in connection with the development of Greater Sunrise.

190. The Parties conducted another series of preliminary discussions with the Joint Venture by videoconference on 25 October 2017 concerning facilities and infrastructure on the south coast of Timor-Leste.

191. The Parties conducted a further series of preliminary discussions with the Joint Venture by videoconference on 27 October 2017 concerning the route of the pipeline and financial models for the development of Greater Sunrise. On the same day, the Parties conducted a preliminary discussion with Woodside Petroleum, without the involvement of the other Joint Venture partners, regarding tolling arrangements in the event that Greater Sunrise were to be developed through the use of the LNG Plant at Wickham Point in Darwin, Australia.

192. On 7 and 8 November 2017, the Parties met with the Joint Venture in Brisbane, Australia for a first trilateral meeting. During this meeting, the Joint Venture gave an presentation on each of the Darwin LNG and Timor LNG approaches to the development of Greater Sunrise, following which the Parties provided the Joint Venture with detailed feedback regarding issues on which they were unconvinced by the Joint Venture's analysis or considered that additional work and discussion would be required. The Parties and the Joint Venture also concluded an Information Sharing Agreement. The Commission was not involved in these various videoconferences or trilateral meetings.

## L. Stocktaking and Arrangements for the Signature of the Treaty

193. Throughout late October and early November 2017, the Parties exchanged correspondence bilaterally regarding the manner and timing for the disclosure of details of the Parties' agreement on maritime boundaries to the Joint Venture and other stakeholders with interests in the Timor Sea. The Parties also exchanged correspondence regarding other transitional arrangements, including domestic legislation that would need to be adopted to implement the Parties' agreement on maritime boundaries and the Greater Sunrise Special Regime.

194. On 9 November 2017, the Parties met bilaterally in Brisbane to discuss transitional arrangements and the disclosure of details of the Final Draft Treaty.

195. On 18 November 2017, the Commission held a one-day stocktaking session in Singapore with the Parties and a separate meeting with the Joint Venture. During these meetings, Timor-Leste indicated its view that the timetable for engagement with the Joint Venture was unreasonably compressed. Australia, for its part, indicated that it did not believe that sufficient progress had been achieved with respect to the development concept to fix a timetable for signature of the Final Draft Treaty. In keeping with the Commission's practice, no formal written record was kept of the meetings.[60]

196. Following its November stocktaking session with the Parties, the Commission scheduled a further stocktaking session for mid-December, 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.

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[60] The following persons participated in the November 2017 session:

For Timor-Leste: H.E. Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, Mr. Alfredo Pires, H.E. Ambassador Abel Guterres, Mr. Gualdino do Carmo da Silva, Mr. Francisco da Costa Monteiro, Sir Michael Wood KCMG, Mr. Simon Fenby, Ms. Sadhie Abayasekarae, Mr. Stephen Webb, Ms. Gitanjali Bajaj, Ms. Lena Chapple, Mr. Jeffrey Sheehy, Mr. Ricardo Alves Silva, Mr. Sivakumar Muniappan, Mr. Paul Hayward, Mr. Rod McKellar, Mr. David Lawson, Ms. Emilie Barton, Mr. Ernesto Pinto, Mr. Angelo Lay, and Mr. Agus Maradona Tilman.

For Australia: Mr. Gary Quinlan AO, Mr. James Larsen, Ms. Lisa Schofield, Mr. Michael Googan, Ms. Amelia Telec, Ms. Esther Harvey, Ms. Rebecca Curtis, Mr. Steven Taylor, Mr. Benjamin Huntley, Mr. Peter Carter, Dr. Evan Hynd, Mr. Patrick Mullins, and Ms. Vrinda Tiwari.

For the Greater Sunrise Joint Venture: Mr. Mike Nazroo, Ms. Michelle Clark, Ms. Larina Taylor, Ms. Kayleen Ewin, Mr. Chris Wilson, Mr. Frank Krieger, Mr. Dave Fillman, Mr. David Jamieson, Mr. Mike Timmcke, Mr. Damien Yelverton, Mr. Seamus Arundel, Mr. Mark Hunter, and Mr. John Devins of ConocoPhillips; Ms. Tricia Desplace, Mr. Paul Baker, Mr. Robert Edwardes, Mr. Andrew Pearce, Mr. Scott Amos, Mr. Daniel Bathe, and Mr. Ben Coetzer of Woodside Petroleum; Mr. Damian Deveney and Mr. Nilofar Morgan of Royal Dutch Shell; and Ms. Patricia Lim, Mr. Wataru Kato, Mr. Prady Chaliha, and Mr. Craig Dingley of Osaka Gas.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

## M. Further Engagement between the Parties and the Joint Venture

197. On 18 November 2017, the Joint Venture provided the Parties with a first draft of a possible Framework Agreement for the development of Greater Sunrise.

198. The Parties subsequently met with the Joint Venture in Singapore for a second trilateral meeting on 19 and 20 November 2017. During this meeting, the Parties and the Joint Venture discussed their respective positions concerning the Timor LNG and Darwin LNG approaches, including outstanding technical issues, economics, socio-economic considerations, and a potential Framework Agreement.

199. On 4 and 5 December 2017, the Parties met with the Joint Venture in Melbourne for a third trilateral meeting. During this meeting, the Parties and the Joint Venture discussed the two development concepts, technical issues relating to pipelines and the use of existing facilities, local content, and the economics of both concepts.

200. On 11 December 2017, the Parties met with the Joint Venture in Singapore for a fourth trilateral meeting concerning the economics of the two development concepts.

## N. The Commission's Direct Engagement on the Greater Sunrise Development Concept

201. From 12 to 14 December 2017, the Commission held a session in Singapore with the Parties regarding the development concept for Greater Sunrise, as well as separate meetings with the Joint Venture.[61] During these

[61] The following persons participated in the December 2017 session:

For Timor-Leste: H.E. Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, Mr. Alfredo Pires, H.E. Ambassador Abel Guterres, Mr. Gualdino do Carmo da Silva, Mr. Francisco da Costa Monteiro, Sir Michael Wood, Mr. Eran Sthoeger, Mr. Simon Fenby, Ms. Sadhie Abayasekarae, Ms. Adelsia Coelho da Silva, Mr. Stephen Webb, Ms. Gitanjali Bajaj, Ms. Lena Chapple, Mr. Jeffrey Sheehy, Mr. Ricardo Alves Silva, Mr. Sivakumar Muniappan, Mr. Paul Hayward, Mr. Rod McKellar, Mr. David Lawson, and Ms. Emilie Barton, Ms. Fiona Macrae, Ms. Felismina Carvalho dos Reis, Mr. Ernesto Pinto, Mr. Mateus da Costa, Mr. Angelo Lay, Mr. Agus Maradona Tilman, Mr. João Leite, and Mr. Nuno Delicado.

For Australia: Mr. Gary Quinlan AO, Mr. John Reid PSM, Mr. James Larsen, Ms. Lisa Schofield, Mr. Michael Googan, Ms. Amelia Telec, Ms. Esther Harvey, Mr. Jeremy Noye, Ms. Rebecca Curtis, Mr. Steven Taylor, Mr. Benjamin Huntley, Mr. Peter Carter, Dr. Evan Hynd, and Ms. Vrinda Tiwari.

For the Greater Sunrise Joint Venture: Mr. Chris Wilson, Mr. Mike Nazroo, Ms. Kayleen Ewin, Ms. Michelle Clark, Ms. Larina Taylor, Mr. Mark Hunter, and Mr. Marcello Iuliano of ConocoPhillips; Mr. Robert Edwardes, Ms. Tricia Desplace, Mr. Daniel Bathe, and Mr. Tom Van Der Meulen of Woodside Petroleum; Mr. Damian Deveney, Mr. Nilofar Morgan, and Ms. Elaine Loh of Royal Dutch Shell; and Ms. Patricia Lim, Mr. Wataru Kato, and Mr. Craig Dingley of Osaka Gas.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

meetings, the two governments indicated that it was not realistic, on the information before them, for the governments to take a decision on the development concept for Greater Sunrise by 15 December 2017 as anticipated by the 30 August Agreement. Both governments, however, reaffirmed to the Commission their wish to continue to discuss the development concept for Greater Sunrise with a view to resolving this matter within the context of the conciliation proceedings. During the course of the December session, the Parties also agreed on the terms of an exchange of letters concerning the interpretation of the Final Draft Treaty.

202. In accordance with the fall-back provisions of the 30 August Agreement, the Commission acceded to the Parties' request that it engage directly with the Parties and the Joint Venture "with a view to facilitating agreement on the Development Concept." In consultation with the two governments and the Joint Venture, the Commission adopted a Supplemental Action Plan pursuant to which the Commission would appoint an independent expert in oil and gas development planning to advise it and would meet with the Parties in January and February 2018, leading to a decision on the development concept by no later than 1 March 2018.[62] The Supplemental Action Plan also set out a detailed list of requests for additional information from both governments and from the Joint Venture. A copy of the Commission's Supplemental Action Plan is attached as Annex 27 to this Report. The Commission also agreed with the Parties on Terms of Reference for the expert to be appointed to assist the Commission. The Terms of Reference identified the scope of the expert's duties as follows:

> 3.1. The Expert shall assist the Conciliation Commission in relation to its consideration of the information provided by the Governments of Timor-Leste and Australia and the Joint Venture regarding the development of the Sunrise and Troubadour gas fields ("Greater Sunrise") and, in particular, in:
>
> 3.1.1. examining and analysing the data and materials relating to the development concept for Greater Sunrise;
>
> 3.1.2. assessing whether the informational basis exists to evaluate and compare the Darwin-LNG and Timor-LNG concepts in accordance with international best oilfield practice and the agreed development concept decision criteria;
>
> 3.1.3. identifying any gaps in the available information necessary for the comparison of the Darwin-LNG and Timor-LNG concepts and for an informed high-level decision between concepts in accordance with international best oilfield practice and the agreed development concept decision criteria;
>
> 3.1.4. assessing the comparative economics and economic viability of the Darwin-LNG and Timor-LNG concepts and

[62] Based on the information available to it regarding timing constraints on the potential availability of the Wickham Point LNG plant in Darwin, Australia, the Commission and the Parties considered that both options would likely remain available through 1 March 2018, rather than 1 February 2018 as anticipated in the 30 August Agreement.

> the economic implications of each concept for Australia, Timor-Leste, the Joint Venture, and any other relevant actors;
> 3.1.5. assessing the suitability for investment of the Darwin-LNG and Timor-LNG concepts in accordance with international best oilfield practice and the agreed development concept decision criteria;
> 3.1.6. consideration of any such other matters as the Commission or Expert may determine to be relevant during the course of the reference.

In keeping with the Commission's practice, no formal written record was kept of the meetings.

203. Both during and after the December 2017 session, the two governments conveyed a number of informal suggestions regarding individuals and organizations that could potentially be considered in seeking to identify an expert with the experience necessary to advise the Commission.

204. On 10 January 2018, the Commission wrote to the Parties, inviting their comments on three potential candidates for the expert to be appointed to assist the Commission. On 11 January 2018, the Commission wrote to the Parties regarding a fourth potential candidate for consideration.

205. On 12 and 13 January 2018, the Commission conferred informally with the Parties regarding the choice of the expert to be appointed. At this point, Timor-Leste raised the question of the Commission potentially also seeking expertise in development economics. In response, the Commission recalled the scope of the mandate in the Terms of Reference and emphasized that it did not intend to make any formal recommendation on the choice of development concept or on how best to develop the Timor-Leste economy. Consequently, the Commission had looked for individuals with the expertise to undertake a comparative technical and financial analysis of the two development concepts under consideration in order to allow for an informed decision by the two governments.

206. On 16 and 17 January 2018, the two governments and the Joint Venture wrote to the Commission, providing their responses to the Commission's requests for additional information, made as part of the Supplemental Action Plan. Upon receipt, each response was circulated to the other parties for their information.

207. On 17 January 2018, the Commission, with the agreement of the Parties, appointed Mr. Mike Wood of Gaffney, Cline & Associates as expert to assist the Commission in the final phase of the proceedings.[63]

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[63] Prior to confirming this appointment, the Commission exchanged correspondence with Gaffney, Cline & Associates and with Australia, acknowledging Gaffney, Cline & Associates' past work on behalf of the Government of Timor-Leste, confirming that no individuals involved in these prior engagements would play any role in supporting or advising the Commission, and recording Australia's non-objection to the appointment.

208. On 22, 23, and 25 January 2018, the two governments and the Joint Venture each wrote confidentially to the Commission, providing a submission setting out their views regarding the development concept for Greater Sunrise.

209. On 27 January 2018, the Commission wrote to the Parties with regard to its three objectives for the upcoming session:

> (*a*) First, the Commission noted its intention to develop with the two governments and the Joint Venture the details of both the Timor LNG and Darwin LNG concepts in order to allow both to be fully explored, with a strong commitment to the development of Timor-Leste regardless of the concept chosen and with a common understanding of the economic implications of that choice.
>
> (*b*) Second, in addition to consideration of the choice between development concepts, the Commission noted that it considered it imperative to also move forward on certain matters that would be relevant regardless of the choice between concepts and necessary to formalize agreement on the concept chosen. These included the fiscal regime to be applicable within the Greater Sunrise Special Regime and the terms of a Framework Agreement and production sharing contract that are not contingent on the choice of development concept.
>
> (*c*) Third, the Commission recalled that the issue of transitional arrangements for areas other than Greater Sunrise had proven more complicated than anticipated and requested an update from each government regarding outstanding issues in relation to transitional arrangements. The Commission indicated that it would then propose that the governments seek to agree a roadmap to move forward with these issues in advance of the signature of the Treaty in early March.

210. Between 29 January and 2 February 2018, the Commission met separately with the two governments and the Joint Venture in Sydney.[64] In keeping with the Commission's practice, no formal written record was kept of the meetings.

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[64] The following persons participated in the January 2018 session:

For Timor-Leste: H.E. Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, Mr. Alfredo Pires, H.E. Ambassador Abel Guterres, Mr. Gualdino do Carmo da Silva, Mr. Francisco da Costa Monteiro, Mr. Amado Hei, Mr. Florentino Soares Ferreira, Mr. Carlos Alves, Mr. Rod McKellar, Mr. Sivakumar Muniappan, Mr. Simon Fenby, Mr. Stephen Webb, Ms. Gitanjali Bajaj, Mr. Jack Brumpton, Ms. Sadhie Abayasekara, Mr. Ricardo Alves Silva, Mr. João Leite, Mr. David Lawson, Mr. Paul Hayward, Mr. Nuno Delicado, Ms. Adelsia Coelho da Silva, Mr. Jeffrey Sheehy, Ms. Melody McLennan, and Mr. Agus Maradona Tilman.

For Australia: Mr. Gary Quinlan AO, Mr. James Larsen, Mr. Michael Googan, Ms. Rebecca Curtis, Ms. Vrinda Tiwari, Mr. Jeremy Noye, Ms. Rori Moyo, Mr. John Reid PSM, Ms. Amelia Telec, Ms. Holly Matley, Ms. Lisa Schofield, Ms. Esther Harvey, Ms. Bernadette Shanahan, Dr. Evan Hynd, Mr. Steven Taylor, and Mr. Peter Carter.

For the Joint Venture: Mr. Mike Nazroo, Ms. Michelle Clark, Mr. Mark Hunter, Ms. Larina Taylor, Mr. Damien Yelverton, Ms. Kayleen Ewin, Mr. Dane Paddon, Mr. David Jamieson, and Mr. Michael Britton of ConocoPhillips; Mr. Paul Baker, Mr. Ben Coetzer, Ms. Tricia Desplace, Mr. John Prowse, and Mr. Moses Kim of Woodside Petroleum; Mr. David Shepherd, Mr. Damian Deveney, and Mr. Doug Mckay of Royal Dutch Shell; and Ms. Patricia Lim, Mr. Wataru Kato, and Mr. Craig Dingley of Osaka Gas.

211. The Commission continued to confer informally with both governments and with the Joint Venture throughout February 2018.

212. On 9 February 2018, Australia wrote to the Commission in response to several requests from the Commission for additional information.

213. On 14 and 15 February 2018, Australia and Timor-Leste each wrote confidentially to the Commission providing a further submission on their views regarding the development concept for Greater Sunrise.

214. Between 19 and 23 February 2018, the Commission met separately with the two governments and the Joint Venture in Kuala Lumpur.[65] In keeping with the Commission's practice, no formal written record was kept of the meetings.

215. On Thursday, 22 February 2018, the Commission requested a meeting with the leadership of each government's delegation on the following morning, to discuss the Commission's conclusions on the development concept for Greater Sunrise.

216. On Friday, 23 February 2018, the Commission provided the two governments with a series of documents concerning the development of Greater Sunrise. These documents comprised: (1) the Commission's Paper on the Comparative Development Benefits of Timor LNG and Darwin LNG; (2) a condensed analysis of the comparative economics of the two concepts; and (3) the Commission's proposed framework agreements for a decision on a Timor LNG concept, for a decision on a Darwin LNG concept with operations from Timor-Leste, and for the event that no decision is taken. Copies of the first two documents are attached as Annex 28 to this Report.

217. On 28 February 2018, Timor-Leste informed the Commission that it was not in a position to take a decision on the development concept for Greater Sunrise, and expressed the wish to continue discussions with Australia with a view to agreeing on a development concept as soon as possible.

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For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

[65] The following persons participated in the February 2018 session:

For Timor-Leste: H.E. Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, Mr. Alfredo Pires, H.E. Ambassador Abel Guterres, Mr. Gualdino do Carmo da Silva, Mr. Francisco da Costa Monteiro, Mr. Amado Hei, Mr. Florentino Soares Ferreira, Mr. Carlos Alves, Mr. Rod McKellar, Mr. Sivakumar Muniappan, Mr. Simon Fenby, Mr. Stephen Webb, Ms. Gitanjali Bajaj, Mr. Jack Brumpton, Ms. Emilie Barton, Ms. Sadhie Abayasekara, Mr. Ricardo Alves Silva, Mr. João Leite, Mr. David Lawson, Mr. Paul Hayward, Mr. Nuno Delicado, Mr. Agus Maradona Pereira Tilman, Ms. Adelsia Coelho da Silve.

For Australia: Mr. Gary Quinlan AO, Mr. John Reid PSM, Mr. James Larsen, Ms. Lisa Schofield, Mr. Michael Googan, Ms. Rebecca Curtis, Ms. Vrinda Tiwari, Mr. Patrick Mullins, Ms. Esther Harvey, and Mr. Steven Taylor.

For the Joint Venture: Mr. Mike Nazroo, Mr. Mark Hunter, Ms. Larina Taylor, Mr. Damien Yelverton, Ms. Kayleen Ewin, Mr. Dane Paddon, Mr. Jason Fior, and Mr. Patrick Hastwell of ConocoPhillips; Mr. Paul Baker, Mr. Mark Kain, Ms. Tricia Desplace, and Mr. John Prowse of Woodside Petroleum; Mr. David Shepherd, Mr. Damian Deveney, Ms. Elaine Loh, and Mr. Doug Mckay of Royal Dutch Shell; Ms. Patricia Lim, Mr. Wataru Kato, Mr. Masaaki Kishimoto, and Mr. Craig Dingley of Osaka Gas; and Mr. Sam Luttrell of Clifford Chance LLP.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

218. On 6 March 2018, the Parties both confirmed to the Commission their willingness to proceed with the signature of the Treaty on Maritime Boundaries.

## O. Signature of the Treaty on Maritime Boundaries

219. On 6 March 2018, the Treaty on Maritime Boundaries (the "Treaty") was signed at the United Nations in New York for Australia by The Honourable Julie Bishop MP, Minister for Foreign Affairs, and for Timor-Leste by H.E. Hermenegildo Augusto Cabral Pereira, Minister in the Office of the Prime Minister for the Delimitation of Borders and the Agent in the Conciliation. The signing of the Treaty was witnessed by the Secretary-General of the United Nations, H.E. António Manuel de Oliveira Guterres and by the Chairman, in the presence of the other members of the Conciliation Commission.[66] The Chairman was also invited to sign the Treaty on behalf of the Commission.

* * *

# VI. The Issues before the Commission

220. In the sections that follow, the Commission has set out for each phase of the proceedings the principal issues separating the Parties and the steps taken by the Commission to facilitate an amicable settlement.

## A. The Commission's Decision on Competence

221. As mentioned earlier (see paragraphs 76 to 88 above), at the outset of these proceedings, in its Response to the Notice of Conciliation, Australia objected to the competence of the Commission, principally on the grounds that recourse to compulsory conciliation under the Convention was precluded by CMATS. The Commission decided at the July 2016 procedural meeting to hear Australia's objections as a preliminary matter, and thereafter received written submissions from the Parties and convened a hearing on competence in August 2016. Having considered Australia's objections and Timor-Leste's response, the Commission issued a *Decision on Competence* on 19 September 2016, rejecting Australia's objection and upholding its competence. A copy of the Commission's *Decision on Competence* is found at Annex 9 to this Report and is incorporated by reference herein.

## B. Engagement on the Delimitation of Maritime Boundaries

222. This Report is issued in the context of the Parties having reached agreement on the delimitation of maritime boundaries in the Timor Sea, as

[66] Video of the signing ceremony is available at the website of the Permanent Court of Arbitration.

set out in Treaty annexed to this Report.[67] The preamble to the Treaty provides that the Parties' agreement "is based on a mutual accommodation between the Parties without prejudice to their respective legal positions."

223. The Commission briefly records the positions espoused by the Parties in the course of these proceedings, as well as certain of the reactions to these positions conveyed by the Commission. The Commission does this both to provide background to facilitate the understanding of the Parties' agreement and to make clear that the significant accommodation necessary to reach this agreement was not undertaken lightly by either Party.

## 1. Relevant Provisions of the Convention and Related Treaties

224. In order to better understand the Parties' initial positions with respect to their maritime delimitation in the Timor Sea, it is useful to recall the legal framework for maritime boundaries under international law, which has undergone significant evolution.

225. As already noted above, the 1958 Continental Shelf Convention was ratified in 1963 by both Australia and Portugal, with the latter having extended its application to its colony in East Timor.[68] In accordance with its terms, the 1958 Continental Shelf Convention entered into force on 10 June 1964 and defined the continental shelf as follows:

> For the purpose of these articles, the term "continental shelf" is used as referring (*a*) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (*b*) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

226. This convention governed the continental shelf claims made by Australia and Portugal, in 1953 and 1956 respectively, until the adoption of the Convention on 10 December 1982 and its subsequent entry into force for Australia and Timor-Leste.[69]

227. Article 76 of the Convention defines the continental shelf and continental margin as follows:

> 1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

[67] The Treaty, in turn, was based on the agreement reached in Copenhagen on 30 August 2017.

[68] See paragraphs 17 to 19 above.

[69] See paragraphs 28 to 29 above.

> [… ]
>
> 3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

The Convention recognises in Article 77 that "[t]he coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources."

228. The Convention also provides for the establishment by States Parties of exclusive economic zones for the exercise of sovereign rights, defined by Articles 55 and 56 as follows:

> *Article 55*
> *Specific legal regime of the exclusive economic zone*
>
> The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.
>
> *Article 56*
> *Rights, jurisdiction and duties of the coastal State in the exclusive economic zone*
>
> 1. In the exclusive economic zone, the coastal State has:
>
> (*a*) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
>
> (*b*) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
>
> (i) the establishment and use of artificial islands, installations and structures;
>
> (ii) marine scientific research;
>
> (iii) the protection and preservation of the marine environment;
>
> (*c*) other rights and duties provided for in this Convention.
>
> 2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.

229. As regards delimitation of the aforementioned continental shelf and exclusive economic zone, the Convention provides in Articles 74 and 83 as follows:

*Article 74*
*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.

*Article 83*
*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.

## 2. The Parties' Opening Positions

230. As set out above (see paragraph 60), the Commission's Rules of Procedure permitted the Parties to communicate with the Commission in confidence, under an assurance that views expressed would not subsequently be made public without the consent of the Parties concerned. In preparing this Report, the Commission thus provides only a limited summary of the positions taken by the Parties in the course of the conciliation, in keeping with the aforementioned option of confidentiality which it considers to have been essential to the conduct of the proceedings.

### *a. Timor-Leste's Opening Position*

231. In its discussions with the Commission, Timor-Leste took the position that the delimitation of a maritime boundary should be based upon contemporary international law as reflected in the recent jurisprudence of courts and tribunals engaged in the delimitation of maritime boundaries. Timor-Leste argued that this would entail the delimitation of a boundary for both the continental shelf and exclusive economic zone that would follow the median line between the coasts of Timor-Leste and Australia.

232. In Timor-Leste's view, there was no basis for the application of different principles to the delimitation of the exclusive economic zone and of the continental shelf. According to Timor-Leste, the adoption of the Convention and the introduction of distance from the coast as an element of the definition of the continental shelf were such that concepts of natural prolongation and the geology and geomorphology of the seabed were no longer relevant to the delimitation of a continental shelf between two States situated at a distance of less than 400 nautical miles. Moreover, Timor-Leste argued that it did not accept, as a matter of fact, that the Timor Trough represents a fundamental geological discontinuity separating the continental shelf of Australia from that of Timor-Leste. According to Timor-Leste, the outer edge of the continental shelf of Australia actually lies to the north of the island of Timor, and the Timor Trough represents only a "crumple zone" that was formed within the Australian continental plate as it collided with Eurasian continental plate to create the formation known as the Banda Arc.

233. With respect to the median line, Timor-Leste indicated that it did not consider that there were any relevant circumstances that would call for the adjustment of the median line. Timor-Leste thus took the view that the boundary between the Parties' exclusive economic zones should follow the median line until it reached an area in which the rights of Indonesia would be affected. Thereafter, Timor-Leste proposed that the median line would continue as a continental shelf boundary until, in the east, it reached the line of the 1972 Seabed Treaty between Australia and Indonesia. In the west, Timor-Leste argued that median line could continue as a continental shelf boundary until it reached a distance of 200 nautical miles from the coast of Timor-Leste.

### *b. Australia's Opening Position*

234. In its discussions with the Commission, Australia took the position that the delimitation of the continental shelf between Timor-Leste and Australia should take account of the unique configuration of the seabed in the Timor Sea. Australia rejected Timor-Leste's account of the law on the delimitation of the continental shelf, and in particular that natural prolongation is no longer relevant to maritime boundary delimitation. Australia argued that the physical continental shelves of Australia to the south and Timor-Leste and Indonesia to the north are entirely separate, and that these significant factual characteristics geologically, geomorphologically and ecologically remained relevant in maritime boundary delimitation.[70] As such considerations would not, however, be relevant to the delimitation of the exclusive economic zone, Australia proposed that there should be separate boundaries for the two regimes, arguing that international law does not require or prefer a single maritime boundary.

235. In addition, Australia considered that the delimitation of eastern and western lateral seabed boundaries should be on the basis of equidistance lines drawn from the coasts of Timor-Leste and Indonesia. In particular, Australia argued that the lateral boundaries of the JPDA were based upon historical equidistance lines from the coasts of Timor-Leste and Indonesia.[71]

## 3. The Commission's Reaction and Exploration of Options and Ideas

236. In engaging with the Parties, the Commission explored a wide range of issues relating to the delimitation of maritime boundaries, including:

(*a*) whether either physically, or as a legal, matter, the seabed between Timor-Leste and Australia is composed of a single continental shelf or two separate shelves;

(*b*) the evolution of the law of the sea relating to the continental shelf and, in particular, the differences between the basis for sovereign rights to the continental shelf under the 1958 Continental Shelf Convention and under the Convention;

(*c*) the relevance of geologic and geomorphologic factors;

(*d*) the potential interaction between claims to sovereign rights based on natural prolongation and claims based on distance from the coast;

(*e*) the relevant base points for the calculation of a median line;

(*f*) relevant circumstances that might lead to the adjustment of a provisional median line;

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[70] Opening Session Transcript, pp. 91–92.

[71] Opening Session Transcript, p. 94.

(*g*) the concept of "lateral" boundaries and the role, if any, of the coast of third States in the delimitation of a boundary between Timor-Leste and Australia;

(*h*) the extent of potentially overlapping claims by third States and their effect;

(*i*) the effect of prior treaties and agreements in the area; and

(*j*) historic claims.

237. In responding to the positions set out by the Parties, the Commission sought to be guided by its understanding of its mandate pursuant to the Convention and by what it considered would best assist the Parties in reaching an amicable settlement. The Commission informed the Parties that it did not consider that it would be beneficial for the Commission to express a definite opinion on certain issues of the law of maritime boundary delimitation on which the Parties had divergent—and deeply held—views. At the same time, the Commission sought during its discussions with the Parties in March 2017 to meet the Parties' requests for the Commission to indicate a view on the positions they had presented and to advise the Parties as to where it did not consider their positions to be compatible with an amicable settlement.

238. After discussing the Parties' positions with them in March 2017, the Commission introduced a *Non-Paper* setting out options and ideas that the Commission wished the Parties to consider. In presenting its *Non-Paper*, the Commission sought to emphasize that it was not making a proposal, but rather wished to gauge the Parties' reactions to certain elements that could potentially form part of an amicable settlement. The Commission's *Non-Paper* was intended to—and did—provoke strong reactions from both Parties.

239. In broad terms, the *Non-Paper* invited the Parties to consider a single maritime boundary as set out in an attached sketch map. In the east, the *Non-Paper* set out a seabed boundary that would extend beyond the confines of the JPDA, but would still partially run through Greater Sunrise and would leave the intersection with the 1972 Seabed Treaty for future determination. Although the 30 August Agreement differs in significant respects from the Commission's options and ideas in March, the Commission considers this process to have been wholly beneficial in concentrating the Parties' minds and enabling further discussions to engage with the merits (and demerits) of potential agreed outcomes, rather than adhering to rigid positions.

240. In its further meetings with the Parties and in informal discussions with each Party at the political level, the Commission continued to engage with the Parties regarding the location of the seabed boundary. These discussions were particularly focused on the location of the eastern seabed boundary, where each Party's view on the appropriate location of the boundary was strongly coloured by the location of the known resources of Greater Sunrise. In these discussions, the Commission continued to emphasize five points, as follows:

(*a*) that it was not convinced either Party's opening legal position was entirely correct;

(*b*) that Timor-Leste's maritime entitlements could not be constrained by the boundaries of the JPDA or the 1972 Seabed Treaty boundary between Australia and Indonesia;

(*c*) that the Commission considered that there were relevant circumstances that would require the median line to be adjusted to achieve an equitable result;

(*d*) that the Commission would not exclude that an adjustment of the eastern portion of the median line could lead to a seabed boundary running through Greater Sunrise; and

(*e*) that the Commission did not see that such a seabed boundary dividing Greater Sunrise would be inequitable or inconsistent with the Convention.

The Commission also emphasized to the Parties that it did not consider that a compromise could be reached that would restrict Timor-Leste's maritime entitlements to the area of the JPDA or that would give either Party exclusive control over Greater Sunrise.

## C. Engagement on Resource Governance and Revenue Issues

### 1. Resource Governance and the Greater Sunrise Special Regime

241. At the Commission's suggestion, the Parties agreed to separate the discussion of Greater Sunrise from the location of the seabed boundary and to explore the possibility of establishing a special regime for Greater Sunrise. These discussions were begun further to the Commission's recommendation that it did not consider that an agreement could be reached without shared control over Greater Sunrise, but on the basis that a special regime was without prejudice to the location of the boundary in relation to Greater Sunrise.

242. In the Commission's discussions with the Parties, it quickly became clear that although the Parties continued to disagree as to whether a special regime was necessary, the differences between them regarding how the governance of a special regime should be structured were comparatively minor. The Parties already had significant experience in the joint management of petroleum resources through the JPDA and its associated governance structures and had similar views regarding how these mechanisms could be improved. Australia indicated to the Commission that it was comfortable with Timor-Leste's regulator, the ANPM, exercising day-to-day oversight over joint petroleum activities, as it had done within the JPDA. Indeed Australia indicated that it would prefer a mechanism that would encourage the ANPM to exercise greater discretion and to refer fewer issues for resolution at the inter-governmental level. Both Parties also recognized the need for a special regime to include greater clarity on the allocation of jurisdiction and a dispute-resolu-

tion procedure for issues that could not be resolved through consensus at the inter-governmental level, both areas in which the governance structure of the JPDA had proved lacking.

243. In addition to governance, the Commission's discussions with the Parties sought to explore the issue of how Greater Sunrise would be developed in the context of a potential special regime. In this respect, the Parties indicated that the Joint Venture had previously proposed to both governments to develop Greater Sunrise by re-using the LNG plant at Wickham Point in Darwin and a significant portion of the Bayu-Undan pipeline, once production from Bayu-Undan ceased in 2022 (*i.e.*, the Darwin LNG concept). Timor-Leste, however, indicated to the Commission that, in its view, the Joint Venture had never appropriately considered the possibility of developing Greater Sunrise by way of a pipeline to Timor-Leste. When the decision had been taken to develop Bayu-Undan by way of the pipeline to Darwin, the Timorese government had anticipated that the next pipeline developed in the Timor Sea would necessarily run to Timor-Leste, in order to support the economic development of Timor-Leste's south coast. In Timor-Leste's view, the location of the LNG Plant for Bayu-Undan in Australia had led to substantial economic benefits for the city of Darwin and the development there of significant expertise and infrastructure for offshore petroleum. In contrast, while Bayu-Undan had provided Timor-Leste with revenue, it had led to little in the way of broader economic development. Timor-Leste indicated to the Commission that its own studies indicated that development of Greater Sunrise by way of a pipeline to Timor-Leste and the construction of a new LNG plant in Timor-Leste (*i.e.*, a Timor LNG concept) was technically and commercially feasible, but had not been given serious consideration by the Joint Venture.

244. For its part, Australia indicated to the Commission that it had no preference regarding the development of Greater Sunrise or the choice between a Darwin LNG and Timor LNG concept. Under Australia's general approach to the regulation of petroleum activities, it would ordinarily approve a commercially viable development concept proposed by a licence holder and would not seek to influence the concept proposed. Australia indicated, however, that it believed, on the basis of the information available to it at that time, that the Joint Venture's analysis that a Timor LNG concept was not commercially viable in the existing market context was probably correct. Additionally, Australia noted that the operators of the Wickham Point LNG Plant would be seeking to link that infrastructure to a new gas field as soon as possible following the completion of production from Bayu-Undan. While Greater Sunrise represented the largest and highest quality of the known fields in the Timor Sea, it was not the only option, and a decision would be taken to connect the Wickham Point plant with another field if regulatory approval to develop Greater Sunrise did not appear to be forthcoming. In that case, Australia considered that there was a significant likelihood that Greater Sunrise would remain undeveloped for the foreseeable future, given an environment of low prices that rendered the con-

struction of new LNG plants generally non-viable. Australia thus emphasized that, while it had no view on the development concept to be chosen, it considered it essential that a decision on Greater Sunrise be made promptly.

245. Based on its discussions with each Party, the Commission informed the Parties that it believed there was significant common ground between the Parties on which the framework of a special regime could be constructed. The Commission provided the Parties with a *Non-Paper on Uncontroversial Elements of a Greater Sunrise Special Regime* setting out the elements of a regime where it believed agreement could be easily reached. The core elements of the Commission's *Non-Paper* included:

> (*a*) The objective of the special regime would be the shared development, exploitation, and management of the Greater Sunrise field, including the participation of both Timor-Leste and Australia in the overall benefits to be derived from the development and exploitation of Greater Sunrise.
>
> (*b*) The special regime would be limited to Greater Sunrise and would apply within an area corresponding to the area of the Unitisation Agreement.
>
> (*c*) The special regime would include clear allocation of areas of joint and exclusive jurisdiction.
>
> (*d*) The choice of development concept, as between Darwin LNG and Timor LNG, would be decided by Timor-Leste, in agreement with the Joint Venture, according to commercial principles consistent with good oilfield practice, but would be taken as part of the overall agreement on the special regime.
>
> (*e*) The Designated Authority for day-to-day oversight of petroleum operations in the special regime area would be Timor-Leste's ANPM.
>
> (*f*) New Production Sharing Contracts ("PSCs") would be concluded with the joint venture by the ANPM to replace and consolidate the existing PSCs and retention leases covering the area of Greater Sunrise on conditions equivalent to those existing instruments.
>
> (*g*) One or more governance/appeal boards would be established with responsibility for high-level strategic policy and decision-making, as well as ensuring accountability to that policy.
>
> (*h*) Revenue-sharing arrangements would include consideration of upstream and downstream activities, including direct and indirect tax revenues and other economic benefits.

246. The Commission invited the Parties to give further consideration to these issues and, during the July 2017 meetings, established a Working Group of representatives of both Parties, as well as an observer from the Registry, to formulate an agreed governance mechanism for a potential special regime. During the course of several meetings, the Working Group was able

to reach substantial agreement with the exception of three issues that were deferred for further consideration with the Commission:

> (*a*) the legal status of the seabed within the special regime area, which the Parties considered linked to the ongoing discussions on the location of the seabed boundary, as well as certain issues of jurisdiction that were also consequential thereto;
>
> (*b*) whether the governance mechanism would include procedures for the approval of the development concept, which Australia considered should be agreed promptly as part of the conciliation process and which Timor-Leste considered might need to be decided through the operation of the treaty mechanism; and
>
> (*c*) revenue sharing.

247. The product of the Working Group discussions was further refined during the Parties' preparation of the Consolidated Draft Treaty and during discussions in October 2017 and now constitute Annex B to the Final Draft Treaty.

### 2. Economic Benefits and Revenue Sharing

248. While the Parties were agreed in principle that Timor-Leste and Australia should share in the overall benefit of the development of Greater Sunrise, it became apparent to the Commission that there remained significant differences between them, stemming from their differing understanding of the broader economic benefits that would follow from developing Greater Sunrise.

249. As noted above, Timor-Leste was concerned that the broader economic benefits of developing Bayu-Undan by way of a pipeline to Darwin had largely accrued to Australia. According to Timor-Leste, although the Timor Sea Treaty had divided the upstream revenue from Bayu-Undan on a 90:10 basis in favour of Timor-Leste, the actual allocation of economic benefits was closer to 55:45 in favour of Australia once downstream tax revenues and economic multipliers were considered. Timor-Leste was determined not to repeat this scenario with the development of Greater Sunrise.

250. For its part, Australia questioned the methodology underlying Timor-Leste's study on economic multipliers and noted that the Bayu-Undan project had been deliberately structured to shift the majority of corporate profits to the upstream portion of the project where they would be subject to Timorese taxation. Australia derived only a small, fixed amount of tax revenue from the operation of the Wickham Point plant, which employed only a small number of people in its day-to-day operations. Australia acknowledged that the city of Darwin had experienced an economic boom during the decade in which the Bayu-Undan project had been operational, but denied that this growth could be significantly attributed to the LNG plant. Australia also indicated that it would be open to encouraging the Greater Sunrise Joint Venture to include significant Timorese local content under a Darwin LNG concept so as to help Timor-Leste meet its broader economic development goals for the south coast of Timor-Leste.

251. Based on these radically different understandings of the economic benefits of developing Greater Sunrise, the Parties proposed correspondingly different approaches to meet the objective of developing the field as a shared resource from which both States would derive benefits. Timor-Leste suggested that if the field were potentially to be developed through a pipeline to Darwin, Australia would already share in the economic benefits and no direct sharing of revenue was necessary. Even if, Timor-Leste noted, the field were to be developed by way of a pipeline to Timor-Leste, Australian companies would still end up carrying out the majority of the construction work and bringing benefits to Australia. Australia, in contrast, was of the view that sharing the benefits of Greater Sunrise necessarily entailed sharing in the revenue to be derived from the field.

252. The Commission invited the Parties to share their economic modelling with one another and engaged in extensive discussions on these issues with both Parties during the July 2017 meetings. The Commission indicated to both Parties that it did not consider either Party's economic analysis to be fully convincing. More importantly, however, the Commission informed the Parties that it did not see that either Party's economic arguments were capable of convincing the other or achieving a shared understanding of the broader economic benefits of Greater Sunrise.

253. The Commission explored with the Parties several potential approaches to reaching a neutral, agreed quantification of the broader value of Greater Sunrise. Ultimately, however, both Parties indicated to the Commission that they considered that any precise quantification would be extremely difficult and that they preferred to reach a simplified, negotiated outcome. Such an outcome would recognize and reflect the broader economic effects of development—and that these effects would differ depending on the development concept chosen—without attempting to reach agreement on precise figures. Through the course of their meetings and discussions with the Commission, the Parties ultimately arrived at the differential factor reflected in the 30 August Agreement to account for the broader economic benefits accruing to each State, respectively, from the Darwin LNG and Timor LNG development concepts.

## D. The Comprehensive Package Agreement of 30 August 2017

254. Following the July 2017 meetings, a delegation from the Commission met with Timor-Leste at the political level in Dili regarding outstanding issues, in particular the location of the eastern seabed boundary and the approach to revenue sharing.[72] In these discussions, Timor-Leste indicated that it could accept the joint management of Greater Sunrise for the lifetime of the resource and the sharing of revenue, provided that the proportion sufficiently favoured Timor-Leste. Timor-Leste could also accept seabed bounda-

[72] The Commission's visit to Dili is also described above at paragraphs 147 to 153.

ries to the east and west of the JPDA that would connect with the 1972 Seabed Treaty boundary at its current endpoints (thus running through Greater Sunrise in east), provided that such boundaries were subject to adjustment once Timor-Leste concluded its seabed boundary with Indonesia and the relevant resources were depleted.[73]

255. Timor-Leste indicated, however, that it was not prepared, on the information available to it, to agree to the development concept for Greater Sunrise or, in particular, to accept the Joint Venture's view that the field could only feasibly be developed by way of a pipeline to Darwin. Timor-Leste maintained the view that the Joint Venture had never properly evaluated the possibility of developing Greater Sunrise through a Timor LNG concept. Timor-Leste reiterated to the Commission that it was unwilling to agree to any development concept for the field unless and until the Joint Venture gave fair consideration to Timor LNG, enabling Timor-Leste to make a proper comparison of the two approaches. While Timor-Leste emphasized that it had more interest than anyone in having Greater Sunrise developed as soon as possible, it was not willing to sacrifice a point of principle or take a rushed decision on the basis of what it considered to be incomplete information.

256. Australia, on the other hand, considered that prior agreements between the Parties had failed in significant part due to the failure to agree on a development concept for Greater Sunrise and was unwilling to conclude an agreement on a special regime for the resource without knowing that a development concept would be approved.

257. In its discussions with the Parties, the Commission sought to resolve this impasse on the basis of three principles. First, Timor-Leste must have the space to take a decision on a matter of great importance to its national development in accordance with its own national interest. Second, Timor-Leste could not be expected to take a decision without full information or proper engagement by the Joint Venture. Third, the interests of both Parties would best be served by their taking a decision on the development of Greater Sunrise as soon as possible and before the Wickham Point plant was allocated to another project, potentially foreclosing the possibility of Darwin LNG. The Commission indicated to the Parties that it considered these principles compatible if the Parties were to initiate an expedited process of joint engagement with the Joint Venture in order to generate the basis for Timor-Leste to take an informed decision on development of Greater Sunrise within the conciliation process. If the Parties could work together in negotiating with the Joint Venture on both concepts and the terms on which Greater Sunrise would be developed, the Commission indicated that it believed the basis existed for an agreement between the Parties on all aspects of their dispute.

* *

[73] Adjustment of the seabed boundary in the west may take place only after the commercial depletion of the the Laminaria and Corallina Fields, and adjustment in the east only after the commercial depletion of Greater Sunrise.

258. On the basis of these discussions, the Commission sought to assemble all of the elements of a settlement into a comprehensive package that would be acceptable to both Parties and that would meet the Convention's requirement that the delimitation of the maritime boundaries achieve an equitable solution, compatible with the Convention and with the international law of maritime boundary delimitation.

259. The 30 August Agreement was thus the product of a proposal advanced by the Commission during meetings in Copenhagen based on informal consultations. The agreement and the Treaty agreed between the Parties are annexed to this Report. The principal elements of this agreement were as follows.

260. The Parties agreed to maritime boundaries as depicted in Annex A to the Final Draft Treaty and in Map 4 [reproduced on page 326].

261. The southern maritime boundary between the Parties would take the form of a single maritime boundary (except in the southwest, where the rights of Indonesia to the water column may be affected) and would partially follow the median line and partially run to the north of the median line along an agreed course.

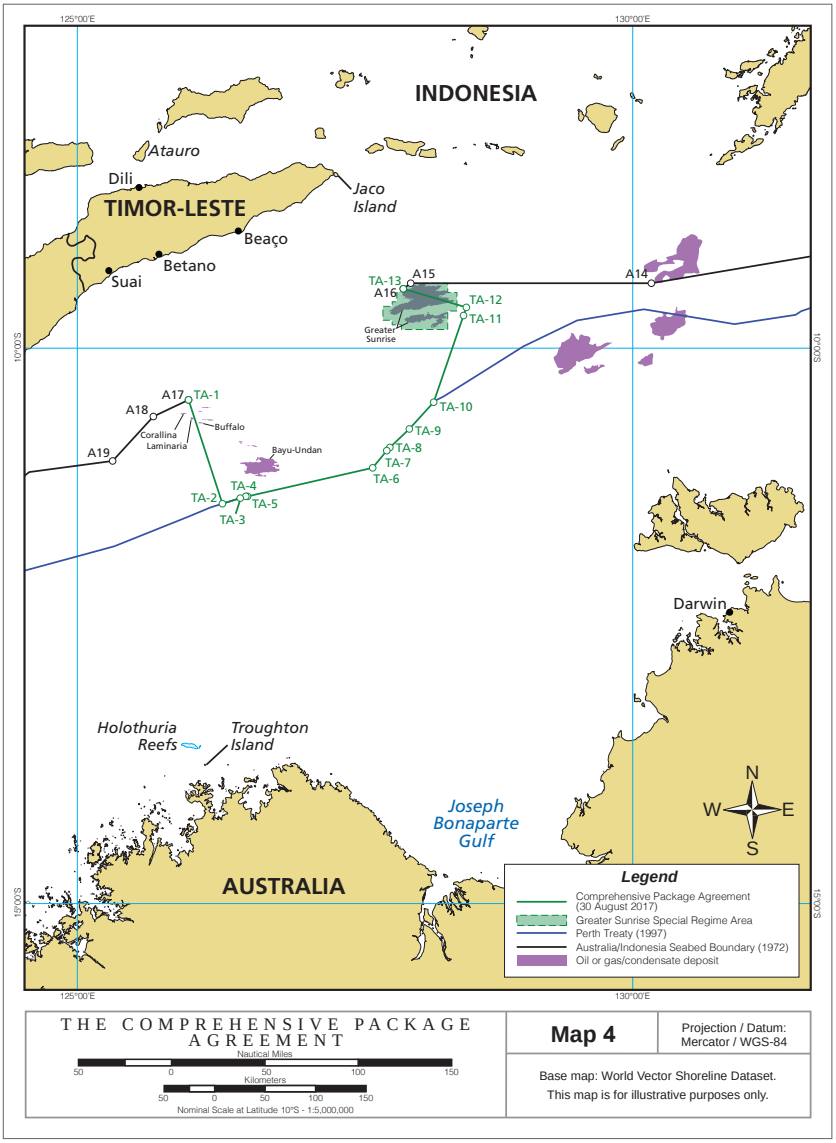
262. The western boundary would be a continental shelf boundary only and would run to the west of the JPDA. This would allocate the Buffalo oil field—where recent reports indicate a new find estimated at 31 million barrels of oil—to Timor-Leste, and the Corallina and Laminaria fields to Australia for their remaining production life.

263. The eastern boundary would be a continental shelf boundary only and would run to the east of the JPDA and largely to the east of Greater Sunrise before turning back to run through Greater Sunrise and meet the 1972 Seabed Treaty boundary.

264. The eastern and western seabed boundaries would meet the 1972 Seabed Treaty boundary at points A16 and A17, respectively, but pursuant to Article 2(2) of the Treaty, these portions of the boundary are "provisional," which for the purposes of the Treaty means they are subject to automatic adjustment as follows:

> (*a*) In the west, the boundary would adjust following (i) the commercial depletion of the Corallina and Laminaria fields and (ii) the conclusion of a continental shelf boundary between Timor-Leste and Indonesia. After adjustment the boundary would run to meet the 1972 Seabed Treaty boundary at either (i) the same point as the continental shelf boundary concluded between Timor-Leste and Indonesia, if that boundary meets the 1972 Seabed Treaty boundary between points A17 and A18, or (ii) point A18, if the continental shelf boundary concluded between Timor-Leste and Indonesia meets the 1972 Seabed Treaty boundary to the west of point A18.
>
> (*b*) In the east, the northern two segments of the boundary would adjust following (i) commercial depletion of the Sunrise and Troubadour fields and (ii) the entry into force of an agreement between

Timor-Leste and Indonesia delimiting the continental shelf. After adjustment the boundary would run to meet the 1972 Seabed Treaty boundary at the same point as the continental shelf boundary concluded between Timor-Leste and Indonesia.



Through this adjustment mechanism, the Parties' agreement is intended to avoid any prejudice to the 1972 Seabed Treaty or to Timor-Leste's ongoing negotiations with Indonesia concerning maritime boundaries.

265. Greater Sunrise would be governed through a special regime, within the area of which the Parties would jointly exercise their rights as coastal States pursuant to Article 77 of the Convention. Upstream revenue from Greater Sunrise would be split on an 80:20 basis in favour of Timor-Leste in the event that that field was developed through a Darwin LNG concept, and on a 70:30 basis in favour of Timor-Leste in the event that the field was developed through a Timor LNG concept. Through this contingent apportionment, the Parties agreed that they were reflecting the broader economic effects and benefits of developing Greater Sunrise.

266. For other petroleum resources previously located within the JPDA, the Parties agreed that Timor-Leste would receive all future revenue, including from the operating Bayu-Undan and Kitan fields. However, for simplicity and continuity, the governance and regulatory arrangements for the remaining life of Bayu-Undan and Kitan would be "grandfathered" (*i.e.*, remain as is).

267. Finally, the Parties agreed to initiate a process of intense engagement with the Joint Venture through an agreed action plan, and prolonged the Commission's mandate for it to remain involved in this process. The purpose of this engagement would be to reconcile the Joint Venture and Timor-Leste's differing views on the commercial viability of a Timor LNG approach and to establish the negotiated commercial terms on which both options could be undertaken. This was intended to permit a proper comparison of both approaches and to ensure that a decision on the development of Greater Sunrise was taken by 15 December 2017 or, at the latest, by 1 February 2018.

## E. Engagement on the Development of Greater Sunrise

268. Although these proceedings were initially concerned with the delimitation of maritime boundaries, the Parties subsequently requested that the Commission engage with them with a view to facilitating agreement on the development concept for Greater Sunrise, it being an integral part of the 30 August Agreement that a decision on the development concept should be taken within the context of the conciliation process.

269. As noted above, the Parties and the Joint Venture had before them two concepts for the development of Greater Sunrise. Timor-Leste proposed a Timor LNG approach in which Greater Sunrise would be connected to an LNG plant to be constructed at Beaço in Timor-Leste by way of a pipeline across the Timor Trough. The Joint Venture proposed a Darwin LNG approach in which Greater Sunrise would be connected to the existing pipeline running from Bayu Undan and would make use of the existing LNG plant at Wickham Point in Darwin, following the depletion of Bayu Undan.

270. While Australia emphasized that it had no preference for either the Timor LNG or Darwin LNG approach (provided that the concept was technically feasible and commercially viable), it was concerned that a Darwin LNG concept would soon be foreclosed if the Wickham Point plant were to commit its capacity to the development of another field, potentially leaving Greater Sunrise without a commercially viable development option.

271. Timor-Leste, for its part, indicated that it could not take a decision on the development concept until it considered that Timor LNG had been properly considered and analysed. Timor-Leste emphasized, however, that it was the most interested party to see Greater Sunrise promptly developed and indicated that it was willing to engage intensively with the Joint Venture, provided that engagement was based on the consideration of both development concepts.

272. The 30 August Agreement accordingly set out an Action Plan for the two governments to engage with the Joint Venture, leading to a decision on the development concept to be taken by 15 December 2017, with a fall-back date of 1 February 2018. These dates were dictated by an understanding of the timeframe in which the Wickham Point plant was likely to award contracts for the use of the facility and thus the latest point at which a Darwin LNG concept could be safely be expected to remain available. Although Timor-Leste indicated that it considered this schedule to be ambitious, it endorsed the 30 August Agreement.

273. During the Parties' initial engagement with the Joint Venture in September and October 2017, the Commission sought to facilitate the process, but did not engage directly regarding the substance of the two development concepts. The Commission acted to facilitate an agreement between the two governments and the Joint Venture concerning confidentiality, to coordinate the two governments' requests to the Joint Venture for additional information, and to emphasize to all parties the need to build up both development concepts, rather than merely advocate for a preferred outcome. The Commission did not, however, participate in the videoconference sessions in October 2017 or in the three trilateral meetings held in Brisbane, Singapore, and Melbourne in November and December 2017.

274. During the course of this initial engagement, both Timor-Leste and the Joint Venture established virtual data rooms and exchanged a large volume of technical material and economic data regarding the Timor LNG and Darwin LNG concepts. These initial exchanges contributed to the parties' respective understanding of the views and concerns of the other. However, it became evident to the Commission in December 2017 that this initial engagement had not led the parties to a common understanding on the development of Greater Sunrise, or brought them any closer to taking a decision on the development concept. Rather, Timor-Leste and the Joint Venture each used the process to advocate for its preferred option.

275. The Joint Venture continued to assert that only a Darwin LNG concept was commercially viable and that Timor-Leste had not engaged with the economic reality facing a Timor LNG concept. Timor-Leste maintained

that Timor LNG was commercially viable and that only a Timor LNG concept would meet its development objectives. Timor-Leste also considered that the Joint Venture had not made a serious effort to ensure that either concept would meaningfully contribute to the development of Timor-Leste. Timor-Leste and the Joint Venture also had diametrically opposed views on the economics of the two concepts and the anticipated return of the project. While for Timor-Leste the mid- and long-term economic consequences for the national economy were decisive, the Joint Venture concentrated on the commercial viability and the ultimate economic return on investment. Australia continued to maintain that it had no preference between the two concepts, but was not convinced, on the basis of the information so far available to it, that a Timor LNG concept was commercially viable. During the December 2017 session, both governments were of the view that the engagement had not created the conditions necessary for a decision on the development concept. Each government, however, reiterated its interest in having the development concept settled in the context of the conciliation proceedings.

276. Pursuant to the 30 August Agreement, "[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." In approaching this mandate, however, the Commission was of the view that it was unlikely to be able meaningfully to facilitate an agreement on the development concept without expert assistance with respect to the technical and financial aspects of the two development concepts. Accordingly, the Commission reached agreement with the Parties on the Terms of Reference for the appointment of an expert in oil and gas development planning as part of its Supplemental Action Plan. The Commission also engaged with the Joint Venture regarding the likelihood that a Darwin LNG concept would remain available until at least 1 March 2018. A copy of the Commission's Supplemental Action Plan is attached as Annex 27 to this Report.

277. During the course of its January session with the Parties and the Joint Venture, the Commission pursued five objectives:

(*a*) The Commission sought to build up understanding of both the Darwin LNG and Timor LNG concepts, engaging with the Joint Venture and Timor-Leste, respectively, regarding areas in which the Commission considered that their respective concepts could be further developed. In the case of Darwin LNG, the Commission sought more concrete detail on local content that would meaningfully contribute to the economic development of Timor-Leste. In the case of Timor LNG, the Commission sought clarification on the financing and operation of the project.

(*b*) The Commission sought to encourage both Timor-Leste and the Joint Venture to step away from their preferred concept and to consider what it would take to make the other approach viable and attractive. At the Commission's request, both Timor-Leste and the Joint Venture provided the Commission with details in this respect.

(*c*) The Commission sought to facilitate agreement on certain issues relating to the development of Greater Sunrise that would need to be determined irrespective of the development concept chosen. This concerned in particular the fiscal regime that would apply to the Greater Sunrise project and how the application of the Parties' taxation laws would provide the Joint Venture with "conditions equivalent", as required by Article 22 of the Timor Sea Treaty and Article 27 of the Unitisation Agreement.

(*d*) The Commission sought to reach agreement on a framework agreement to provide all parties with the necessary certainty to move forward with the project once the development concept was chosen. Both governments as well as the Joint Venture provided the Commission with their proposed drafts for a potential agreement.

(*e*) The Commission sought to ensure that its expert had all of the technical and economic information necessary for him to undertake a comparative analysis of the two development concepts.

278. In approaching its final session with the Parties, the Commission considered that it could best facilitate a decision on the development concept by providing the Parties with the basis for an informed decision. During the period between the January and February sessions as well as in the course of the February session, the Commission accordingly continued to engage with the Parties on the issues set forth above (see paragraph 277). At the request of the Commission, the Joint Venture and Australia indicated certain commitments they would be willing to make in respect of local content.

279. The Commission also sought to elaborate, with the input of both governments and the Joint Venture, draft framework agreements covering three scenarios: (*a*) for a decision on a Timor LNG concept; (*b*) for a decision on a Darwin LNG concept with operations from Timor-Leste; and (*c*) for the event that no decision is taken.

280. At the close of the February session, the Commission provided the Parties with a paper on the comparative benefits of the two concepts and a condensed comparative economic analysis of the two concepts undertaken by the Commission's expert. Copies of these documents are attached as Annex 28 to this Report. The Commission also provided both governments and the Joint Venture with copies of its proposed framework agreements for all three scenarios.[74]

281. As mentioned earlier (see paragraphs 215 to 218 above), the Parties have not yet agreed on the development concept for Greater Sunrise.

282. The Parties signed the Treaty on Maritime Boundaries on 6 March 2018 at a ceremony hosted by the Secretary-General of the United Nations in New York.

* * *

[74] Due to the inclusion of potentially confidential information in the draft framework agreement, the Commission has elected not to include copies of those documents with this Report.

## VII. The Commission's Reflections on the Proceedings

283. Beyond the foregoing description of the procedural steps taken by the Commission and the agreement reached by the Parties, the Commission wishes to record some of the key elements that, in its view, contributed to the outcome of these proceedings.

284. As noted above, however, these proceedings have progressed through two distinct phases. The first phase, concerning the delimitation of a maritime boundary, has been brought to a full conclusion through the signature on 6 March 2018 of the Parties' Treaty on Maritime Boundaries. The second phase, in which the Commission, pursuant to the Parties' 30 August Agreement, sought to facilitate agreement on the development concept for Greater Sunrise, remains ongoing in that the Parties will still need to reach agreement on a concept, now without the involvement of the Commission. The Commission's reflections on these two phases are different, and the Commission will address each in turn.

### A. Reflections on the Proceedings concerning Maritime Boundaries

285. The Commission recalls that the Parties came to these proceedings deeply entrenched in their legal positions, something which had frustrated previous efforts to achieve a settlement through negotiation. In considering how an agreement was ultimately reached, however, the Commission considers it important that the Parties' interests in the Timor Sea were such that it remained possible to envisage a mutually beneficial result meeting both sides' essential interests. In particular, given that the issue of maritime boundaries marked a serious obstacle in the otherwise close relationship between the peoples of Timor-Leste and Australia, the prospect of resolution itself offered the potential to unlock significant benefits in the broader bilateral relationship. While strongly committed to upholding their rights, both Parties ultimately preferred an amicable solution to the continuation of an unsatisfactory status quo. In this sense, the matter can be considered to have been ripe for resolution. In the Commission's view, it is in fact a significant benefit of conciliation that the proceedings were able to build on these aspirations for a positive outcome and preferable to a resolution of the dispute consisting merely of identifying a "winner".

286. In addition to the above, the Commission considers that a number of steps taken in the course of the conciliation were instrumental in bringing the Parties together. In particular, the Commission considers that a constructive outcome was enabled (*a*) by efforts throughout the proceedings to build the Parties' trust in each other, in the Commission, and in the process; (*b*) by the possibility of managing the scope of the proceedings to encompass the elements necessary for a solution; (*c*) by the Commission's pro-active efforts to advance ideas

and direct the course of the proceedings; and (*d*) by sustained, informal contacts with the Parties' representatives and counsel at a variety of different levels.

287. At the outset of these proceedings, the Parties were frank with the Commission regarding the extent that each distrusted the other, at least with respect to resources and maritime boundaries. A significant element of the Commission's efforts, both initially and throughout the proceedings was thus concerned with building trust between the Parties and removing obstacles to productive and successful conciliation on the substance of the Parties' dispute. As already noted, the Commission believes that the early resolution of Australia's objections to the competence of the Commission proved essential to allowing Australia to engage effectively in the conciliation process thereafter. At the same time, while the resolution of competence as a preliminary matter removed a significant obstacle, the unavoidably adversarial character of a challenge to competence did little to foster trust or compromise.

288. In the Commission's view, the confidence-building measures agreed in October 2016 were thus essential in changing the dynamic of the proceedings and generating early positive momentum. The Commission sought to mark a clear break from the competence proceedings by meeting with the Parties principally bilaterally, away from The Hague, and in as informal a setting as possible. From those early discussions it became apparent that a further break from the past would be necessary for both Parties to move forward. The continued presence of CMATS and pending arbitrations initiated by Timor-Leste under the Timor Sea Treaty constituted a symbolic barrier to progress and kept the Parties looking backwards. The Commission thus sought to establish a clean slate for these proceedings through confidence-building measures centred on the termination of the CMATS treaty and the withdrawal of both arbitrations. In the case of CMATS, however, the legal effects of termination were uncertain. At the suggestion of the Commission, both Parties thus undertook to cooperate in terminating CMATS in a manner that preserved the stability of their legal relations and thereby also maintained legal certainty for other stakeholders in the Timor Sea.

289. This confidence-building exercise benefited, in the Commission's view, from the fact that the proposed measures were not wholly transactional in nature. While remaining balanced and closely aligned in both timing and substance, the various steps were not strictly reciprocal, tit-for-tat concessions. They envisaged independent actions which sought to demonstrate to the other Party a genuine commitment to the success of the conciliation process. Inasmuch as the Rules of Procedure sought to enable the Parties to engage without prejudice to their respective legal positions, the Commission's confidence-building measures required the opposite: *i.e.*, that the Parties abandon certain stances which constituted an obstacle to moving forward with the conciliation and were intended to preserve leverage against the other for the possibility that the conciliation might fail to produce an agreed outcome. The Parties were thus required each to demonstrate through independent meas-

ures a sincere and substantial commitment to a successful conciliation. This initial investment paid dividends throughout the remainder of the process as the Parties did, through the conciliation, engage bilaterally in a constructive manner to achieve an equitable compromise.

290. At the same time, it was also necessary to establish a foundation of trust between the Parties and the Commission. The Commission is cognizant that Timor-Leste initiated these proceedings as much due to the absence of other options as from a belief in the virtues of conciliation or in the likelihood of success. The Commission thus devoted significant time to making sure that it fully understood not only the Parties' formal positions, but also the interests and sensitivities underpinning those positions. The first step in this process was to receive brief but comprehensive written statements of the Parties' opening positions. Although soliciting what amounted to legal argument bore the risk of entrenching positions, it provided an opportunity for the Parties to evaluate and express positions in detailed form, which they may not have done previously. It also had the associated benefit of requiring the Parties to define their own positions in a more precise manner, especially where some of their own priorities may not yet have been reconciled within their respective governments and delegations. The Commission then engaged the Parties in open-ended discussions in January 2017 and sought to confirm its understanding by providing the Parties, first separately and then jointly, with *Issues Papers* outlining—in the Commission's words—the elements of the dispute and the Parties' respective views. In the Commission's view, these proceedings truly became productive at the point at which both Parties became convinced that the Commission's objective was not to push them to abandon long-held positions, but rather to understand and assist the Parties to identify a solution they had been unable to reach themselves.

291. As the Commission moved to considering matters of substance, it proved essential that the Commission's mandate extended to the consideration of the Parties' broader, non-legal interests to the extent necessary for an amicable settlement and that the proceedings could be expanded, with the Parties' agreement, to encompass issues beyond the strict delimitation of the maritime boundary. These proceedings began with a focus exclusively on delimitation under Articles 74 and 83 of the Convention and always remained focused on achieving an equitable solution consistent with those legal provisions. At the same time, it was apparent that both Parties' views on the location of the boundary were—understandably—influenced by the effect of the boundary on prominent seabed resources, in particular Greater Sunrise. It became apparent to the Commission that any agreed outcome would also have to address in a comprehensive manner the development and exploitation of resources in the area and the Parties' respective rights and status as coastal States under Article 77 of the Convention. The Parties' 30 August Agreement thus incorporated a special regime for Greater Sunrise, defined the two States' respective legal rights within the area of the special regime, and incorporated a roadmap for

the development of the resource as an integral element of agreement. The conciliation proceedings were accordingly adapted to include the second phase of the proceedings discussed below.

292. The Commission notes that the very exercise of defining, with the Parties, the issues that were—or were not—relevant to achieving an agreement on maritime boundaries was itself a difficult process. For the Commission, however, the ability to calibrate the proceedings to address the elements necessary for an amicable settlement, even where those extend beyond purely legal considerations, is a hallmark advantage of conciliation as compared to adjudication.

293. In the course of engaging with the Parties, it was likewise essential for the Commission to take a pro-active role in managing the process. This was particularly the case when the Commission sought to shift the Parties' focus away from the arguments in favour of their opening positions and towards the requirements of a possible settlement by advancing the Commission's own options and ideas in March 2017. This was done with full knowledge that the Commission's *Non-Paper* was likely to encounter strong resistance, but would nevertheless provide a useful reference point around which further discussions could be oriented. Such a change in dynamic to a problem-solving approach was vital to obtaining the necessary flexibility from the Parties over the course of the various sessions that followed, so as to create a platform for creative thinking and eventually generate the space for mutually acceptable outcomes. The Commission likewise ensured that discussions were held on the modalities of the joint management of petroleum resources and on the broader economic effects of developing seabed gas deposits, notwithstanding doubts at the time by one Party or the other that these issues were truly necessary for an amicable settlement.

294. The proactive approach taken by the Commission required a high degree of coordination within the Commission itself. As most discussions took place between the Commission and one or the other of the Parties, the Commission was regularly called on to probe the Parties' positions and to respond with the Commission's reaction on the spot (or on short notice), while at the same time mapping the course with respect to next steps. It was important, in the Commission's view, that it maintain unity in its engagement with the Parties while still devoting the time for internal deliberation necessary to produce a considered response. The Commission notes that a different composition could well have rendered it difficult to maintain this objective while still keeping up the pace called for in these proceedings. Indeed, effective conciliation requires that a careful mix of diplomatic and legal skills, backgrounds, and approaches be deployed in varying combinations at different stages of the process.

295. A further key element of the procedure that the Commission wishes to highlight is the value and importance of informal contacts at a variety of levels. The Commission sought to engage with the Parties' representatives through formal and informal sessions, through conversations at the political level and working level, and through a nearly continuous flow of letters, e-mail communications, telephone calls, and text messages. The Commission also made

extensive use of its Registry as an additional channel of communication with the Parties and to record and share within the Commission the details of informal contacts and conversations. Many of the principal steps that were instrumental to bringing the Parties together occurred as much in late night conversations with various members of each delegation as in any formal meeting. The ongoing process of building trust with and between the Parties likewise occurred, not only through joint sessions or information sharing, but also through social receptions and other unplanned encounters. In many ways, one of the Commission's main functions was to provide as many opportunities as possible for the Parties to reassess the degree of flexibility in their positions and contemplate creative solutions to their differences, and to continually encourage them to do so.

296. Finally, it was essential that all discussions between the Parties and the Commission operated on the basis that a mutually acceptable outcome would necessarily be a package and that both Parties would have to make compromises, while at the same time recognizing that all concessions were made without prejudice to the Parties' evaluation and acceptance of a final, balanced package. While the importance of this may be obvious to some, it was something that the Commission found important to reiterate, along with the non-binding character of conciliation, at various key stages over the course of the process.

## B. Reflections on the Proceedings concerning the Development Concept

297. Following the Parties' agreement on their maritime boundaries, the Commission was also requested, through the 30 August Agreement, to attempt to facilitate an agreement on the development concept for Greater Sunrise. The Commission interpreted its role as being to provide the Parties with the basis on which to take an informed decision, but not to recommend a development concept. No agreement has so far been reached, and it will remain for the Parties to continue with the process of seeking an agreement on the development concept for Greater Sunrise.

298. In the preceding sections, the Commission has set out the issues involved and the steps it took in engaging with the Parties and the Joint Venture in respect of the development concept. The Commission has also provided the Parties with a number of documents, some appended to this report and others confidential, that may inform future discussions between them. Insofar as discussions regarding the development concept remain ongoing, the Commission considers that no further comment or reflections are warranted.

299. The Commission hopes that its efforts may contribute to further discussions between the Parties. The Commission recommends that the Parties continue their discussions with a view to maximizing the benefit of this shared resource for the peoples of both States.

* * *

## VIII. The Commission's Conclusions and Recommendations

300. The Commission commends the Parties on the manner in which they have approached these conciliation proceedings and welcomes the opportunity available to them to use these proceedings as the basis for a lasting partnership in their mutual relations.

301. The Commission records and recalls its decision that 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. That decision is incorporated here by reference.

302. As a result of the agreement reached between the Parties, the Commission's formal task under Article 7 of Annex V of the Convention has been rendered significantly more straightforward. Article 7 of its Annex V provides as follows:

> 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.

303. In accordance with that provision, the Commission first records the Parties' agreement to extend by agreement the Commission's mandate and the period for the submission of this Report.

304. Having subsequently heard the Parties, examined their claims and objections, and made proposals to the Parties with a view to reaching an amicable settlement, the Commission is pleased to note the successful outcome of these conciliation proceedings. Pursuant to its mandate under Annex V to the Convention, the Commission therefore records that the Parties have reached agreement on the delimitation of a maritime boundary between them in the Timor Sea, as set out in the Treaty signed on 6 March 2018 and annexed to this Report.

305. The Commission further records that the Parties' agreements are consistent with the UN Convention on the Law of the Sea and other provisions of international law and recommends that the Parties implement the agreements reached in the course of these conciliation proceedings, including the transitional arrangements pertaining thereto.

306. The Commission also recommends that the Parties continue their discussions regarding the development of Greater Sunrise with a view to reaching agreement on a concept for the development of the resource.

* * *

Done this 9th day of May 2018,

[*Signed*]
Dr. Rosalie Balkin

[*Signed*]
Judge Abdul G. Koroma

[*Signed*]
Professor Donald McRae

[*Signed*]
Judge Rüdiger Wolfrum

[*Signed*]
H.E. Ambassador Peter Taksøe-Jensen
[Chairman]

[*Signed*]
Mr. Garth Schofield
[Registrar]

# 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. Santina 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

*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. Sadhie 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. Ermesto 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

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

## 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*

— Sir Daniel Bethlehem KCMG QC, 20 Essex Street Chambers

— Mr. Justin Gleeson SC, Solicitor-General of Australia (*until 25 October 2016*)

— 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*

— 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 l 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 disagree-

ment 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 rec-

ommendations 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 l 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
Edificio 1, R/C Esquerda
Palácio do Governo
Avenida Marginal
Dili, Timor-Leste

and also to the Deputy Agent at the following address:

Ms. Elizabeth Exposto
Conselho para a Delimitação Definitiva das Fronteiras Maritimas
Gabinete das Fronteiras Maritimas

Respectfully submitted,
Dr. Rui Maria de Araújo
Prime Minister of the Democratic Republic of Timor-Leste
Dili, 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

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

Katrina Cooper
Senior Legal Adviser
Department of Foreign Affairs and Trade

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

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

Dr. Rosalie Balkin

Judge Rüdiger Wolfrum
Max Planck Institute for Comparative Public Law and International Law

Professor Donald McRae
Faculty of Law, Common Law Section, University of Ottawa

*Copy to:*
Mr. Hugo Hans Siblesz
Secretary-General, Permanent Court of Arbitration

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 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 appointment is not made within 30-day period referred above, either party may, within one week of expiration of that period request the Secretary-General of the United Nations to make the appointment of 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 request by a party.

For ease of reference, we enclose a copy of Article 298 of 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:
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 7:
## Press Releases Nos. 1 to 3

[…]

# Annex 8:
# Rules of Procedure

PCA Case Nº 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

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## Rules of Procedure

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**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 email 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

[…]

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

22 September 2016

Mr. Garth Schofield
Legal Counsel, Permanent Court of Arbitration

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 above mentioned 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

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

[…]

# 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 *Timor Sea Treaty Arbitration* and the *Article 8(b) Arbitration*, 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 |

| *Date* | *Event* |
|---|---|
| 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 *Timor Sea Treaty Arbitration* and the *Article 8(b) Arbitration* 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

21 October 2016

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 Office
Maritime Boundary Office
Deputy Agent for Timor-Leste

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

* * *

Mr. Garth Schofield
Legal Counsel
Permanent Court of Arbitration
Peace Palace
21 October 2016

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 underly-

ing 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
Agent for Timor-Leste

JOHN REID
First Assistant Secretary
Office of International Law
Attorney-General's Department
Agent for Australia

* * *

MR. GARTH SCHOFIELD
Legal Counsel
Permanent Court of Arbitration
Peace Palace

21 October 2016

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 above mentioned 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
Co-Agent for Timor-Leste

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

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

*Data/Date:* 6 December 2016

*Para/To:* Mr. Garth Schofield, Senior Legal Counsel, Permanent Court of Arbitration

*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

* * *

Dili, 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
Elizabeth Exposto, Deputy Agent for Timor-Leste

# 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

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 W162. 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 ex-

clude 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
Ms. Elizabeth Exposto, Deputy Agent for Timor-Leste

# 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

12 January 2017

Mr. Garth Schofield
Legal Counsel
Permanent Court of Arbitration
Peace Palace

Dear Mr. Schofield

*Conciliation Proceedings under Article 298 and Annex V of UNCLS (PGA 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 Commis-

sion 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

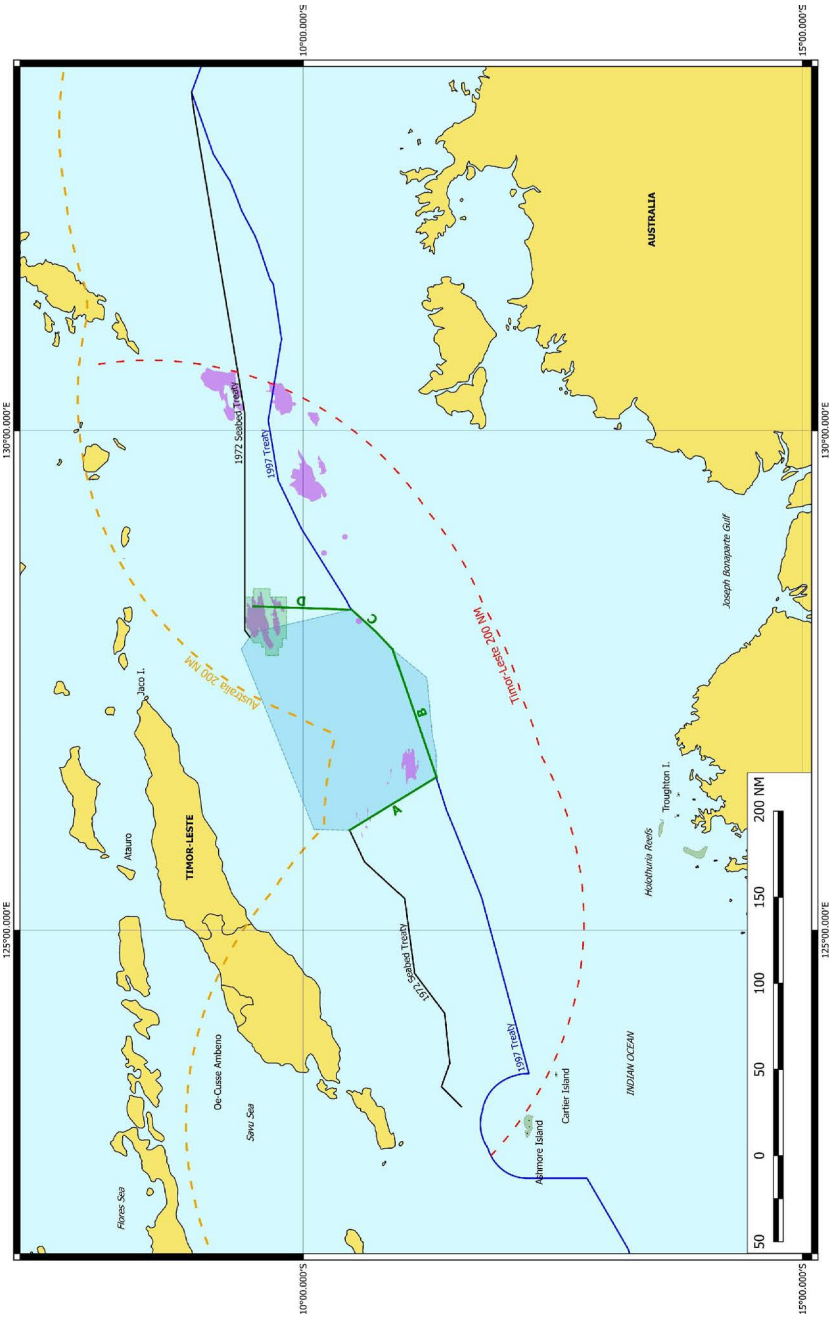
Indicative Description of Line

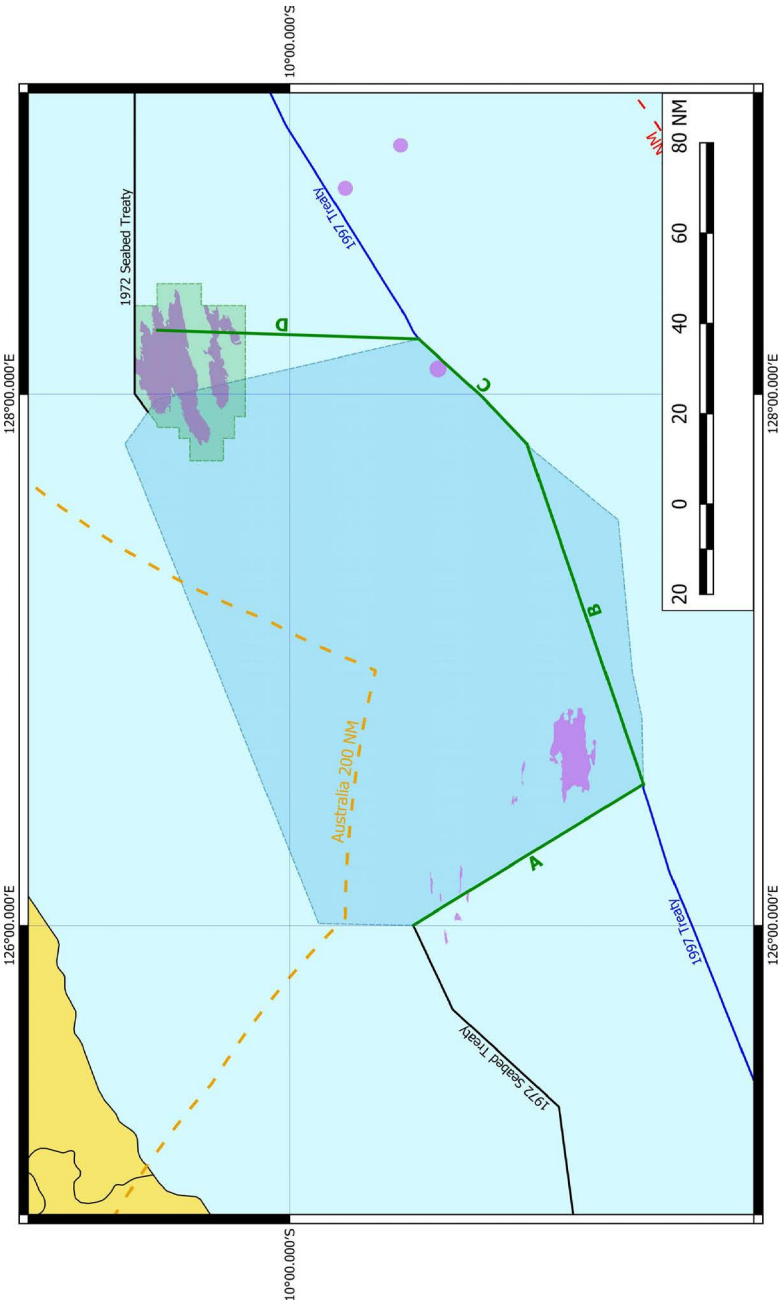
- *Segment A*: a seabed boundary only, running along the western boundary of the current JPDA, from the line of the 1972 Seabed Treaty between Australia and Indonesia until it intersects with the line of the 1997 Perth Treaty between Australia and Indonesia.
- *Segment B*: a single maritime boundary, 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;




10°00.000'S
128°00.000'E
126°00.000'E
1997 Treaty
1972 Seabed Treaty
D
C
B
A
Australia 200 NM
20 0 20 40 60 80 NM

# Annex 20:
# Press Releases Nos. 6 to 8

[…]

# 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).

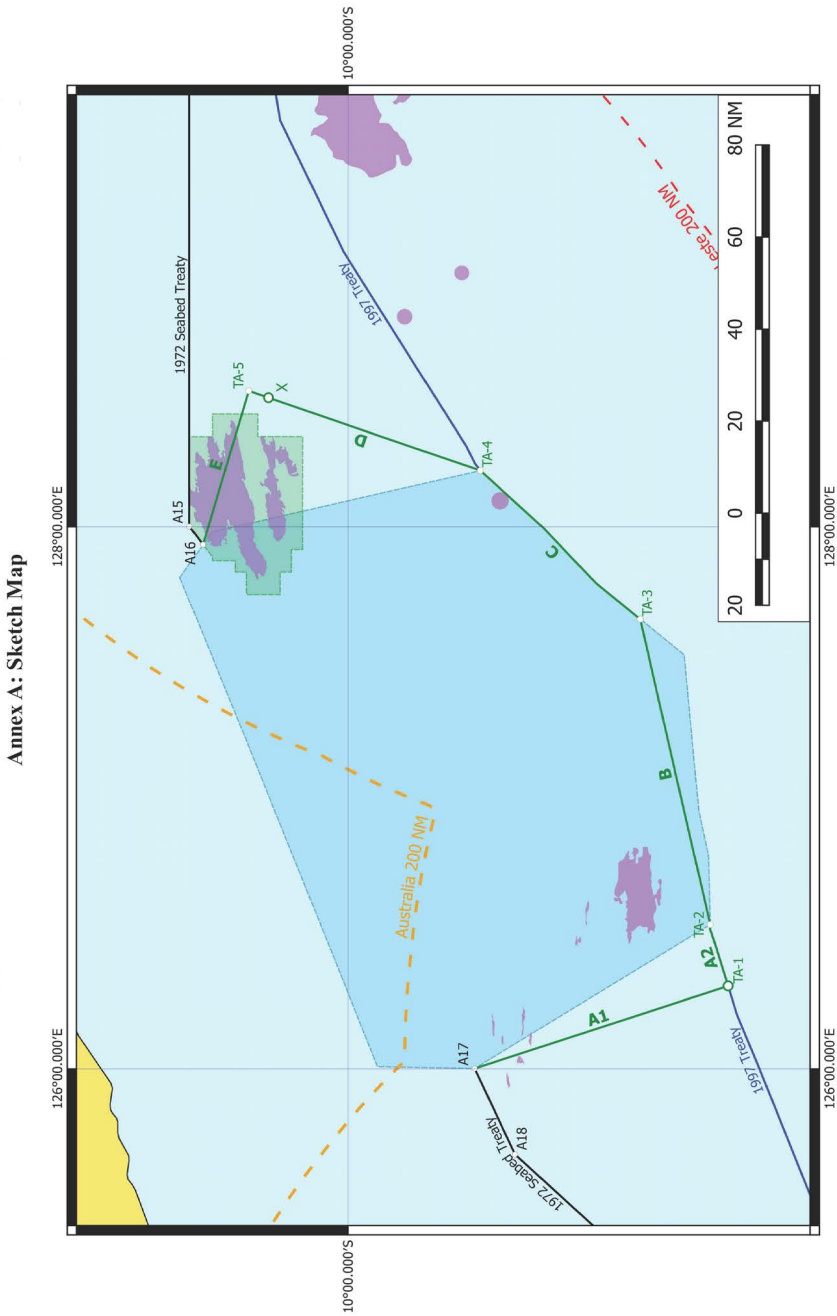
*Mechanism for Development Concept*

- 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 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 the Commission's Action Plan

| *Date* | *Action* |
|---|---|
| 25 Sept | • 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<br>• 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<br>• Discuss timeline in the Commission`s Action Plan and realistic delivery times |
| 25 Sept pm / Tuesday 26 Sept am | Parties and JV (or CP on behalf of JV) working call/meeting to discuss Protocol and add more detail around deliverables and timing |
| Date to be agreed | Australia to advise Commission whether CMATS is to be terminated by Agreement |
| 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. |

| *Date* | *Action* |
|---|---|
| Immediately Post October Commission | • 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)<br>• Timor-Leste to provide information to JV as agreed with the Commission in October in the Hague<br>• 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 | Series of meetings to discuss and agree on:<br>• common assumptions on some key aspects of both options, such as a common cost basis for DLNG and TLNG, reserve capacity [others?]<br>• Continued, regular engagement with JV to negotiate the terms of each option<br>• Meetings between JV members and DLNG in terms of tolling arrangements<br>• Completion of technical / other studies for each option (to be considered further)<br>• 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<br>• Continued engagement with JV to clarify or negotiate changes to TLNG and DLNG options<br>• fiscal and regulatory terms to apply to Greater Sunrise for both TLNG and DLNG<br>• High-level discussions with JV on necessary changes to PSC terms for both TLNG and DLNG<br>[See Action Plan for more detail] |
| 15 Dec [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] | Once both options are in a viable state both Parties to make recommendations to relevant leadership for a decision |
| Post 15 Dec / 1 February | 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 |

# 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

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 of 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 06105) 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
Mr. Antonio Jose Loyola de Sousa, Timor-Leste Joint Commissioner
Mr. Bruce Wilson, Australian Joint Commissioner
Members of the Conciliation Commission

* * *

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.

Mr. Hermenegildo Pereira
Agent for Timor-Leste

*cc*: Mr. Francisco da Costa Monteiro, Timor-Leste Joint Commissioner
Mr. Antonio Jose Loyola de Sousa, Timor-Leste Joint Commissioner
Mr. Bruce Wilson, Australian Joint Commissioner
Members of the Conciliation Commission

## Annex 24:
## Press Releases Nos. 9 to 14

[…]

## 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

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

Ms. Elizabeth Exposto
Conselho para a Delimitação Definitiva das
Fronteiras Marítimas
Gabinete das Fronteiras Marítimas

Mr. James Larsen
Senior Legal Adviser Department of Foreign Affairs and Trade

16 December 2017

AG 217386

*RE: 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 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
Judge Abdul Koroma
Judge Rudiger Wolfrum
Dr. Rosalie Balkin
Professor Donald McRae

*Counsel and Legal Representatives of Timor-Leste:*
Professor Vaughan Lowe QC
Sir Michael Wood KCMG
Mr. Eran Sthoeger
Ms. Janet Legrand
Mr. Stephen Webb
Ms. Gitanjali Bajaj

*Representatives and Counsel for Australia:*
Mr. Gary Quinlan AO
Sir Daniel Bethlehem KCMG QC

* * *

*Subject: RE: 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 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 Exposto
Diretora Executiva / Chief Executive Officer

* * *

*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 the UN Convention on the Law of the Sea*

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

* * *

9 January 2018

Mr. Garth Schofield
Senior Legal Counsel
Permanent Court of Arbitration

Dear Mr. Schofield

*Conciliation Proceedings under Article 298 and Annex V of UNCLOS (PCA Case No. 2016 10) Democratic Republic 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 |

| *Date* | *Action* |
|---|---|
| 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, though 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 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 focused 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 Beaço 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 Estimation 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)<br>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 |

| | *Timor-LNG Case* | *Darwin-LNG Case (with operations from Timor-Leste)* |
|---|---|---|
| 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) |

| | *Timor-LNG Case* | *Darwin-LNG Case (with operations from Timor-Leste)* |
|---|---|---|
| Segmented Project (Upstream) Estimated return (IRR) | 11.82% at US$4.00 tolling fee<br>13.18% at US$3.00 tolling fee<br>14.44% at US$2.00 tolling fee | 14.52% at US$3.00 tolling fee<br>16.08% at US$2.00 tolling fee<br>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<br>2.69% at US$3.00 tolling fee<br>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)<br>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]

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[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;

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 Beaço 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.

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

## E. 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

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and (*b*) subsea cost estimates adjusted to current market rates for installation vessels. Specific adjustments are set out in an annex to this paper.

[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.

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.

## F. 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 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.

[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.

## 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<br>(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<br>Include downtime<br>Escalate toll from production start | US$3.04 |
| Delay start up by 1 year<br>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 |

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<br>Include down-time<br>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 Beaço 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 depos-

its 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; and

includes 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

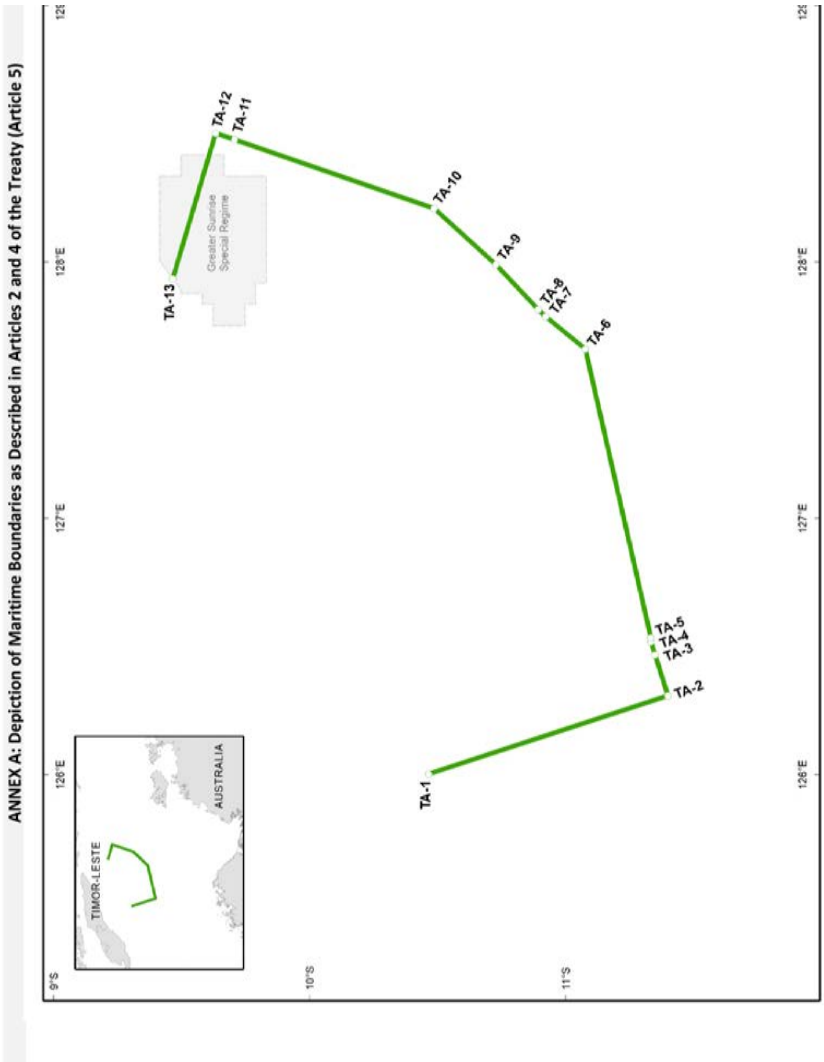
Minister for Foreign Affairs

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 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.

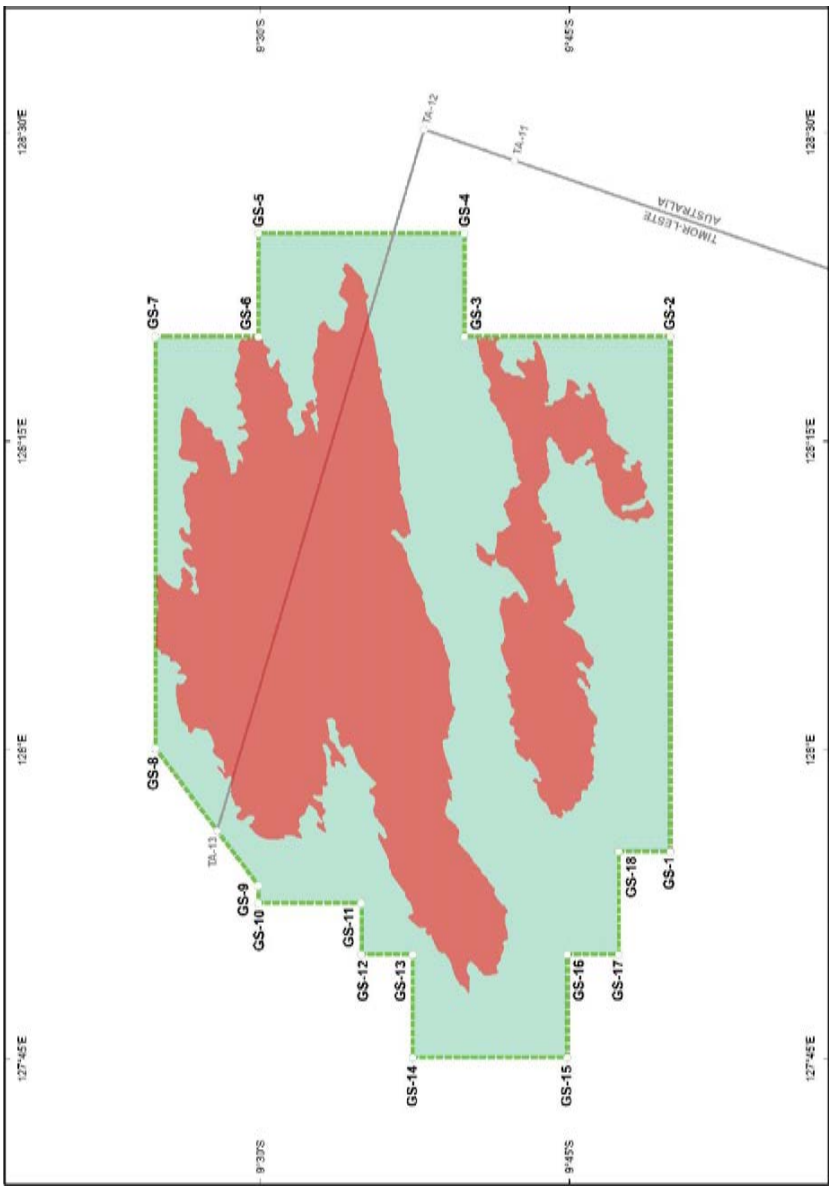
2. The Parties shall confirm their common understanding that the Greater Sunrise Fields have been commercially depleted and that the Greater Sunrise Special Regime has ceased to be in force by an exchange of notes through diplomatic channels.

**Annex C: Special Regime Area**

1. 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 |

2. The following is a depiction of the outline of the Special Regime Area and the Greater Sunrise Fields for illustrative purposes only:


GS-1
GS-2
GS-3
GS-4
GS-5
GS-6
GS-7
GS-8
GS-9
GS-10
GS-11
GS-12
GS-13
GS-14
GS-15
GS-16
GS-17
GS-18
TA-12
TA-17
TA-13
TIMOR-LESTE
AUSTRALIA
128°30'E
128°15'E
128°E
127°45'E
9°30'S
9°45'S

## 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.

## Annex E: Arbitration

### *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.