CIL Selected Documents on Joint Development and the South China Sea

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4. Joint Development in the Gulf of Tonkin and Northeast Asia

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1. GLOBAL CONVENTIONS

A. 1982 United Nations Convention on the Law of the Sea (1982 UNCLOS) [extracts]

Adopted in Montego Bay, Jamaica on 10 December 1982.

Entered into force on 16 November 1994

Part II: Territorial Sea and Contiguous Zone

Section 1: General Provisions

Article 2. Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil

1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.
2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.
3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

Section 2: Limits of the Territorial Sea

Article 3. Breadth of the territorial sea

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

Article 4. Outer limit of the territorial sea

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Article 5. Normal baseline

Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

Article 6. Reefs

In the case of islands situated on atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on charts officially recognized by the coastal State.

Article 7. Straight baselines

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the

coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

2. Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.

3. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

4. Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of baselines to and from such elevations has received general international recognition.

5. Where the method of straight baselines is applicable under paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage.

6. The system of straight baselines may not be applied by a State in such a manner as to cut off the territorial sea of another State from the high seas or an exclusive economic zone.

Article 13. Low-tide elevations

1. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

Article 15. Delimitation of the territorial sea between States with opposite or adjacent coasts

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agree-

ment between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

Part IV: Archipelagic States

Article 47. Archipelagic baselines

1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.
2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.
3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.
4. Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.
5. The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.
6. If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected.
7. For the purpose of computing the ratio of water to land under paragraph 1, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.

8. The baselines drawn in accordance with this article shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted.

9. The archipelagic State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

Article 48. Measurement of the breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf

The breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be measured from archipelagic baselines drawn in accordance with article 47.

Part V: Exclusive Economic Zone

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.

Article 57. Breadth of the exclusive economic zone

The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Article 58. Rights and duties of other States in the exclusive economic zone

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.

3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

Article 60. Artificial islands, installations and structures in the exclusive economic zone

1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:

   (a) artificial islands;

   (b) installations and structures for the purposes provided for in article 56 and other economic purposes;

   (c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.

2. The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.

3. Due notice must be given of the construction of such artificial islands, installations or structures, and permanent means for giving warning of their presence must be maintained. Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organization. Such removal shall also have due regard to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed.

4. The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures.

5. The breadth of the safety zones shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres around them, measured from each point of their outer edge, except as authorized by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given of the extent of safety zones.

6. All ships must respect these safety zones and shall comply with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations, structures and safety zones.

7. Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

8. Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

Article 61. Conservation of the living resources

1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.

2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall cooperate to this end.

3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.

4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.

5. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.

Article 62. Utilization of the living resources

1. The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61.

2. The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially

in relation to the developing States mentioned therein.

3. In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including, inter alia, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70, the requirements of developing States in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.

4. Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, inter alia, to the following:

   (a) licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;

   (b) determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period;

   (c) regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;

   (d) fixing the age and size of fish and other species that may be caught;

   (e) specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;

   (f) requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;

   (g) the placing of observers or trainees on board such vessels by the coastal State;

(h) the landing of all or any part of the catch by such vessels in the ports of the coastal State;

(i) terms and conditions relating to joint ventures or other cooperative arrangements;

(j) requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research;

(k) enforcement procedures.

5. Coastal States shall give due notice of conservation and management laws and regulations.

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.

Part VI: Continental Shelf

Article 76. Definition of the continental shelf

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.

2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.

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.

4(a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

(i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or

(ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

5. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a) (i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

8. Information on the limits of the continental shelf beyond 200 nautical

miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

9. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.

10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

Article 77. Rights of the coastal State over the continental shelf

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

Article 78. Legal status of the superjacent waters and air space and the rights and freedoms of other States

1. The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters.

2. The exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with

navigation and other rights and freedoms of other States as provided for in this Convention.

Article 80. Artificial islands, installations and structures on the continental shelf

Article 60 applies mutatis mutandis to artificial islands, installations and structures on the continental shelf.

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.

Part VIII: Regime of Islands

Article 121. Regime of islands

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

Part IX: Enclosed or Semi-Enclosed Seas

Article 122. Definition

For the purposes of this Convention, "enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

Article 123. Cooperation of States bordering enclosed or semi-enclosed seas

States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:

(a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;

(b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;

(c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;

(d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.

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 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.

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 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 293. Applicable law

1. A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.
2. Paragraph 1 does not prejudice the power of the court or tribunal having jurisdiction under this section to decide a case ex aequo et bono, if the parties so agree.

Article 294. Preliminary proceedings

1. A court or tribunal provided for in article 287 to which an application is made in respect of a dispute referred to in article 297 shall determine at the request of a party, or may determine *proprio motu,* whether the claim constitutes an abuse of legal process or whether prima facie it is well founded. If the court or tribunal determines that the claim constitutes an abuse of legal process or is prima facie unfounded, it shall take no further action in the case.
2. Upon receipt of the application, the court or tribunal shall immediately notify the other party or parties of the application, and shall fix a reasonable time-limit within which they may request it to make a determination in accordance with paragraph 1.
3. Nothing in this article affects the right of any party to a dispute to make preliminary objections in accordance with the applicable rules of procedure.

Article 295. Exhaustion of local remedies

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

Article 296. Finality and binding force of decisions

1. Any decision rendered by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute.
2. Any such decision shall have no binding force except between the parties and in respect of that particular dispute.

Section 3: Limitations and Exceptions to Applicability of Section 2

Article 297. Limitations on applicability of section 2

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

(a) when it is alleged that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines, or in regard to other internationally lawful uses of the sea specified in article 58;

(b) when it is alleged that a State in exercising the aforementioned freedoms, rights or uses has acted in contravention of this Convention or of laws or regulations adopted by the coastal State in conformity with this Convention and other rules of international law not incompatible with this Convention; or

(c) when it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have been established by this Convention or through a competent international organization or diplomatic conference in accordance with this Convention.

2(a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to marine scientific research shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute arising out of:

(i) the exercise by the coastal State of a right or discretion in accordance with article 246; or

(ii) a decision by the coastal State to order suspension or cessation of a research project in accordance with article 253.

(b) A dispute arising from an allegation by the researching State that with respect to a specific project the coastal State is not exercising its rights under articles 246 and 253 in a manner compatible with this Convention shall be submitted, at the request of either party, to conciliation under Annex V, section 2, provided that the conciliation commission shall not call in question the exercise by the coastal State of its discretion to designate specific areas as referred to in article 246, paragraph 6, or of its discretion to withhold consent in accordance with article 246, paragraph 5.

3(a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to fisheries shall be

settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulations.

(b) Where no settlement has been reached by recourse to section 1 of this Part, a dispute shall be submitted to conciliation under Annex V, section 2, at the request of any party to the dispute, when it is alleged that:

(i) a coastal State has manifestly failed to comply with its obligations to ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not seriously endangered;

(ii) a coastal State has arbitrarily refused to determine, at the request of another State, the allowable catch and its capacity to harvest living resources with respect to stocks which that other State is interested in fishing; or

(iii) a coastal State has arbitrarily refused to allocate to any State, under articles 62, 69 and 70 and under the terms and conditions established by the coastal State consistent with this Convention, the whole or part of the surplus it has declared to exist.

(c) In no case shall the conciliation commission substitute its discretion for that of the coastal State.

(d) The report of the conciliation commission shall be communicated to the appropriate international organizations.

(e) In negotiating agreements pursuant to articles 69 and 70, States Parties, unless they otherwise agree, shall include a clause on measures which they shall take in order to minimize the possibility of a disagreement concerning the interpretation or application of the agreement, and on how they should proceed if a disagreement nevertheless arises.

Article 298. Optional exceptions to applicability of section 2

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

   (a) (i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2; and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;

   (ii) after the conciliation commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2, unless the parties otherwise agree;

   (iii) this subparagraph does not apply to any sea boundary dispute finally settled by an arrangement between the parties, or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon those parties;

   (b) disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribu-

nal 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.

Part XVI: General Provisions

Article 300. Good faith and abuse of rights

States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.

Article 301. Peaceful uses of the seas

In exercising their rights and performing their duties under this Convention, States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations.

2. ASEAN DOCUMENTS

A. 1992 ASEAN Declaration on the South China Sea

Adopted by the Foreign Ministers at the 25th ASEAN Ministerial Meeting in Manila, Philippines on 22 July 1992.

WE, the Foreign Ministers of the member countries of the Association of Southeast Asian Nations;

RECALLING the historic, cultural and social ties that bind our peoples as states adjacent to the South China Sea;

WISHING to promote the spirit of kinship, friendship and harmony among our peoples who share similar Asian traditions and heritage;

DESIROUS of further promoting conditions essential to greater economic cooperation and growth;

RECOGNIZING that we are bound by similar ideals of mutual respect, freedom, sovereignty and jurisdiction of the parties directly concerned;

RECOGNIZING that South China Sea issues involve sensitive questions of sovereignty and jurisdiction of the parties directly concerned;

CONSCIOUS that any adverse developments in the South China Sea directly affect peace and stability in the region.

HEREBY

1. EMPHASIZE the necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force;
2. URGE all parties concerned to exercise restraint with the view to creating a positive climate for the eventual resolution of all disputes;
3. RESOLVE, without prejudicing the sovereignty and jurisdiction of countries having direct interests in the area, to explore the possibility of cooperation in the South China Sea relating to the safety of maritime navigation and communication, protection against pollution of the marine environment, coordination of search and rescue operations, efforts towards combatting piracy and armed robbery as well as collaboration in the campaign against illicit trafficking in drugs;
4. COMMEND all parties concerned to apply the principles contained in the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea;
5. INVITE all parties concerned to subscribe to this Declaration of principles.

Signed in Manila, Philippines, this 22nd day of July, nineteen hundred and ninety-two.

For Brunei Darussalam: HRH PRINCE MOHAMED BOLKIAH, Minister of Foreign Affairs

For the Republic of Indonesia: ALI ALA-TAS, Minister for Foreign Affairs

For Malaysia: DATUK ABDULLAH BIN HAJI AHMAD BADAWI, Minister of Foreign Affairs

For the Republic of Philippines: RAUL S. MANGLAPUS, Secretary of Foreign Affairs

For the Republic of Singapore: WONG KAN SENG, Minister for Foreign Affairs

For the Kingdom of Thailand: ARSA SARASIN, Minister of Foreign Affairs

B. 2002 ASEAN-CHINA Declaration on the Conduct of Parties in the South China Sea

Adopted by the Foreign Ministers of ASEAN and the People's Republic of China at the 8th ASEAN Summit in Phnom Penh, Cambodia on 4 November 2002.

The Governments of the Member States of ASEAN and the Government of the People's Republic of China,

REAFFIRMING their determination to consolidate and develop the friendship and cooperation existing between their people and governments with the view to promoting a 21st century-oriented partnership of good neighbourliness and mutual trust;

COGNIZANT of the need to promote a peaceful, friendly and harmonious environment in the South China Sea between ASEAN and China for the enhancement of peace, stability, economic growth and prosperity in the region;

COMMITTED to enhancing the principles and objectives of the 1997 Joint Statement of the Meeting of the Heads of State/Government of the Member States of ASEAN and President of the People's Republic of China;

DESIRING to enhance favourable conditions for a peaceful and durable solution of differences and disputes among countries concerned;

HEREBY DECLARE the following:

1. The Parties reaffirm their commitment to the purposes and principles of the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law which shall serve as the basic norms governing state-to-state relations;

2. The Parties are committed to exploring ways for building trust and confidence in accordance with the above-mentioned principles and on the basis of equality and mutual respect;

3. The Parties reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea as provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;

4. The Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by

sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;

5. The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.

   Pending the peaceful settlement of territorial and jurisdictional disputes, the Parties concerned undertake to intensify efforts to seek ways, in the spirit of cooperation and understanding, to build trust and confidence between and among them, including:

   a. holding dialogues and exchange of views as appropriate between their defense and military officials;
   b. ensuring just and humane treatment of all persons who are either in danger or in distress;
   c. notifying, on a voluntary basis, other Parties concerned of any impending joint/combined military exercise; and
   d. exchanging, on a voluntary basis, relevant information.

6. Pending a comprehensive and durable settlement of the disputes, the Parties concerned may explore or undertake cooperative activities. These may include the following:

   a. marine environmental protection;
   b. marine scientific research;
   c. safety of navigation and communication at sea;
   d. search and rescue operation; and
   e. combating transnational crime, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms.

   The modalities, scope and locations, in respect of bilateral and multilateral cooperation should be agreed upon by the Parties concerned prior to their actual implementation.

7. The Parties concerned stand ready to continue their consultations and dialogues concerning relevant issues, through modalities to be agreed by them, including regular consultations on the observance of this Declaration, for the purpose of promoting good neighbourliness and transparency, establishing harmony, mutual understanding and cooperation, and facilitating peaceful resolution of disputes among them;

8. The Parties undertake to respect the provisions of this Declaration

and take actions consistent therewith;

9. The Parties encourage other countries to respect the principles contained in this Declaration;

10. The Parties concerned reaffirm that the adoption of a code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective.

DONE on the Fourth Day of November in the Year Two Thousand and Two in Phnom Penh, the Kingdom of Cambodia

For Brunei Darussalam: MOHAMED BOLKIAH, Minister of Foreign Affairs

For the Kingdom of Cambodia: HOR NAMHONG, Senior Minister and Minister of Foreign Affairs and International Cooperation

For the Republic of Indonesia: DR HASSAN WIRAYUDA, Minister for Foreign Affairs

For the Lao People's Democratic Republic: SOMSAVAT LENGSAVAD, Deputy Prime Minister and Minister for Foreign Affairs

For Malaysia: DATUK SERI SYED HAMID ALBAR, Minister of Foreign Affairs

For the Union of Myanmar: WIN AUNG, Minister for Foreign Affairs

For the Republic of the Philippines: BLAS F. OPLE, Secretary of Foreign Affairs

For the Republic of Singapore: PROF. S. JAYAKUMAR, Minister for Foreign Affairs

For the Kingdom of Thailand: DR. SURAKIART SATHIRATHAI, Minister of Foreign Affairs

For the Socialist Republic of Viet Nam: NGUYEN DY NIEN, Minister of Foreign Affairs

For the People's Republic of China: WANG YI, Special Envoy and Vice Minister of Foreign Affairs

C. 2011 Chair's Statement of the 18th ASEAN Summit "ASEAN Community in a Global Community of Nations" [Extracts]

Adopted on 8 May 2011 in Jakarta, Indonesia

The 18th ASEAN Summit, with the theme "ASEAN Community in a Global Community of Nations", held in Jakarta on 7-8 May 2011, was chaired by the President of the Republic of Indonesia, Dr. Susilo Bambang Yudhoyono, as the Chair of ASEAN in 2011. The Heads of State/Government of ASEAN Member States had substantive, frank and productive discussion in a plenary session and retreat session, under a new arrangement of ASEAN Summit programmes and agenda.

REGIONAL AND INTERNATIONAL ISSUES

South China Sea

126. We reaffirmed the importance of the Declaration on the Conduct of the Parties in the South China Sea (DOC) as a milestone document signed between ASEAN and China embodying the collective commitment to promoting peace, stability, and mutual trust in the South China Sea. We stressed that continuing the positive engagement of ASEAN-China is essential in moving forward the DOC issue. We stressed the need to intensify efforts to ensure the effective implementation of the DOC and move forward the eventual conclusion of the regional Code of Conduct (COC).

127. We reiterated our commitment to resolving disputes in the South China Sea by peaceful means in conformity with the spirit of the DOC and recognize the principles of international law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS). In this connection, we recognized that territorial and jurisdictional disputes are best addressed bilaterally or amongst the parties concerned. We further emphasized the need for a breakthrough on this issue and to encourage efforts towards the effective and full implementation of the Declaration and the eventual conclusion of a regional COC in the South China Sea.

128. We welcomed the convening of the 6th ASEAN-China Joint Working Group on the DOC on 18-20 April 2011 in Medan, Indonesia. In this connection, we encouraged the continued constructive consultations between ASEAN and China, including the early convening of the ASEAN-China SOM on the DOC.

We therefore reaffirm the principle of ASEAN, on the basis of unity and solidarity, to coordinate and to endeavour to develop common positions in its dialogues with its Dialogue Partners.

129. We resolved to take advantage of the momentum of the anniversary of the 20 years of ASEAN-China relations in 2011 and 10 years of the adoption of the DOC in 2012 to finalize the Guidelines on the implementation of the DOC and initiate discussions on a regional COC.

3. JOINT DEVELOPMENT IN SOUTHEAST ASIA

A. 1979 Memorandum of Understanding between Malaysia and Thailand on the Establishment of a Joint Authority for the Exploitation of the Resources of the Sea Bed in a Defined Area of the Continental Shelf of the Two Countries in the Gulf of Thailand

Adopted on 21 February 1979 in Chiang Mai, Thailand

Entered into force on 24 October 1979

Malaysia and the Kingdom of Thailand,

DESIRING to strengthen further the existing bonds of traditional friendship between the two countries;

RECOGNISING that as a result of overlapping claims made by the two countries regarding the boundary line of their continental shelves in the Gulf of Thailand, there exists an overlapping area on their adjacent continental shelves;

NOTING that the existing negotiations between the two countries on the delimitation of the boundary of the continental shelf in the Gulf of Thailand may continue for some time;

CONSIDERING that it is in the best interests of the two countries to exploit the resources of the sea-bed in the overlapping area as soon as possible; and

CONVINCED that such activities can be carried out jointly through mutual cooperation,

HAVE AGREED AS FOLLOWS:

Article I

Both parties agree that as a result of overlapping claims made by the two countries regarding the boundary line of their continental shelves in the Gulf of Thailand, there exists an overlapping area, which is defined as that area bounded by straight lines joining the following coordinated points:-

(A)	N 6°50'.0	E 102°21'.2
(B)	N 7°10'.25	E 102°29'.0
(C)	N 7°49'.0	E 103°02'.5
(D)	N 7°22'.0	E 103°42'.5
(E)	N 7°20'.0	E 103°39'.0
(F)	N 7°03'.0	E 103°06'.0
(G)	N 6°53'.0	E 102°34'.0

And shown in the relevant part of the British Admiralty Chart No:2414 Edition 1967, annexed hereto.

Article II

Both Parties agree to continue to resolve the problem of the delimitation of the boundary of the continental shelf in the Gulf of Thailand between the two countries by negotiations or such other

peaceful means as agreed to by both Parties, in accordance with the principles of international law and practice especially those agreed to in the Agreed Minutes of the Malaysia-Thailand Officials' Meeting on Delimitation of the Continental Shelf Boundary Between Malaysia and Thailand in the Gulf of Thailand and in the South China Sea, 27 February-1 March 1978 and in the spirit of friendship and in the interest of mutual security.

Article III

(1) There shall be established a Joint Authority to be known as "Malaysia-Thailand Joint Authority" (thereafter referred to as "the Joint Authority") for the purpose of the exploration and exploitation of the non-living natural resources of the sea-bed and subsoil in the overlapping area for a period of fifty years commencing from the date this Memorandum comes into force.

(2) The Joint Authority shall assume all rights and responsibilities on behalf of both Parties for the exploration and exploitation of the non-living natural resources of the sea-bed and subsoil in the overlapping area (hereinafter refered to as the joint development area) and also for the development, control and administration of the joint development area. The assumption of such rights and responsibilities by the Joint Authority shall in no way affect or curtail the validity of concessions or licences hitherto issued or agreements or arrangements hitherto made by either Party.

(3) The Joint Authority shall consist of:-

  (a) two joint-chairmen, one from each country, and

  (b) an equal number of members from each country.

(4) Subject to the provisions of this Memorandum, the Joint Authority shall exercise on behalf of both Parties all the powers necessary for, incidental to or connected with the discharge of its functions relating to the exploration and exploitation of the non-living natural resources of the sea-bed and subsoil in the joint development area.

(5) All costs incurred and benefits derived by the Joint Authority from activities carried out in the joint development area shall be equally borne and shared by both Parties.

(6) If any single geological petroleum or natural gas, structure or field, or other mineral deposit of whatever character, extends beyond the limit of the joint development area defined in Article I, the Joint Authority and the Party or Parties concerned shall communicate to each other all information in this regard and shall seek to reach agreement as to the manner in which the structure, field or deposit will be most effectively

exploited; and all expenses incurred and benefits derived therefrom shall be equitably shared.

Article IV

(1) The rights conferred or exercised by the national authority of either Party in matters of fishing, navigation, hydrographic and oceanographic surveys, the prevention and control of marine pollution and other similar matters (including all powers of enforcement in relation thereto) shall extend to the joint development area and such rights shall be recognized and respected by the Joint Authority.

(2) Both Parties shall have a combined and coordinated security arrangement in the joint development area.

Article V

The criminal jurisdiction of Malaysia in the Joint Development Area shall extend over that area bounded by straight lines joining the following coordinated points:-

(A)	N 6°50'.0	E 102°21'.2
(X)	N 7°35'.0	E 103°23'.0
(D)	N 7°22'.0	E 103°42'.5
(E)	N 7°20'.0	E 103°39'.0
(F)	N 7°03'.0	E 103'06'.0
(G)	N 6°53'.0	E 102°34'.0

The areas of criminal jurisdiction of both Parties defined under this Article shall not in any way be construed as indicating the boundary line of the continental shelf between the two countries in the joint development area, which boundary is to be determined as provided for by Article II, nor shall such definition in any way prejudice the sovereign rights of either Party in the joint development area.

Article VI

(1) Notwithstanding Article III, if both Parties arrive at a satisfactory solution on the problem of the delimitation of the boundary of the continental shelf before the expiry of the said fifty-year period, the Joint Authority shall be wound up and all assets administered and liabilities incurred by it shall be equally shared and borne by both Parties. A new arrangement may, however, be concluded if both Parties so decide.

(2) If no satisfactory solution is found on the problem of the delimitation of the boundary of the continental shelf within the said fifty-year period, the existing arrangement shall continue after the expiry of the said period.

Article VII

Any difference or dispute arising out of the interpretation or implementation of the provisions of this Memorandum shall be settled peacefully by consultation or negotiation between the Parties.

Article VIII

This Memorandum shall come into force on the date of exchange of instruments of ratification.

DONE in duplicate at Chiang Mai the Twenty-first day of February in the year One Thousand Nine Hundred and Seventy-Nine in the Malay, Thai and English Languages.

In the event of any conflict among the texts, the English text shall prevail.

For Malaysia: DATUK HUSSEIN ONN, Prime Minister

For the Kingdom of Thailand: GENERAL KRIANGSAK CHOMANAN, Prime Minister

B. 1990 Agreement between the Government of Malaysia and the Government of the Kingdom of Thailand on the Constitution and Other Matters Relating to the Establishment of the Malaysia-Thailand Joint Authority

Adopted on 30 May 1990 in Kuala Lumpur, Malaysia

THE GOVERNMENT OF MALAYSIA

and

THE GOVERNMENT OF THE KINGDOM OF THAILAND,

hereinafter referred to as "the Governments",

DESIRING to implement the Memorandum of Understanding between Malaysia and the Kingdom of Thailand on the Establishment of a Joint Authority for the Exploitation of the Resources of the Sea-bed in a Defined Area of the Continental Shelf of the Two Countries in the Gulf of Thailand dated 21 February 1979, hereinafter referred to as "the Memorandum of Understanding, 1979",

HAVE HEREBY AGREED on the establishment of the Malaysia-Thailand Joint Authority, hereinafter referred to as "the Joint Authority", which shall operate in accordance with the following provisions:

Chapter I: Legal Status and Organization

Article 1. Juristic Personality and Capacity

(1) The Joint Authority shall have a juristic personality and such capacities as shall be provided for in the Acts of Parliament to be enacted by the Government of Malaysia and the Government of the Kingdom of Thailand, respectively, for the establishment of the Joint Authority, hereinafter referred to as "the Acts".

(2) The drafts of the Acts, referred to in paragraph (1) and attached hereto as Appendix A and Appendix B respectively, shall form an integral part of this Agreement.*

Article 2. Purpose

(1) The purpose of the Joint Authority shall be the exploration and exploitation of the non-living natural resources of the sea-bed and subsoil, in particular petroleum, in the Joint Development Area as defined in the Memorandum of Understanding, 1979 for the period of validity of the Memorandum of Understanding, 1979.

(2) In this Agreement, "petroleum" means any mineral oil or relative hydrocarbon and natural gas existing in its natural condition and casing-head petroleum spirit, including

bituminous shales and other stratified deposits from which oil can be extracted.

Article 3. Membership

(1) The Joint Authority shall comprise

(a) two Co-Chairmen, one each to be appointed by the respective Governments; and

(b) an equal number of members to be appointed by each Government, provided that the initial number of members, excluding the Co-Chairmen, to be appointed by each Government shall be six.

(2) The word "member" shall, for the purposes of this Agreement, and unless the context otherwise requires, include a Co-Chairman.

Article 4. Procedure

(1) The Co-Chairmen shall alternate to perform the functions of a Chairman at meetings of the Joint Authority. In the absence of a Co-Chairman during his chairmanship, the members of the Joint Authority shall elect a Chairman from amongst the members representing the same Government as the corresponding Co-Chairman. When so elected, he shall have all the powers of the Chairman.

(2) The quorum for any meeting of the Joint Authority shall not be less than ten. Decisions shall be taken jointly at a meeting by the Co-Chairmen.

Article 5. Personal Liability

No member of the Joint Authority shall incur any personal liability for any loss or damage caused by any act or omission in the administration of the affairs of the Joint Authority unless such loss or damage is occasioned by a wrongful act, gross negligence or omission on his part.

Article 6. Emoluments

The members of the Joint Authority shall be paid such emoluments and other allowances as the Joint Authority may determine with the approval of the Governments.

Chapter II: Powers and Functions

Article 7. Powers and Functions

(1) The Joint Authority shall control all exploration and exploitation of the non-living natural resources in the Joint Development Area and shall be responsible for the formulation of policies for the same.

(2) Without prejudice to the generality of the foregoing, the powers and functions of the Joint Authority shall include the following:

(a) to decide, with the approval of the Governments, on the organizational structure of the Joint Authority;

(b) subject to subparagraph (a), to appoint the chief executive officer and other officers of the Joint Authority, provided that the appointment of the chief executive officer and the deputy chief executive officer shall require the approval of the Governments;

(c) to decide on the terms and conditions of service of the chief executive officer and other officers of the Joint Authority;

(d) to decide on the plan of operation and the working programme for the administration of the Joint Development Area;

(e) to permit operations and to conclude transactions or contracts for or relating to the exploration and exploitation of the non-living natural resources in the Joint Development Area subject to the approval of the Governments;

(f) in respect of any contract referred to in subparagraph (e) for the exploration and exploitation of petroleum

(i) to approve and extend the period of exploration and exploitation;

(ii) to approve the work programmes and budgets of the contractor; and

(iii) to approve the production programmes of the contractor, including the production costs, conditions and schedules of the production;

(g) in respect of an operator of any contract referred to in subparagraph (f)

(i) to inspect and audit the operator's books and accounts relating to its operations in the Joint Development Area;

(ii) to take periodic inventories of the properties and assets procured by the operator for petroleum operations; and

(iii) to receive, collate and store all data supplied by the operator relating to its operations in the Joint Development Area;

(h) to approve and award tenders and contracts relating to goods and services required in carrying out petroleum operations in the Joint Development Area;

(i) to appoint committees, subcommittees or independent experts and consultants where necessary for the administration of the Joint Authority;

(j) to regulate any meeting of the Joint Authority, any committee

and sub-committee thereof; and

(k) to do any other thing incidental to or necessary for the performance of any of its functions.

Article 8. Production Sharing

(1) For the purpose of paragraph (2)(f) of Article 7, any contract awarded to any person for the exploration and exploitation of petroleum in the Joint Development Area shall, in accordance with subsection (3) of section 14 of the Acts, be a production sharing contract.

(2) A production sharing contract referred to in paragraph (1) shall include, without prejudice to paragraph (3), the terms and conditions specified in subsection (3) of section 14 of the Acts as follows:

(a) the contract shall be valid for a period not exceeding thirty-five years but shall not exceed the period of validity of this Agreement;

(b) payment in the amount of ten per centum of gross production of petroleum by the contractor to the Joint Authority as royalty in the manner and at such times as may be specified in the contract;

(c) fifty per centum of gross production of petroleum shall be applied by the contractor for the purpose of recovery of costs for petroleum operations;

(d) the remaining portion of gross production of petroleum, after deductions for the purposes of subparagraphs (b) and (c), shall be deemed to be profit petroleum and be divided equally between the Joint Authority and the contractor;

(e) all costs of petroleum operations shall be borne by the contractor and shall, subject to subparagraph (c), be recoverable from production;

(f) a minimum amount that the contractor shall expend on petroleum operations under the contract as a minimum commitment as may be agreed to by the Joint Authority and the contractor;

(g) payment of a research cess [sic] by the contractor to the Joint Authority in the amount of one half of one per centum of the aggregate of that portion of gross production which is applied for the purpose of recovery of costs under subparagraph (c) and the contractor's share of profit petroleum under subparagraph (d) in the manner and at such times as may be determined by the Joint Authority, provided that such payment

shall not be recoverable from production; and

(h) any disputes or differences arising out of or in connection with the contract which cannot be amicably settled shall be referred to arbitration before a panel consisting of three arbitrators, one arbitrator to be appointed by each party, and a third to be jointly appointed by both parties. If the parties are unable to concur on the choice of a third arbitrator within a specified period, the third arbitrator shall be appointed upon application to be United Nations Commission of International Trade Law (UNCITRAL). The arbitration proceedings shall be conducted in accordance with the rules of UNCITRAL. The venue or arbitration shall be either Bangkok or Kuala Lumpur, or any other place as may be agreed to by the parties.

(3) In addition to the matters specified in paragraph (2), production sharing contract may, at the option of the Joint Authority, include the following:

(a) the period referred to under subparagraph (a) of paragraph (2) shall be applied as follows:

(i) in respect of a contract for petroleum (other than gas), the periods for the purposes of exploration, development and production shall not exceed five years, five years and twenty-five years, respectively; and

(ii) in respect of a contract for gas, the periods for the purposes of exploration, the identification and nomination of the gas market, development and production shall not exceed, in respect of the first three periods, five years each, and in respect of the fourth period, twenty years:

Provided that any period referred to in subparagraphs (a)(i) and (a)(ii) may be varied by the Joint Authority from time to time as may be necessary on condition that where any such variation affects a subsisting contract it shall only be made with the agreement of the contractor:

Provided further that where the first commercial production occurs, in the case of

(A) petroleum (other than gas), before the expiry of the development period, the balance of that development period shall be added to the production period; and

(B) gas, before the expiry of the period for the identification and nomination of the gas market

or the development period, the balance of either of those periods shall be added to the production period;

(b) title to any equipment or assets purchased or acquired by the contractor for the purpose of petroleum operations shall pass to the Joint Authority upon such purchase or acquisition;

(c) the Joint Authority shall have title to all original data (raw, processed or interpreted) resulting from petroleum operations, including but not limited to geological, geophysical, core samples, petro-physical, well completion reports, engineering and other data reports and actual samples as the contractor may collect and compile; and

(d) the contractor shall purchase or acquire equipment, facilities, goods, materials, supplies, including services and research facilities, professional or otherwise, from sources in Malaysia or the Kingdom of Thailand where technically and economically feasible.

(4) The Joint Authority may vary any of the amounts referred to in subparagraphs (c), (d) and (g) of paragraph (2) in respect of any contract with the approval of the Governments:

Provided that there shall be no variation of any of these amounts in respect of a subsisting contract without the agreement of the contractor.

(5) For the purpose of this Article –

(a) "first commercial production" in relation to petroleum (other than gas) means the date that production has continued for a period of twenty-four hours following completion of testing from the first production well, and, in relation to gas, means the date within the first sixty days on which a cumulative 106 Giga Joule (approximately 947 billion BTU) of gas is first sold or, the sixtieth day after the gas is first sold if the cumulative sale within the first sixty days does not exceed 106 Giga Joule; and

(b) "gross production" with reference to gas means gross proceeds of sale of gas.

(6) The contractor shall pay export duty on its share of profit oil and petroleum income tax in accordance with Article 16 and Article 17 of this Agreement, respectively.

Chapter III: Financial Provisions

Article 9. Finance

(1) All costs incurred and benefits derived by the Joint Authority from activities carried out in the Joint Development Area shall be equally

borne and shared by the Governments.

(2) Until such time as the Joint Authority shall have sufficient income to finance its annual operational expenditure, the Governments shall annually provide the Joint Authority with the agreed amounts of money in equal shares to be paid into the Malaysia-Thailand Joint Authority Fund, hereinafter referred to as "the Fund".

(3) Thereupon, as specified in paragraph (2), and unless otherwise decided by the Governments, all such annual government contributions shall cease.

Article 10. Accounts and Records

(1) The Joint Authority shall cause proper accounts and other records of its transactions and affairs to be kept in accordance with generally accepted accounting principles and shall do all things necessary to ensure that all incomes are properly accounted for all that all expenditures out of the Fund including payments of salaries, remuneration and other monetary benefits to members of the Joint Authority and its employees, are properly authorized and that adequate control is maintained over the assets of or in the custody of the Joint Authority.

(2) Either Government may at any time direct any account or records to be made available to it and the Joint Authority shall comply with such direction.

Article 11. Budget

The annual budget of the Joint Authority shall be submitted to the Governments well in advance before the financial year of the respective Governments for their approval.

Article 12. Audit

(1) The Joint Authority shall have a financial year beginning on the first day of January.

(2) The accounts of the Joint Authority shall be audited annually by an auditor appointed by the Joint Authority with the approval of the Governments.

(3) The Joint Authority shall, within six months after the end of each financial year, have its accounts audited and transmitted to both Governments together with a copy of any observations made by the auditor on any statement or on the accounts of the Joint Authority and a copy of the annual report dealing with the activities of the Joint Authority in the preceding year.

Chapter IV: Regulations and Relations with Other Organizations

Article 13. Regulations

The Joint Authority may, in accordance with and for the purpose of section 15 of the Acts, submit recommendations on regulations in respect of any matter falling thereunder to the Governments for consideration.

Article 14. Relations with Other Organizations

In order to fulfill its purpose, the Joint Authority may cooperate with any government or organization, and, to this end, may, subject to the approval of the Governments, conclude any agreement or arrangement with such government or organization.

Chapter V: The Acts

Article 15. Amendment of the Acts

In order to facilitate the efficient management and operation of this Agreement, the Governments agree that the Acts shall not be amended without prior agreement between the Governments.

Chapter VI: Customs and Excise, and Taxation

Article 16. Customs Matters

(1) For the purpose of Part X of the Acts

(a) the rate of export duty payable by the contractor in respect of the contractor's share of profit oil sold outside Malaysia and the Kingdom of Thailand shall be ten per centum subject to the provision of subparagraph (b) (ii);

(b) the Customs and Excise Authorities shall continue to exercise all powers in relation to all matters relating to the regulation of the movement of goods imported into or exported from the Joint Development Area in accordance with the existing legislation of Malaysia or the Kingdom of Thailand, as the case may be, subject to the following:

(i) customs approved goods, equipment and materials for use in the Joint Development area shall be accorded duty exemption if they are imported by the Joint Authority or any person authorized by it:

Provided that where one of the Governments proposes to impose any duties or taxes on any such customs approved goods, equipment and materials, it may impose such duties or taxes after consultation with the other Government;

(ii) Malaysia and the Kingdom of Thailand shall collect

their respective duties and taxes collectible under their respective legislation but shall reduce the applicable rates by fifty per centum;

(iii) any goods entering the Joint Development Area from:

(A) a third country, any licensed warehouse or bonded are of either Malaysia or the Kingdom of Thailand shall be deemed an import; and

(B) Malaysia or the Kingdom of Thailand, shall be deemed an internal movement, provided they are customs approved goods, equipment and materials for use in the Joint Development Area;

(iv) any goods produced in the Joint Development Area entering Malaysia or the Kingdom of Thailand or a third country shall be deemed an export;

(v) any goods which has entered the Joint Development Area under the situation described in subparagraph (b)(iii)(B) and is to be moved into Malaysia or the Kingdom of Thailand shall be subject to the laws of Malaysia or the Kingdom of Thailand, as the case may be;

(vi) any goods falling within the category of goods appearing in both the lists of prohibited goods made in accordance with the laws of Malaysia and the Kingdom of Thailand, respectively, shall not be permitted to be brought into the Joint Development Area:

Provided that where an exception is required in respect of any specific importation, such an exception may be made with the agreement of the competent authorities of the other Country;

(vii) proceeds from any sale of forfeited goods which are the produce of the Joint Development Area shall be equally shared by Malaysia and the Kingdom of Thailand;

(c) the Customs and Excise Authorities shall use common customs forms for the purposes of import, export and internal movement of goods in the Joint Development Area as specified in subparagraphs (b)(iii) and (iv); and

(d) the Country where the headquarters of the Joint Authority is located shall empower the officers of the Customs and Excise Authority of the other Country to exercise their authority with regard to customs clearance, including the collection of duties and taxes, within the premises of the Joint Customs Office.

(2) Notwithstanding section 18 of the Acts, and insofar as it applies to customs and excise matters, the following arrangements shall apply:

(a) where an act is committed in the Joint Development Area and that act is an offence under the laws of one of the Countries only, such Country whose laws are alleged to have been breached may assume jurisdiction over such alleged offence;

(b) where the act referred to in subparagraph (a) is an offence under the laws of the Countries, the Country which may assume jurisdiction over the act shall be that whose officer first makes an arrest or seizure in respect of the alleged offence; and

(c) where the act referred to in subparagraph (a) is an offence under the laws of the Countries and in respect of which there are simultaneous arrests or seizures by the Customs and Excise Authorities, the jurisdiction over the alleged offence shall be determined through consultation between such Authorities.

(3) For the purpose of this Article –

(a) "Countries" means Malaysia and the Kingdom of Thailand, and when used in the singular means Malaysia or the Kingdom of Thailand, as the context requires;

(b) "customs approved goods" means goods in respect of which customs duties are exempted under both the laws of Malaysia and the Kingdom of Thailand relating to customs;

(c) "Customs and Excise Authority" in relation to Malaysia means the Royal Customs and Excise, Malaysia and in relation to the Kingdom of Thailand means the Customs Department of Thailand, and when used in the plural means both such Authorities;

(d) "Joint Customs Committee" means the committee comprising officers of the Customs and Excise Authorities established for the purpose of the coordination of the administration of customs and excise laws in the Joint Development Area; and

(e) "Joint Customs Office" means the office of the Joint Customs

Committee established in the headquarters of the Joint Authority for the purpose of the coordination of the administration of the customs and excise laws in the Joint Development Area.

Article 17. Taxation

(1) For the purpose of Part X of the Acts, the Revenue Authorities of the Governments shall, subject to the following, continue to impose and collect taxes in respect of income from the Joint Development Area in accordance with the existing tax legislation of Malaysia and the Kingdom of Thailand, as the case may be:

(a) the taxation of such income of any person who holds the right to explore and exploit any petroleum in the Joint Development Area under a contract awarded by the Joint Authority shall be in accordance with the following rates:

First 8 years of production: 0% of taxable income

Next 7 years: 10% of taxable income

Subsequent years: 20% of taxable income:

Provided that the tax chargeable by each of the Governments shall be reduced to fifty per centum of the amount so chargeable:

Provided further that where the tax chargeable for each year by one of the Governments exceeds that chargeable by the other Government, such excess shall be shared equally by the two Governments and shall be effected by the Joint Authority through appropriate adjustments of payments made under paragraph (d) of section 10 of the Acts;

(b) the taxation of such income of a person who is a Malaysian or Thai national exercising employment in the Joint Development Area or with the Joint Authority shall be based on his residence; and

(c) the taxation of such income of any person other than a person mentioned in subparagraphs (a) and (b) shall be in accordance with the laws and regulations of Malaysia and the Kingdom of Thailand, provided that where the same income is subject to tax in both countries, the tax chargeable in each country shall be reduced by fifty per centum of the amount so chargeable.

(2) The Governments agree that any law for taxation which is in the nature of general sales tax, including any tax imposed on the provision

of goods and services in the Joint Development Area, shall not be applicable to the Joint Development Area.

(3) The Joint Authority shall be exempt from taxation in Malaysia and the Kingdom of Thailand.

(4) The Revenue Authorities of the Governments shall continue to communicate with and consult each other in respect of the implementation and administration of any tax law in the Joint Development Area.

Chapter VII: Miscellaneous and Provisions

Article 18. Entry into Force and Termination

(1) The Agreement shall enter into force upon the exchange of instruments of ratification, and, unless otherwise agreed to by the Governments, shall remain in force for the period of validity of the Memorandum of Understanding, 1979.

(2) Upon termination of this Agreement, the Joint Authority shall be wound up in accordance with a liquidation procedure as may be approved by the Governments.

Article 19. Application

The application and interpretation of the provisions of this Agreement shall be consistent with the spirit and provisions of the Memorandum of Understanding, 1979.

Article 20. Amendment

This Agreement may be amended by a joint decision of the Co-Chairman with the approval of the Governments.

Article 21. Settlement of Disputes

Any differences or disputes arising out of the interpretation or application of the provisions of this Agreement shall be settled peacefully by consultation or negotiation between the Governments. In the event that no settlement is reached within a period of three months either Government may refer the matter to the Prime Minister of Malaysia and the Prime Minister of the Kingdom of Thailand who shall jointly decide on the mode of settlement for the purpose of the particular matter referred to them.

Article 22

This Agreement is made in duplicate at Kuala Lumpur, Malaysia, on the Thirtieth day of May, in the year One thousand Nine hundred and Ninety, in the English Language.

For The Government Of Malaysia
(Dato' Haji Abu Hassan bin Haji Omar)
Minister of Foreign Affairs

For The Government Of The Kingdom Of Thailand
(Air Chief Marshal Siddhi Savetsila)

C. 1992 Memorandum of Understanding between Malaysia and the Socialist Republic of Vietnam for the Exploration and Exploitation of Petroleum in a Defined Area of the Continental Shelf Involving the Two Countries

Adopted on 5 June 1992 in Kuala Lumpur, Malaysia

Entered into force on 4 June 1993

MALAYSIA

and

THE SOCIALIST REPUBLIC OF VIETNAM,

DESIRING to further strengthen the cooperation between the two countries;

RECOGNIZING that as a result of overlapping claims made by the two countries regarding the boundary lines of their continental shelves located off the northeast coast of West Malaysia and off the southwest coast of Vietnam, there exists an overlapping area of their continental shelves;

CONSISTENT with the agreement reached by the leaders of the two countries to cooperate in that part of the overlapping area involving the two countries only;

MINDFUL of the decision by the leaders of the two countries to resolve peacefully the question of all overlapping claims involving multiple parties with the parties concerned at an appropriate time;

CONSIDERING that it is in the best interests of both countries, pending delimitation of their continental shelves located off the northeast coast of West Malaysia and off the southwest coast of Vietnam, to enter into an interim arrangement for the purpose of exploring and exploiting petroleum in the seabed in the overlapping area;

CONVINCED that such activities can be carried out through mutual cooperation;

HAVE AGREED AS FOLLOWS:

Article 1

(1) Both parties agree that as a result of overlapping claims made by the two countries regarding the boundary lines of their continental shelves located off the northeast coast of West Malaysia and off the southwest coast of Vietnam, there exists an overlapping area (the Defined Area), being that area bounded by straight lines joining the following coordinated points:

A	N7°22.0'	E103°42.5'
B	N7°20.0'	E103°39.0'
C	N7°18.31'	E103°35.71'

D	N7°03.0'	E103°52.0'
E	N6°05.8'	E105°49.2'
F	N6°48.25'	E104°30.0'
A	N7°22.0'	E103°42.5'

and shown in the relevant part of the British Admiralty Chart No: 2414, Edition 1967, annexed hereto.

(2) The actual location at sea of the points referred to in Clause (1) of this Article shall be determined by a method to be mutually agreed upon by the competent authorities of both parties. The competent authorities in relation to Malaysia means the Directorate of National Mapping Malaysia and includes any person authorized by it and in relation to the Socialist Republic of Vietnam means the Department of Geo-Cartography and the Navy Geo-Cartography Section and includes any person authorized by them.

Article 2

(1) Both parties agree, pending final delimitation of the boundary lines of their continental shelves pertaining to the Defined Area, through mutual cooperation, to explore and exploit petroleum in that area in accordance with the terms of, and for a period of the validity of this Memorandum of Understanding.

(2) Where a petroleum field is located partly in the Defined Area and partly outside that area in the continental shelf of Malaysia or the Socialist Republic of Vietnam, as the case may be, both parties shall arrive at mutually acceptable terms for the exploration and exploitation of petroleum therein.

(3) All costs incurred and benefits derived from the exploration and exploitation of petroleum in the Defined Area shall be borne and shared equally by both parties.

Article 3

For the purpose of this Memorandum of Understanding –

(a) Malaysia and the Socialist Republic of Vietnam agree to nominate PETRONAS and PETROVIETNAM, respectively, to undertake, on their respective behalves, the exploration and exploitation of petroleum in the Defined Area;

(b) Malaysia and the Socialist Republic of Vietnam shall cause PETRONAS and PETROVIETNAM, respectively, to enter into a commercial arrangement as between them for the exploration and exploitation of petroleum in the Defined Area provided that the terms and

conditions of that arrangement shall be subject to the approval of the Government of Malaysia and the Government of the Socialist Republic of Vietnam;

(c) both parties agree, taking into account the significant expenditures already incurred in the Defined Area, that every effort shall be made to ensure continued early exploration of petroleum in the Defined Area.

Article 4

Nothing in this Memorandum of Understanding shall be interpreted so as to in any way –

(a) prejudice the position and claims of either party in relation to and over the Defined Area; and

(b) without prejudice to the provisions of Article III, confer any rights, interests or privileges to any person not being a party hereto in respect of any petroleum resources in the Defined Area.

Article 5

This Memorandum of Understanding shall continue for a period to be specified by an exchange of Diplomatic Note between the two parties.

Article 6

Any dispute arising out of the interpretation or implementation of the provisions of this Memorandum of Understanding shall be settled peacefully by consultation or negotiation between both parties.

Article 7

This Memorandum of Understanding shall come into force on the date to be specified by an exchange of Diplomatic Notes between the two parties.

Article 8

For the purpose of this Memorandum of Understanding –

(a) 'Defined Area' means the area referred to in Article I(1) of this Memorandum of Understanding;

(b) 'petroleum' means any mineral oil or relative hydrocarbon and natural gas existing in its natural condition and casinghead petroleum spirit, including bituminous shales and other stratified deposits from which oil can be extracted;

(c) 'petroleum field' means an area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same individual geological structural feature, or stratigraphic conditions from which

petroleum may be produced commercially;

(d) 'PETRONAS' is the short form of Petroliam Nasional Berhad, a company incorporated under the Malaysia Companies Act 1965; and

(e) 'PETROVIETNAM' is the short form of Vietnam National Oil and Gas Company established by the Decree of No. 250/ HDBT of 6 July 1990.

DONE in duplicate at Kuala Lumpur the 5th day of June in the year One Thousand Nine Hundred and Ninety Two in the English Language.

For Malaysia
H.E. Datuk Ahmad Kamil Jaafar
Secretary-General, Ministry of Foreign Affairs, Malaysia

For the Socialist Republic of Vietnam
H.E. Vu Khoan
Vice Minister of Foreign Affairs
Socialist Republic of Vietnam

4. JOINT DEVELOPMENT IN THE GULF OF TONKIN AND NORTH EAST ASIA

A. 1974 Agreement between Japan and the Republic of Korea Concerning Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries

Adopted on 30 January 1974, Seoul, Republic of Korea

Entered into force on 22 June 1978

JAPAN

and

THE REPUBLIC OF KOREA,

DESIRING to promote the friendly relations existing between the two countries,

CONSIDERING their mutual interest in carrying out jointly exploration and exploitation of petroleum resources in the southern part of the continental shelf adjacent to the two countries,

RESOLVING to reach a final practical solution to the question of the develop ment of such resources,

HAVE AGREED as follows:

Article I

For the purposes of this Agreement

(1) The term "natural resources" means petroleum (including natural gas) resources and other underground minerals which are produced in association with such resources;

(2) The term "concessionaire" means a person authorized by either Party under the laws and regulations of that Party to explore and/or exploit natural resources in the Joint Development Zone;

(3) The term "concessionaires of both Parties" means a concessionaire of one Party and a concessionaire of the other Party respectively authorized with respect to the same subzone of the Joint Development Zone;

(4) The term "operating agreement" means a contract concluded between concessionaires of both Parties for the purpose of exploring and exploiting natural resources in the Joint Development Zone;

(5) The term "operator" means a concessionaire designated and acting as such under the operating agreement with respect to a subzone of the Joint Development Zone.

Article II

1. The Joint Development Zone shall be the area of the continental shelf bounded by straight lines connecting the following points in the sequence given below:

   Point 1 32°57.0' N 127°41.1' E
   Point 2 32°53.4' N 127°36.3' E
   Point 3 32°46.2' N 127°27.8' E
   Point 4 32°33.6' N 127°13.1' E
   Point 5 32°10.5' N 126°51.5' E
   Point 6 30°46.2' N 125°55.5' E
   Point 7 30°33.3' N 126°00.8' E
   Point 8 30°18.2' N 126°05.5' E
   Point 9 28°36.0' N 127°38.0' E
   Point 10 29°19.0' N 128°00.0' E
   Point 11 29°43.0' N 128°38.0' E
   Point 12 30°19.0' N 129°09.0' E
   Point 13 30°54.0' N 129°04.0' E
   Point 14 31°13.0' N 128°50.0' E
   Point 15 31°47.0' N 128°50.0' E
   Point 16 31°47.0' N 128°14.0' E
   Point 17 32°12.0' N 127°50.0' E
   Point 18 32°27.0' N 127°56.0' E
   Point 19 32°27.0' N 128°18.0' E
   Point 20 32°57.0' N 128°18.0' E
   Point 1 32°57.0' N 127°41.1' E

2. The straight lines bounding the Joint Development Zone are shown on the map annexed to this Agreement.

Article III

1. The Joint Development Zone may be divided into subzones, each of which shall be explored and exploited by concessionaires of both Parties.

2. Each subzone shall be numbered and defined by reference to geographical coordinates in the appendix to this Agreement. The appendix may be amended by mutual consent of the Parties without modification of this Agreement.

Article IV

1. Each Party shall authorize one or more concessionaires with respect to each subzone within three months after the date of entry into force of this Agreement. When one Party authorizes more than one concessionaire with respect to one subzone, all such concessionaires shall have an undivided interest and shall be represented, for the purposes of this Agreement, by one concessionaire. In case of any change in concessionaire or in subzone, the Party concerned shall authorize one or more new concessionaires as soon as possible.

2. Each Party shall notify the other Party of its concessionaire or concessionaires without delay.

Article V

1. Concessionaires of both Parties shall enter into an operating agreement to carry out jointly exploration and exploitation of natural

resources in the Joint Development Zone. Such operating agreement shall provide, inter alia, for the following:

(a) Details relating to the sharing of natural resources and expenses in accordance with article IX;

(b) Designation of operator;

(c) Treatment of sole risk operations;

(d) Adjustment of fisheries interests;

(e) Settlement of disputes.

2. The operating agreement and modifications thereof shall enter into force upon approval by the Parties. Approval of the Parties shall be deemed to have been given unless either Party explicitly disapproves the operating agreement or modifications thereof within two months after such operating agreement or modifications thereof have been submitted to the Parties for approval.

3. The Parties shall endeavour to ensure that the operating agreement enter into force within six months after concessionaires of both Parties have been authorized under paragraph 1 of article IV.

Article VI

1. The operator shall be designated by agreement between concessionaires of both Parties. If concessionaires of both Parties fail to reach agreement between themselves as to the designation of the operator within three months after such concessionaires have been authorized, the Parties shall hold consultations concerning the designation of the operator. If the operator is not designated within two months after such consultations have started, concessionaires of both Parties shall determine the operator by lot-drawing.

2. The operator shall have exclusive control of all operations under the operating agreement and employ all personnel required for such operations, pay and discharge all expenses incurred in connection with such operations, and obtain all assets, including equipment, materials and supplies, necessary for carrying out such operations.

Article VII

A concessionaire of one Party may acquire, construct, maintain, use and dispose of, in the territory of the other Party, buildings, platforms, tanks, pipelines, terminals and other facilities necessary for exploration or exploitation of natural resources in the Joint Development Zone in accordance with the laws and regulations of that other Party.

Article VIII

A concessionaire of one Party shall not interfere with the discharging by a

concessionaire of the other Party of its obligations under the laws and regulations of that other Party, insofar as such obligations are consistent with the provisions of this Agreement.

Article IX

1. Concessionaires of both Parties shall be respectively entitled to an equal share of natural resources extracted in the Joint Development Zone.

2. Expenses reasonably attributable to exploration and exploitation of such natural resources shall be shared in equal proportions between concessionaires of both Parties.

Article X

1. The right of concessionaires under this Agreement shall be exploration right and exploitation right.

2. The duration of exploration right shall be eight years from the date of entry into force of the operating agreement, subject to the provisions of paragraph 4 (3) of this article.

3. The duration of exploitation right shall be thirty years from the date of the establishment of such right. Concessionaires of both Parties may apply to the respective Parties for an extension of an additional period of five years. Such application may be made as many times as necessary. The Parties shall, upon receipt of such application, consult with each other to decide whether to approve such application.

4(1) When commercial discovery of natural resources is made during the period of exploration right, concessionaires of both Parties may apply to the respective Parties for the establishment of exploitation right. When the Parties receive such application, they shall promptly hold consultations and shall without delay approve such application.

(2) When the Parties recognize that commercial discovery is made, each Party may request its concessionaire concerned to present an application for the establishment of exploitation right. Such concessionaire shall present such application within three months after receiving the request.

(3) If exploitation right is established during the period of exploration right, the period of exploration right shall expire on the date of the establishment of exploitation right.

5. In case of any change in concessionaire of one Party, the period of exploration right or exploitation right of a new concessionaire shall expire on the date of expiration of the period of exploration right

or exploitation right of the original concessionaire.

6. Exploration right or exploitation right of a concessionaire may be transferred in its entirety subject to the approval of the Party that has authorized it and to the consent of the other concessionaire authorized with respect to the same subzone, provided that the rights and obligations of that concessionaire under this Agreement and the operating agreement are transferred in whole.

Article XI

1. Concessionaires of both Parties shall be required to drill a certain number of wells during the period of exploration right in accordance with a separate arrangement to be made between the Parties. However, the minimum number of wells to be drilled in each subzone shall not exceed two respectively for the first three-year period, the following three-year period and the remaining two-year period, from the date of entry into force of the operating agreement. The Parties shall, when agreeing upon the minimum number of wells to be drilled in each subzone, take into account the depths of the superjacent waters and the size of each subzone.

2. If concessionaires of both Parties have drilled wells in excess of the requirements during any of the periods referred to in paragraph 1 of this article, such excess wells shall be regarded as having been drilled in the succeeding period or periods.

Article XII

Concessionaires of both Parties shall start operations within six months from the date of the establishment of exploration right or exploitation right and shall not suspend operations for more than six consecutive months.

Article XIII

1. Subject to the provisions of paragraph 2 of this article, concessionaires of both Parties shall release twenty-five per cent of the original subzone concerned within three years, fifty per cent of such subzone within six years, and seventy-five per cent of such subzone within eight years, from the date of entry into force of the operating agreement.

2. The size, shape and location of the area to be released and the time of release shall be determined by agreement between concessionaires of both Parties. However, no single area smaller than seventy-five square kilometres shall be released except under paragraph 3 of this article.

3(1) If concessionaires of both Parties are unable to agree on the area to be released under

paragraph 1 of this article, concessionaires of both Parties shall release, on the date of the expiration of the release period concerned, the area mutually proposed for release and fifty per cent of the areas respectively proposed for release in such a way that the total area to be released will be a single area whenever possible.

(2) If there is no area mutually proposed for release, concessionaires of both Parties shall release fifty per cent of the areas respectively proposed for release.

4. Concessionaires of both Parties may release voluntarily any area subject to the provisions of paragraph 2 of this article.

5. Notwithstanding the provisions of paragraph 2 of this article, a concessionaire may unilaterally release the total subzone concerned after two years have elapsed from the date of entry into force of the operating agreement.

Article XIV

1. Either Party may, by pertinent procedures laid down in its laws and regulations concerning the protection of concessionaires, cancel exploration right or exploitation right of its concessionaire after consultations with the other Party if such concessionaire fails to discharge any of its obligations under this Agreement or the operating agreement.

2. When either Party intends to cancel in accordance with its laws and regulations exploration right or exploitation right of its concessionaire, that Party shall notify the other Party of its intention at least fifteen days prior to such cancellation, except under paragraph 1 of this article.

3. The cancellation of exploration right or exploitation right by one Party shall be notified to the other Party without delay.

Article XV

1. When a concessionaire of one Party has unilaterally released a subzone under paragraph 5 of article XIII, when exploration right or exploitation right of a concessionaire of one Party has been cancelled under article XIV or when a concessionaire of one Party has ceased to exist (any such concessionaire hereinafter referred to as "the former concessionaire"), the remaining concessionaire in the subzone concerned may, until such time as the Party that has authorized the former concessionaire authorizes a new concessionaire, carry out exploration or exploitation of natural resources under the terms of the sole risk operation clauses and under other

relevant provisions of the operating agreement to which such remaining concessionaire and the former concessionaire were parties, subject to the approval of the Party that has authorized the former concessionaire.

2. For the purposes of paragraph 1 of this article, the remaining concessionaire shall be regarded as a concessionaire of the Party that has authorized the former concessionaire in respect of rights and obligations of a concessionaire, while retaining its own concessionaireship. The provisions of the above sentence shall not apply to taxation upon the remaining concessionaire with respect to its income derived from exploration or exploitation of natural resources under paragraph 1 of this article.

3. When a new concessionaire is authorized by one Party, the new concessionaire and the remaining concessionaire shall be bound by the operating agreement to which the remaining concessionaire and the former concessionaire were parties until such time as a new operating agreement enters into force. The remaining concessionaire who has started exploration or exploitation of natural resources under paragraph 1 of this article may continue such exploration or exploitation under the terms of the sole risk operation clauses of the operating agreement to which such remaining concessionaire and the former concessionaire were parties until such time as the new operating agreement referred to above enters into force.

Article XVI

In the application of the laws and regulations of each Party to natural resources extracted in the Joint Development Zone, the share of such natural resources to which concessionaires of one Party are entitled under article IX shall be regarded as natural resources extracted in the continental shelf over which that Party has sovereign rights.

Article XVII

1. Neither Party (including local authorities) shall impose taxes or other charges upon concessionaires of the other Party with respect to:

   (a) Exploration or exploitation activities in the Joint Development Zone;

   (b) Income derived from such activities;

   (c) The possession of fixed assets in the Joint Development Zone necessary for carrying out such activities; or

   (d) The subzones with respect to which such concessionaires are authorized.

2. Each Party (including local authorities) may impose taxes and other charges upon its concessionaires with respect to:

   (a) Exploration or exploitation activities in the Joint Development Zone;

   (b) The possession of fixed assets in the Joint Development Zone necessary for carrying out such activities; and

   (c) The subzones with respect to which such concessionaires are authorized.

Article XVIII

In the application of the laws and regulations of each Party on customs duties, imports and exports:

(1) The introduction of equipment, materials and other goods necessary for exploration or exploitation of natural resources in the Joint Development Zone (hereinafter referred to as "equipment") into the Joint Development Zone, the subsequent use of equipment therein or the shipment of equipment therefrom shall not be regarded as imports or exports;

(2) The shipment of equipment from areas under the jurisdiction of one Party to the Joint Development Zone shall not be regarded as imports or exports by that Party;

(3) The users of equipment in the Joint Development Zone which has been introduced into the Joint Development Zone from areas under the jurisdiction of either Party may be required to submit reports to that Party on the use of such equipment;

(4) Notwithstanding the provisions of (1) of this article, the shipment of the equipment referred to in (3) of this article from the Joint Development Zone to areas other than those under the jurisdiction of that Party shall be regarded as exports by that Party.

Article XIX

Except where otherwise provided in this Agreement, the laws and regulations of one Party shall apply with respect to matters relating to exploration or exploitation of natural resources in the subzones with respect to which that Party has authorized concessionaires designated and acting as operators.

Article XX

The Parties shall agree on measures to be taken to prevent collisions at sea and to prevent and remove pollution of the sea resulting from activities relating to exploration or exploitation of natural resources in the Joint Development Zone.

Article XXI

1. When damage resulting from exploration or exploitation of natural resources in the Joint Development Zone has been sustained by nationals of either Party or other persons who are resident in the territory of either Party, actions for compensation for such damage may be brought by such nationals or persons in the court of one Party *(a)* in the territory of which such damage has occurred, *(b)* in the territory of which such nationals or persons are resident, or *(c)* which has authorized the concessionaire designated and acting as the operator in the subzone where the incident causing such damage has occurred.

2. The court of one Party in which actions for compensation for such damage have been brought under paragraph 1 of this article shall apply the laws and regulations of that Party.

3(1) When damage referred to in paragraph 1 of this article has been caused by digging operations of seabed and subsoil, or discharging of mine water or used water:

(a) Concessionaires of both Parties who have exploration right or exploitation right with respect to the subzone concerned at the time of occurrence of such damage,

(b) In case no concessionaire has exploration right or exploitation right with respect to the subzone concerned at the time of occurrence of such damage, the concessionaires who had exploration right or exploitation right most recently with respect to the subzone concerned or

(c) In case only one concessionaire has exploration right or exploitation right with respect to the subzone concerned at the time of occurrence of such damage, such concessionaire and the former concessionaire as defined in paragraph 1 of article XV, shall be jointly and severally liable for the compensation for such damage in accordance with the laws and regulations applicable under paragraph 2 of this article.

(2) For the purposes of (1) of this paragraph, when exploration right or exploitation right has been transferred after the occurrence of the damage referred to in (1) of this paragraph, the concessionaire who has transferred explora-

tion right or exploitation right and the concessionaire who has obtained exploration right or exploitation right by such transfer shall be jointly and severally liable for the compensation.

Article XXII

1. Each Party shall, when assigning a frequency or frequencies to a radio station on a fixed installation for exploration or exploitation of natural resources in the Joint Development Zone, inform as soon as possible prior to such assignment the other Party of such frequency or frequencies, class of emission, antenna power, location of the station and other particulars deemed necessary. Each Party shall likewise inform the other Party of any subsequent changes in the above particulars.

2. The Parties shall hold consultations at the request of either Party for necessary coordination concerning the above particulars.

Article XXIII

1. If any single geological structure or field of natural resources extends across any of the lines specified in paragraph 1 of article II and the part of such structure or field which is situated on one side of such lines is exploitable, wholly or in part, from the other side of such lines, concessionaires and other persons authorized by either Party to exploit such structure or field (hereinafter referred to as "concessionaires and other persons") shall, through consultations, seek to reach agreement as to the most effective method of exploiting such structure or field.

2(1) If concessionaires and other persons fail to reach agreement as to the method referred to in paragraph 1 of this article within six months after such consultations have started, the Parties shall, through consultations, endeavour to make a joint proposal concerning such method to concessionaires and other persons within a reasonable period of time.

(2) When agreement concerning such method is reached among all or some of concessionaires and other persons, the agreement (including modifications thereof) shall enter into force upon approval by the Parties. Such agreement shall provide for details relating to the sharing, in accordance with paragraph 3 of this article, of natural resources and expenses.

3. In cases of exploitation under the agreement referred to in paragraph 2 (2) of this article, natural resources extracted from such structure or field and expenses reasonably attributable to exploitation of such

natural resources shall be shared among concessionaires and other persons in proportion to the quantities of producible reserves in the respective parts of such structure or field which are situated in the area with respect to which they have been authorized by either Party.

4. The provisions of the foregoing paragraphs of this article shall apply mutatis mutandis with respect to exploitation of a single geological structure or field of natural resources extending across lines bounding the subzones of the Joint Development Zone.

5(1) For the purposes of article XVI, the share of natural resources extracted in the Joint Development Zone to which persons (other than concessionaires) authorized by one Party are entitled under paragraph 3 of this article and the agreement referred to in paragraph 2 (2) of this article shall be regarded as the share of natural resources to which concessionaires of that Party are entitled.

(2) For the purposes of article XVII, persons (other than concessionaires) authorized by one Party who are parties to the agreement referred to in paragraph 2 (2) of this article shall be regarded as concessionaires of that Party.

(3) Neither Party (including local authorities) shall impose taxes or other charges upon concessionaires of the other Party with respect to:

(a) Exploitation activities carried out outside the Joint Development Zone in accordance with the agreement referred to in paragraph 2 (2) of this article;

(b) Income derived from such activities; or

(c) The possession of fixed assets necessary for carrying out such activities.

Article XXIV

1. The Parties shall establish and maintain the Japan-Republic of Korea Joint Commission (hereinafter referred to as "the Commission") as a means for consultations on matters concerning the implementation of this Agreement.

2. The Commission shall be composed of two national sections, each consisting of two members appointed by the respective Parties.

3. All resolutions, recommendations and other decisions of the Commission shall be made only by agreement between the national sections.

4. The Commission may adopt and amend, when necessary, rules of procedure for its meetings.

5. The Commission shall meet at least once each year and whenever requested by either national section.

6. At its first meeting, the Commission shall select its Chairman and Vice-Chairman from different national sections. The Chairman and the Vice-Chairman shall hold office for a period of one year. Selection of the Chairman and the Vice-Chairman from the national sections shall be made in such a manner as will provide in turn each Party with representation in these offices.

7. A permanent secretariat may be established under the Commission to carry out the clerical work of the Commission.

8. The official languages of the Commission shall be Japanese, Korean and English. Proposals and data may be submitted in any official language.

9. In case the Commission decides that joint expenses are necessary, such expenses shall be paid by the Commission through contributions made by the Parties as recommended by the Commission and approved by the Parties.

Article XXV

1. The Commission shall perform the following functions:

   (a) To review the operation of this Agreement and, when necessary, deliberate on and recommend to the Parties measures to be taken to improve the operation of this Agreement;

   (b) To receive technical and financial reports of concessionaires, which shall be submitted annually by the Parties;

   (c) To recommend to the Parties measures to be taken to settle disputes incapable of solution by concessionaires;

   (d) To observe operations of operators and installations and other facilities for exploration or exploitation of natural resources in the Joint Development Zone;

   (e) To study problems, including those relating to the application of laws and regulations of the Parties, unexpected at the time of entry into force of this Agreement, and, when necessary, recommend to the Parties appropriate measures to solve such problems;

   (f) To receive notices concerning the laws and regulations promulgated by the Parties relating to exploration or exploitation of natural resources in the Joint Development Zone, which shall be submitted by the Parties;

   (g) To discuss any other matter relating to the implementation of this Agreement.

2. The Parties shall respect to the extent possible recommendations made by the Commission under paragraph 1 of this article.

Article XXVI

1. Any dispute between the Parties concerning the interpretation and implementation of this Agreement shall be settled, first of all, through diplomatic channels.

2. Any dispute which fails to be settled under paragraph 1 of this article shall be referred for decision to an arbitration board composed of three arbitrators, with each Party appointing one arbitrator within a period of thirty days from the date of receipt by either Party from the other Party of a note requesting arbitration of the dispute, and the third arbitrator to be agreed upon by the two arbitrators so chosen within a further period of thirty days or the third arbitrator to be appointed by the government of a third country agreed upon within such further period by the two arbitrators, provided that the third arbitrator shall not be a national of either Party.

3. If the third arbitrator or the third country is not agreed upon between the arbitrators appointed by each Party within a period referred to in paragraph 2 of this article, the Parties shall request the President of the International Court of Justice to appoint the third arbitrator who shall not be a national of either Party.

4. At the request of either Party, the arbitration board may in urgent cases issue a provisional order, which shall be respected by the Parties, before an award is made.

5. The Parties shall abide by any award made by the arbitration board under this article.

Article XXVII

Exploration and exploitation of natural resources in the Joint

Development Zone shall be carried out in such a manner that other legitimate

activities in the Joint Development Zone and its superjacent waters such as

navigation and fisheries will not be unduly affected.

Article XXVIII

Nothing in this Agreement shall be regarded as determining the question of sovereign rights over all or any portion of the Joint Development Zone or as prejudicing the positions of the respective Parties with respect to the delimitation of the continental shelf.

Article XXIX

Upon the request of either Party, the Parties shall hold consultations regarding the implementation of this Agreement.

Article XXX

The Parties shall take all necessary internal measures to implement this Agreement.

Article XXXI

1. This Agreement shall be ratified. The instruments of ratification shall be exchanged at Tokyo as soon as possible. This Agreement shall enter into force as from the date on which such instruments of ratification are exchanged.
2. This Agreement shall remain in force for a period of fifty years and shall continue in force thereafter until terminated in accordance with paragraph 3 of this article.
3. Either Party may, by giving three years' written notice to the other Party, terminate this Agreement at the end of the initial fifty-year period or at any time thereafter.
4. Notwithstanding the provisions of paragraph 2 of this article, when either Party recognizes that natural resources are no longer economically exploitable in the Joint Development Zone, the Parties shall consult with each other whether to revise or terminate this Agreement. If no agreement is reached as to the revision or termination of this Agreement, this Agreement shall remain in force during the period as provided for in paragraph 2 of this article.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at Seoul in the English language, this thirtieth day of January of the year one thousand nine hundred and seventy-four.

For Japan:
TORAO USHIROKU

For the Republic of Korea:
DONG-JO KIM

Appendix

The Subzones shall be those areas of the Joint Development Zone bounded respectively by straight lines connecting the following points in the sequence given below:

Subzone I

Point 1 32°57.0' N 127°43.0' E
Point 2 32°39.5' N 127°32.6' E
Point 3 32°39.6' N 127°39.2' E
Point 4 32°38.6' N 127°39.2' E
Point 5 32°39.1' N 128°18.0' E
Point 6 32°57.0' N 128°18.0' E
Point 1 32°57.0' N 127°43.0' E

Subzone II

Point 1 32°57.0' N 127°41.1' E
Point 2 32°53.4' N 127°36.3' E
Point 3 32°48.1' N 127°30.0' E
Point 4 32°39.5' N 127°30.0' E
Point 5 32°39.5' N 127°32.6' E
Point 6 32°57.0' N 127°43.0' E
Point 1 32°57.0' N 127°41.1' E

Subzone III

Point 1 32°48.1' N 127°30.0' E
Point 2 32°46.2' N 127°27.8' E
Point 3 32°40.2' N 127°20.8' E
Point 4 32°40.3' N 127°25.7' E
Point 5 32°39.4' N 127°25.7' E
Point 6 32°39.5' N 127°30.0' E
Point 1 32°48.1' N 127°30.0' E

Subzone IV

Point 1 32°39.5' N 127°30.0' E
Point 2 32°35.0' N 127°30.0' E
Point 3 32°39.5' N 127°32.6' E
Point 1 32°39.5' N 127°30.0' E

Subzone V

Point 1 32°40.2' N 127°20.8' E
Point 2 32°33.6' N 127°13.1' E
Point 3 32°10.5' N 126°51.5' E
Point 4 30°53.1' N 126°00.0' E
Point 5 30°35.2' N 126°00.0' E
Point 6 30°33.3' N 126°00.8' E
Point 7 30°31.0' N 126°01.5' E
Point 8 30°31.0' N 126°43.0' E
Point 9 31°56.0' N 127°07.0' E
Point 10 32°35.0' N 127°30.0' E
Point 11 32°39.5' N 127°30.0' E
Point 12 32°39.4' N 127°25.7' E
Point 13 32°40.3' N 127°25.7' E
Point 1 32°40.2' N 127°20.8' E

Subzone VI

Point 1 30°53.1' N 126°00.0' E
Point 2 30°46.2' N 125°55.5' E
Point 3 30°35.2' N 126°00.0' E
Point 1 30°53.1' N 126°00.0' E

Subzone VII

Point 1 32°39.5' N 127°32.6' E
Point 2 32°35.0' N 127°30.6' E
Point 3 31°56.0' N 127°07.0' E
Point 4 30°31.0' N 126°43.0' E
Point 5 30°31.0' N 126°01.5' E
Point 6 30°18.2' N 126°05.5' E
Point 7 29°38.6' N 126°41.8' E
Point 8 29°39.7' N 127°45.4' E
Point 9 31°47.0' N 128°32.6' E
Point 10 31°47.0' N 128°14.0' E
Point 11 32°12.0' N 127°50.0' E
Point 12 32°27.0' N 127°56.0' E
Point 13 32°27.0' N 128°18.0' E
Point 14 32°39.1' N 128°18.0' E
Point 15 32°38.6' N 127°39.2' E
Point 16 32°39.6' N 127°39.2' E
Point 1 32°39.5' N 127°32.6' E

Subzone VIII

Point 1 31°47.0' N 128°32.6' E
Point 2 29°39.7' N 127°45.4' E
Point 3 29°38.6' N 126°41.8' E
Point 4 28°56.6' N 127°19.6' E
Point 5 29°08.9' N 127°32.6' E
Point 6 29°09.0' N 127°40.1' E
Point 7 29°21.4' N 127°58.3' E
Point 8 29°47.2' N 127°57.9' E

Point 9 30°16.8' N 128°16.2' E
Point 10 30°16.9' N 128°32.0' E
Point 11 30°57.4' N 129°01.5' E
Point 12 31°13.0' N 128°50.0' E
Point 13 31°47.0' N 128°50.0' E
Point 1 31°47.0' N 128°32.6' E

Subzone IX

Point 1 30°57.4' N 129°01.5' E
Point 2 30°16.9' N 128°32.0' E
Point 3 30°16.8' N 128°16.2' E
Point 4 29°47.2' N 127°57.9' E
Point 5 29°21.4' N 127°58.3' E
Point 6 29°09.0' N 127°40.1' E
Point 7 29°08.9' N 127°32.6' E
Point 8 28°56.6' N 127°19.6' E
Point 9 28°36.0' N 127°38.0' E
Point 10 29°19.0' N 128°00.0' E
Point 11 29°43.0' N 128°38.0' E
Point 12 30°19.0' N 129°09.0' E
Point 13 30°54.0' N 129°04.0' E
Point 1 30°57.4' N 129°01.5' E

Agreed minutes to the agreement between Japan and the republic of Korea concerning joint development of the southern part of the continental shelf adjacent to the two countries

The representatives of the Government of Japan and the Government of the Republic of Korea wish to record the following understanding which has been reached during the negotiations for the Agreement between Japan and the Republic of Korea concerning joint development of the southern part of the continental shelf adjacent to the two countries signed today (hereinafter referred to as "the Agreement"):

1. "The laws and regulations" referred to in the Agreement shall be construed, unless the context otherwise requires, to include concession agreements between the Government of the Republic of Korea and its concessionaires.

2. The geographical coordinates as specified in paragraph 1 of article II and the appendix to the Agreement are based on Japan Maritime Safety Agency Chart No. 210 of December 1955, New Edition.

3(1) Regardless of whether the sole risk party is the operator, sole risk operations\ referred to in paragraph 1 of article V shall be carried out by the operator of the subzone concerned.

(2) Natural resources extracted through sole risk operations shall be equally shared between the concessionaires concerned in accordance with article IX.

(3) The non-sole risk party shall pay in money to the sole risk party the reasonable price for the portion of natural resources equal to the half of the sole risk bonus, less expenses incurred in connection with the sale of such portion and tax or other charges paid in connection with such portion.

4. As regards "adjustment of fisheries interests" referred to in paragraph 1 of article V, the Government of each Party shall give administrative guidance to its concessionaires so that they will, before operations for exploration or exploitation of natural resources begin in the sub-zones with respect to which they have been authorized, endeavour to adjust fisheries interests of nationals concerned of that Party.

5. As regards paragraph 2 of article V, the two Governments shall notify each other of the date on which the operating agreement was submitted to them and the date on which they intend to approve or disapprove the operating agreement.

6. As regards article VI, the two Governments shall endeavour to ensure that the designation of operators be made in such a way as to be equitable to the greatest possible extent.

7. "Expenses reasonably attributable to exploration and exploitation" referred to in paragraph 2 of article IX shall include expenses incurred for the purposes of survey in the Joint Development Zone prior to the date of entry into force of the Agreement.

8. The provisions of paragraph 2 of article IX shall not apply to expenses incurred by sole risk operations.

9. As regards paragraph 3 of article X, application for an extension of the period of exploitation right shall be made at least six months prior to the expiration of each of such periods.

10. As regards paragraph 4 of article X, the two Governments shall, after consultations, grant exploitation right respectively to concessionaires of both Parties on the same date.

11. As regards paragraph 5 of article X, the new concessionaire may apply for an extension of the period of exploitation right under paragraph 3 of article X.

12. For the purposes of article XII, sole risk operations shall be regarded as having been carried out by concessionaires of both Parties.

13. When concessionaires of both Parties are unable to comply with the provisions of article XII for unavoidable reasons, they shall submit for approval a statement setting forth reasons for, and the period of, such delay or suspension to the respective Governments authorizing them. The two Governments shall consult with each other before giving such approval.

14. The approval of the Party referred to in paragraph 1 of article XV shall not be withheld without justifiable reasons.

15. As regards paragraph 2 of article XV, when the remaining concessionaire of one Party who was not the operator under the operating agreement to which such concessionaire and the former concessionaire were parties carries out exploration or exploitation of natural resources under paragraph 1 of article XV, such concessionaire shall be regarded as the concessionaire of the other Party designated and acting as the operator, while retaining its own concessionaireship.

16. As regards paragraph 2 of article XV, taxes on income shall not include royalty.

17. Taxes and other charges to be imposed under paragraph 2 of article XVII include

    (1) For Japan:
        (a) Mineral product tax,
        (b) Fixed assets tax and
        (c) Mine lot tax;
    (2) For the Republic of Korea:
        (a) Royalty,
        (b) Property tax and
        (c) Rental.

18(1) "Damage caused by digging operations of seabed and subsoil" referred to in paragraph 3 of article XXI include damage caused by blow-out of oil or natural gas.

(2) "Mine water" referred to in paragraph 3 of article XXI means water flowing out in the course of drilling wells for exploration or exploitation of natural resources, and oil and other substances flowing out together with such water.

19. The provisions of paragraph 3(1) (a) of article XXI shall apply when a concessionaire of one Party carries out exploration or exploitation of natural resources under paragraph 1 of article XV. In such a case, the provisions of paragraph 3 (1) (c) of article XXI shall not apply.

20. As regards paragraph 2 (1) of article XXIII, each Government shall take, within its powers, necessary measures so that its concessionaires and other persons will not exploit independently the structure or field referred to in paragraph 1 of article XXIII during the six-month period referred to in paragraph 2 (1) of article XXIII or during the period in which the two Governments hold consultations for the purpose of making a joint proposal.

21. A concessionaire shall not enter into the agreement referred to in paragraph 2 (2) of article XXIII unless the other concessionaire authorized with respect to the same subzone also enters into such agreement.

Seoul, January 30, 1974.

For the Government of Japan:
TORAO USHIROKU

For the Government of the Republic of Korea:
DONG-JO KIM

Exchanges of Notes

IA

Seoul, January 30, 1974

Excellency,

I have the honour to refer to article XI of the Agreement between the Republic of Korea and Japan concerning joint development of the southern part of the continental shelf adjacent to the two countries signed today (hereinafter referred to as "the Agreement") and to confirm, on behalf of the Government of the Republic of Korea, the following arrangements concerning drilling obligations of concessionaires to be performed during the period of exploration right.

1(1) Concessionaires of both Parties authorized with respect to each subzone as specified in the appendix to the Agreement shall drill one well during the first three-year period, the following three-year period and the remaining two-year period respectively.

(2) For the purposes of (1), sole risk operations shall be regarded as having been performed by concessionaires of both Parties.

(3) Subzones I and IX shall be deemed to constitute a single subzone for the purposes

(4) Notwithstanding the provisions of (1), concessionaires authorized with respect to Subzone VIII shall be exempted from the obligations under (1) during the first three-year period and concessionaires authorized with respect to Subzones II, III, IV and VI shall be exempted from the obligations under (1).

2. The present arrangements shall become applicable as from the date of entry into force of the Agreement.

I have further the honour to propose that the present Note and Your Excellency's Note in reply thereto confirming the foregoing arrangements on behalf of the Government of Japan shall be regarded as constituting an agreement between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

DONG-JO KIM
Minister of Foreign Affairs

His Excellency Torao Ushiroku
Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of Korea

IIA

Seoul, January 30, 1974

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

[SEE NOTE IA]

I have further the honour to confirm, on behalf of the Government of Japan, the arrangements embodied in Your Excellency's Note and to agree that Your Excellency's Note and this Note shall be regarded as constituting an agreement between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

TORAO USHIROKU
Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of Korea

His Excellency Mr. Dong-Jo Kim
Minister of Foreign Affairs of the Republic of Korea

IB

Seoul, January 30, 1974

Excellency,

I have the honour to refer to article XX of the Agreement between the Republic of Korea and Japan concerning joint development of the southern part of the continental shelf adjacent to the two countries signed today (hereinafter referred to as "the Agreement") and to confirm, on behalf of the Government of the Republic of Korea, the following arrangements concerning the prevention of collisions at sea.

1. The Government of either Party shall take the following measures in the subzones of the Joint Development Zone with respect to which that Party has authorized concessionaires designated and acting as operators:

(1)(a) When the exploration under the Agreement is carried out in such subzones by surface vessels, that Government shall promptly inform the other Government and mariners of the areas covered by, and the durations of, such exploration activities.

(b) When a fixed installation hazardous to navigation (hereinafter referred to as "fixed installation") is erected, that Government shall promptly inform the other Government and mariners of the exact location of the fixed installation and other particulars necessary for the safety of navigation, such as markings to be fixed to such installation while being

erected. That Government shall take similar measures when a fixed installation is dismantled or removed.

(2) When a fixed installation has been erected which rises above the water, that

Government shall ensure that:

(a) The fixed installation is marked at night by one or more white lights so constructed that at least one light is visible from any direction. Such lights shall be placed not less than 15 metres above Mean High Water and shall flash Morse letter U (..-) every 15 seconds or less. The intensity of such lights shall be not less than 6,000 candelas;

(b) The horizontal and vertical extremities of the fixed installation are marked at night by red lights having intensity of not less than 300 candelas;

(c) The fixed installation is equipped with one or more sound signals so constructed and fixed as to be audible from any direction. The sound signals shall have a rated range of not less than 2 nautical miles and shall emit blasts corresponding to Morse letter U (• —) every 30 seconds. The signals shall be operated when the meterological visibility is less than 2 nautical miles;

(d) A radar reflector is so fixed as to enable vessels approaching the fixed installation from any direction to clearly detect the presence of the fixed installation on their radar from a distance of not less than 10 nautical miles;

(e) The fixed installation is equipped with appropriate markings to prevent collisions with aircraft.

(3) When an underwater fixed installation such as submerged well or pipe-line has been erected, that Government shall ensure that it is adequately marked.

(4) (a) When a number of fixed installations are situated in close proximity to one another and when safety of navigation can be secured without each of fixed installations being individually equipped with signals referred to in (2) (a), (b), (c) and (d), such fixed installations may be regarded as constituting a single fixed

installation for the purposes of (2) (a), (b), (c) and (d).

(b) When a fixed installation itself possesses radar reflectory capability which meets the requirements of (2) (d), the fixing of a radar reflector may be omitted.

2. The present arrangements shall become applicable as from the date of entry into force of the Agreement.

3. The present arrangements may be terminated by either Government by giving one year's written notice to the other Government.

4. The two Governments shall meet before the present arrangements are terminated in accordance with 3 to decide on future arrangements.

I have further the honour to propose that the present Note and Your Excellency's Note in reply thereto confirming the foregoing arrangements on behalf of the Government of Japan shall be regarded as constituting an agreement between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

DONG-JO KIM
Minister of Foreign Affairs

His Excellency Torao Ushiroku
Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of Korea

IIB

Seoul, January 30, 1974

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

[SEE NOTE IB]

I have further the honour to confirm, on behalf of the Government of Japan, the arrangements embodied in Your Excellency's Note and to agree that Your Excellency's Note and this Note shall be regarded as constituting an agreement between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

TORAO USHIROKU
Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of Korea

His Excellency Mr. Dong-Jo Kim
Minister of Foreign Affairs of the Republic of Korea

IC

Seoul, January 30, 1974

Excellency,

I have the honour to refer to article XX of the Agreement between Japan and the Republic of Korea concerning joint development of the southern part of the continental shelf adjacent to the

two countries signed today (hereinafter referred to as "the Agreement") and to confirm, on behalf of the Government of Japan, the following arrangements concerning the prevention and removal of pollution of the sea resulting from activities relating to exploration or exploitation of natural resources in the Joint Development Zone.

I

The Government of either Party shall ensure that the following measures are taken with respect to (a) a well or a marine facility relating to exploration or exploitation of natural resources in the subzones of the Joint Development Zone with respect to which that Party has authorized concessionaires designated and acting as operators, or (h) a vessel under the flag of that Party engaged in activities relating to exploration or exploitation of natural resources in the Joint Development Zone (hereinafter referred to as "ship"):

1. Blow-out preventer, etc.

(1) (a) A well which is being drilled shall be equipped with blow-out preventer in case blow-out of oil or natural gas is likely to occur.

(b) The provisions of (a) shall not apply when oil testing or repair works are performed and automatic oil- or gas-collecting devices for blow-out have been installed.

(2) The blow-out preventer referred to in (1) shall meet the following requirements:

(a) The blow-out preventer installed at the entrance of a well shall be of an open-and-close type, and of a remote control type which can be promptly operated, with an independent power source;

(b) The operating gear or warning devices for emergency use of such blow-out preventer shall be located close to the person who operates the draw-works;

(c) Flow-bean or other devices shall be installed to control the quantity of oil or natural gas flowing from the outlet of such blow-out preventer;

(d) Devices capable of prevention of blow-out of oil or natural gas from inside drilling pipes, tubing pipes or casing pipes shall be installed.

(3) (a) When drilling of a well or oil testing is performed, muddy water or its materials for emergency use and such materials as are necessary for making

heavy muddy water or for controlling the quality of muddy water shall be stocked at the drilling site.

(b) The provisions of (a) shall not apply when automatic oil- or gas-collecting devices for blow-out have been installed.

(4) The blow-out preventer, automatic oil- or gas-collecting devices for blow-out and other devices installed at the entrance of a well shall be such that they can withstand at least the pressures prescribed in the Schedule attached to this Note.

(5) In the course of drilling operations, the following requirements shall be met:

(a) When a well has been drilled to an appropriate depth, the insertion of casing pipes and cementing shall be performed promptly;

(b) When cementing has been performed, its effectiveness shall be confirmed by applying pressure or by other means;

(c) Devices capable of immediate detection of any unusual increases or decreases in the quantity of muddy water in the tank for circulating muddy water shall be installed.

(6) Pressure proof tests of the blow-out preventer shall be conducted at least once a month by applying appropriate pressures.

(7) The blow-out preventer shall be closed when drilling operations are suspended because of difficulties arising from meteorological conditions in maintaining the position of a drilling facility or because of the occurrence, or the danger, of an accident.

2. *Discharge of oil*

(1)(a) Crude oil, fuel oil, heavy diesel oil, lubricating oil or a mixture containing such oils (hereinafter referred to as "oil") shall not be discharged from a ship or a marine facility.

(b) The provisions of (a) shall not apply to:

(i) The discharge of oil from a ship other than a tanker or the discharge of bilge from a tanker, when the following conditions are all satisfied:

i) The ship or tanker is proceeding en route;

ii) The instantaneous rate of discharge of oil content does not exceed 60 litres per nautical mile;

iii) The oil content of the discharge is less than 100/1,000,000 of the discharge;

(ii) The discharge of oil from a tanker, when the following conditions are all satisfied:

i) The tanker is proceeding en route;

ii) The instantaneous rate of discharge of oil content does not exceed 60 litres per nautical mile;

iii) The total quantity of oil discharged on a ballast voyage does not exceed 1/15,000 of the total cargo-carrying capacity;

iv) The tanker is more than 50 nautical miles from the nearest land;

(iii) The discharge of water ballast from a cargo tank which has been so cleaned that any effluent therefrom would produce no visible traces of oil on the surface of the water, if it were discharged from a stationary tanker into clean calm water on a clear day.

(2) The provisions of (1) shall not apply to:

(a) The discharge of oil for the purpose of securing the safety of a ship or a marine facility, preventing damage to a ship or a marine facility or cargo of a ship or saving life at sea;

(b) The escape of oil resulting from damage to a ship or a marine facility or unavoidable leakage, if all reasonable precautions have been taken after the occurrence of the damage or discovery of the leakage for the purpose of preventing or minimizing the escape;

(c) The discharge of oil from a marine facility if the oil content of such discharge is less than 10/1,000,000 of the discharge;

(d) The discharge of oil from tankers of under 150 tons gross tonnage and other ships of under 500 tons gross tonnage.

3. *Discharge of waste*

(1) Waste shall not be discharged from a ship or a marine facility.

(2) The provisions of (1) shall not apply to:

(a) The discharge of refuse, excretion, sewage or similar

waste resulting from daily life of the personnel aboard a ship or a marine facility;

(b) The discharge of cuttings or dirty water in a manner in which pollution of the sea is not likely to occur;

(c) The discharge of waste other than cuttings or dirty water from a ship in a manner in which pollution of the sea is not likely to occur, and at a location where such discharge is not likely to hinder the maintenance of the sea-environment;

(d) The discharge of waste for the purpose of securing the safety of a ship or a marine facility, preventing damage to a ship or a marine facility or cargo of a ship or saving life at sea;

(e) The discharge of waste resulting from damage to a ship or a marine facility or unavoidable discharge, if all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimizing the discharge.

4. Prevention and removal of pollution

When large quantities of oil have been discharged from a ship or a marine facility, measures shall be taken promptly to prevent the spread of such pollution, to prevent the continued discharge of oil and to remove the discharged oil.

5. Abandonment of a well

When a well is abandoned, measures such as sealing of the well shall be taken to prevent leakage of mine water or other substances from such well.

II

1. One Government shall promptly provide the other Government with all available information when any of the following occurs:

   (a) Discharge of large quantities of oil from a ship or a marine facility;

   (b) Collisions between a marine facility and a ship or other objects;

   (c) Evacuation of personnel from a marine facility due to dangerous meteorological conditions or other emergencies.

2. When information concerning 1 («) is provided, the Government concerned shall also inform the other Government of the measures taken in accordance with 1.4.

III

1. Under special circumstances, each Government may authorize exceptions to the provisions of I. 1 (2) (a), (b), (c) or (d).

2. With respect to a well exceeding 1,500 metres in depth, each Government may authorize exceptions to the provisions of I. 1 (4).

IV

Either Government may take necessary measures to prevent and remove pollution of the sea when measures are not taken in accordance with I. 4 or when that Government considers that such measures are not sufficient to prevent or remove pollution of the sea.

V

The two Governments shall cooperate closely for the effective implementation of the present arrangements.

VI

1. The present arrangements shall become applicable six months after the date of entry into force of the Agreement or on an earlier date as may be mutually agreed upon between the two Governments.
2. The present arrangements may be terminated by either Government by giving one year's written notice to the other Government.
3. The two Governments shall meet before the present arrangements are terminated in accordance with 2 to decide on future arrangements.

I have further the honour to propose that the present Note and Your Excellency's Note in reply thereto confirming the foregoing arrangements on behalf of the Government of the Republic of Korea shall be regarded as constituting an agreement between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

TORAO USHIROKU
Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of Korea

His Excellency Mr. Dong-Jo Kim
Minister of Foreign Affairs of the Republic of Korea

Schedule

	Pressure	
Nature of oil or natural gas stratum to be drilled	*Blow-out preventor*	*Devices other than blow-out preventor*
Oil stratum or isolated natural gas stratum with known pressure	1.5 times the pressure at the bottom of an airtight well	Twice the pressure at the entrance of an airtight well

Oil stratum or isolated natural gas stratum with unknown pressure	Kilogram weight per square centimetre equivalent to the figure computed by multiplying by 1.5 the number of metres of the depth of the stratum divided by 10	Twice the pressure at the entrance of an airtight well
Stratum of natural gas dissolved in water	Kilogram weight per square centimetre equivalent to the figure computed by multiplying by 0.5 the number of metres of the depth of the stratum divided by 10	Twice the pressure at the entrance of an airtight well

IIC

Seoul, January 30, 1974

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

[SEE NOTE IC]

I have further the honour to confirm, on behalf of the Government of the Republic of Korea, the arrangements embodied in Your Excellency's Note and to agree that Your Excellency's Note and this Note shall be regarded as constituting an agreement between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

DONG-JO KIM
Minister of Foreign Affairs

His Excellency Torao Ushiroku
Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of Korea

B. 2000 Agreement between the People's Republic of China and the Socialist Republic of Viet Nam on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves of the Two Countries in Beibu Gulf/Bac Bo Gulf

Adopted on 25 December 2000 in Beijing, China

Entered into force on 30 June 2004

THE PEOPLE'S REPUBLIC OF CHINA

and

THE SOCIALIST REPUBLIC OF VIET NAM

(hereinafter referred to as "the two Contracting Parties");

With an aim to consolidating and developing the traditional bonds of friendship and good-neighbourliness between the two countries and peoples of China and Viet Nam, maintaining the stability and promoting the development of Beibu Gulf/Bac Bo Gulf;

On the basis of the principles of mutual respect for independence, sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality, mutual benefit and peaceful co-existence;

In the spirit of mutual understanding and mutual accommodation, friendly consultations for an equitable and rational solution of the delimitation of Beibu Gulf/ Bac Bo Gulf;

HAVE AGREED as follows:

Article I

1. The two Contracting Parties, on the basis of the 1982 United Nations Convention on the Law of the Sea, generally recognised principles of international law and practices, taking into account all relevant circumstances in Beibu Gulf/Bac Bo Gulf, in accordance with the principle of equality, through friendly consultation, have delimited the territorial seas, exclusive economic zones and continental shelves of the two countries in Beibu Gulf/Bac Bo Gulf.

2. Under this Agreement, Beibu Gulf/ Bac Bo Gulf is a semi-enclosed gulf bordered by the continental coastlines of China and Viet Nam to the North, by the coastline of Lei Zhou peninsula and Hainan island of China to the East, by the continental coastline of Viet Nam to the West and by the straight lines connecting the outermost points of the outer edge of the Ying Ge cape, Hainan island of China defined by the geographical coordinates of latitude 18 30' 19" North, longitude 108 41' 17" East, crossing Con Co island of

Viet Nam to a point situated on the coastline of Viet Nam specified by the geographical coordinates of latitude 16 57' 40" North and longitude 107 08'42" East.

The two Contracting Parties have defined the above-mentioned area as the area to be delimited under this Agreement.

Article II

The two Contracting Parties agreed on the line of delimitation of the territorial seas, exclusive economic zones and continental shelves of the two countries as defined by the straight lines connecting the following 21 points specified by coordinates and in the sequence given below:

Point 1: Latitude 2° 28' 12.5" North
Longitude 108° 06' 04.3" East

Point 2: Latitude 21° 28' 01.7" Nort
Longitude 108° 06' 01.6" East

Point 3: Latitude 21° 27' 50.1" North
Longitude 108° 05' 57.7" East

Point 4: Latitude 21° 27' 39.5" North
Longitude 108° 05' 51.5" East

Point 5: Latitude 21° 27' 28.2" North
Longitude 108° 05' 39.9" East

Point 6: Latitude 21° 27' 23.1" North
Longitude 108° 05' 38.8" East

Point 7: Latitude 21° 27' 08.2" North
Longitude 108° 05' 43.7" East

Point 8: Latitude 21° 16' 32" North
Longitude 108° 08' 05" East

Point 9: Latitude 21° 12' 35" North
Longitude 108° 12' 31" East

Point 10: Latitude 20° 24' 05" North
Longitude 108° 12' 31" East

Point 11: Latitude 19° 57' 33" North
Longitude 107° 55' 47" East

Point 12: Latitude 19° 39' 33" North
Longitude 107° 31' 40" East

Point 13: Latitude 19° 25' 26" North
Longitude 107° 21' 00" East

Point 14: Latitude 19° 25' 26" North
Longitude 107° 12' 43" East

Point 15: Latitude 19° 16' 04" North
Longitude 107° 11' 23" East

Point 16: Latitude 19° 12' 55" North
Longitude 107° 09' 34" East

Point 17: Latitude 18° 42'52" North
Longitude 107° 09' 34" East

Point 18: Latitude 18° 13' 49" North
Longitude 107° 34' 00" East

Point 19: Latitude 18° 07' 08" North
Longitude 107° 37' 34" East

Point 20: Latitude 18° 04' 13" North
Longitude 107° 39' 09" East

Point 21: Latitude 17° 47' 00" North
Longitude 107° 58' 00" East

Article III

1. The line of delimitation from point 1 to point 9 stipulated in Article II of

this Agreement shall be the boundary of the territorial seas of the two countries in Beibu Gulf/Bac Bo Gulf.

2. The vertical plane holding the boundary of the territorial seas stipulated in Paragraph 1 of this Article shall delimit the air spaces above, seabeds and subsoils beneath the territorial seas of the two countries.

3. Any topological changes shall not affect the boundary of the territorial seas of the two countries from point 1 to point 7 stipulated in Paragraph 1 of this Article, unless otherwise agreed by the two Contracting Parties.

Article IV

The line of delimitation from point 9 to point 21 stipulated in Article II of this Agreement shall be the boundary of the exclusive economic zones and the continental shelves of the two countries in Beibu Gulf/Bac Bo Gulf.

Article V

The line of delimitation of the territorial seas of the two countries stipulated in Article II of this Agreement from point 1 to point 7 is illustrated by the black lines in the thematic Map of Bei Lun estuary, 1:10,000 scale, established by the two Contracting Parties in 2000. The line of delimitation of the territorial seas, exclusive economic zones and continental shelves between the two countries from point 7 to point 21 is illustrated by the black lines on the Overall Map of Beibu Gulf/Bac Bo Gulf, 1:500,000 scale, established by the two Contracting Parties in 2000. All the lines of delimitation are geodetic lines.

The above-mentioned thematic Map of Bei Lun estuary and the Overall Map of Beibu Gulf/Bac Bo Gulf are attached to this Agreement. These two maps were established by using ITRF-96 system. Geographical coordinates of the points stipulated in Article II of this Agreement are specified in the above-mentioned maps. The line of delimitation defined in this Agreement as shown on the maps attached to the Agreement is for illustrative purpose only.

Article VI

The two Contracting Parties shall respect the sovereignty, sovereign rights and jurisdiction of each other over their respective territorial seas, exclusive economic zones and continental shelves in Beibu Gulf/Bac Bo Gulf as defined in this Agreement.

Article VII

If any single petroleum or natural gas structure or field, or other mineral deposit of whatever character, extends across the delimitation line defined in Article II of this Agreement, the two Contracting Parties shall, through friendly consultations, reach agreement as to the manner in which the structure, field or

deposit will be most effectively exploited as well as on the equitable sharing of the benefits arising from such exploitation.

Article VIII

The two Contracting Parties shall conduct consultations on the proper use and sustainable development of the living resources in Beibu Gulf/Bac Bo Gulf as well as on cooperative activities relating to the conservation, management and use of the living resources in the exclusive economic zones of the two countries in Beibu Gulf/Bac Bo Gulf.

Article IX

The delimitation of the territorial seas, exclusive economic zones and continental shelves between the two countries in Beibu Gulf/Bac Bo Gulf under this Agreement shall not affect or prejudice the positions of each Contracting Party on the norms of international law of the sea.

Article X

Any dispute between the two Contracting Parties relating to the interpretation or implementation of this Agreement shall be settled through friendly consultations and negotiations.

Article XI

This Agreement shall be ratified by the two Contracting Parties and shall enter into force on the date of exchange of the instruments of ratification. The instruments of ratification will be exchanged in Ha Noi.

Done in Beijing, this 25th day of December of the year 2000, in duplicate, each in the Chinese and Vietnamese languages, both texts being equally authentic.

Plenipotentiary Representative of the People's Republic of China:
TANG JIAXUAN
Minister of Foreign Affairs

Plenipotentiary Representative of the Socialist Republic of Viet Nam:
NGUYEN DY NIEN
Minister of Foreign Affairs

C. 2008 China-Japan Principled Consensus on the East China Sea issue

Foreign Ministry Spokesperson Jiang Yu announced on 18 June 2008 that China and Japan reached a principled consensus on the East China Sea issue through consultation on equal footing.

I. Cooperation between China and Japan in the East China Sea

In order to make the East China Sea, of which the delimitation between China and Japan is yet to be made, a "sea of peace, cooperation and friendship," China and Japan have, in keeping with the common understanding reached by leaders of the two countries in April 2007 and their new common understanding reached in December 2007, agreed through serious consultations that the two sides will conduct cooperation in the transitional period prior to delimitation without prejudicing their respective legal positions. The two sides have taken the first step to this end and will continue to conduct consultations in the future.

II. Understanding between China and Japan on joint development of the East China Sea

As the first step in the joint development of the East China Sea between China and Japan, the two sides will work on the following:

(a) The block for joint development shall be the area that is bounded by straight lines joining the following points in the order listed:

1. Latitude 29°31' North, longitude 125°53'30" East
2. Latitude 29°49' North, longitude 125°53'30" East
3. Latitude 30°04' North, longitude 126°03'45" East
4. Latitude 30°00' North, longitude 126°10'23" East
5. Latitude 30°00' North, longitude 126°20'00" East
6. Latitude 29°55' North, longitude 126°26'00" East
7. Latitude 29°31' North, longitude 126°26'00" East

(b) The two sides will, through joint exploration, select by mutual agreement areas for joint development in the above-mentioned block under the principle of mutual benefit. Specific matters will be decided by the two sides through consultations.

(c) To carry out the above-mentioned joint development, the two sides will work to fulfill their respective domestic procedures and arrive at the necessary bilateral agreement at an early date.

(d) The two sides have agreed to continue consultations for the early realization of joint development in other parts of the East China Sea.

III. Understanding on the participation of Japanese legal person in the development of Chunxiao oil and gas field in accordance with Chinese laws

Chinese enterprises welcome the participation of Japanese legal person in the development of the existing oil and gas field in Chunxiao in accordance with the relevant laws of China governing cooperation with foreign enterprises in the exploration and exploitation of offshore petroleum resources.

The governments of China and Japan have confirmed this, and will work to reach agreement on the exchange of notes as necessary and exchange them at an early date. The two sides will fulfill their respective domestic procedures as required.

5. JOINT DEVELOPMENT IN THE TIMOR SEA

A. 1989 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

Adopted on 11 December 1989 above the Zone of Cooperation in the Timor Sea

Entered into force on 9 February 1991

AUSTRALIA

and

THE REPUBLIC OF INDONESIA

TAKING INTO ACCOUNT the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982[1] and, in particular, Article 83 which requires States with opposite coasts, in a spirit of understanding and cooperation, to make every effort to enter into provisional arrangements of a practical nature which do not jeopardize or hamper the reaching of final agreement on the delimitation of the continental shelf;

DESIRING to enable the exploration for and exploitation of the petroleum resources of the continental shelf of the area between the Indonesian Province of East Timor and northern Australia yet to be the subject of permanent continental shelf delimitation between the Contracting States;

CONSCIOUS of the need to encourage and promote development of the petroleum resources of the area;

DESIRING that exploration for and exploitation of these resources proceed without delay;

AFFIRMING existing agreements on the delimitation of the continental shelf between their two countries;

DETERMINED to cooperate further for the mutual benefit of their peoples in the development of the resources of the area of the continental shelf yet to be the subject of permanent continental shelf delimitation between their two countries;

FULLY COMMITTED to maintaining, renewing and further strengthening the mutual respect, friendship and cooperation between their two countries through existing agreements and arrangements, as well as their policies of promoting constructive neighbourly cooperation;

MINDFUL of the interests which their countries share as immediate neighbours, and in a spirit of cooperation, friendship and goodwill;

1 SD 30 Vol. I p. 1; ILM 21 p. 1261; Cmnd. 8941.

CONVINCED that this Treaty will contribute to the strengthening of the relations between their two countries; and

BELIEVING that the establishment of joint arrangements to permit the exploration for and exploitation of petroleum resources in the area will further augment the range of contact and cooperation between the Governments of the two countries and benefit the development of contacts between their peoples;

HAVE AGREED as follows:

Part I: Zone of Cooperation

Article 1. Definitions

1. For the purposes of this Treaty,

(a) "contract" or "production sharing contract" means a contract between the Joint Authority and corporations, concluded on the basis of the Model Production Sharing Contract, entered into under Article 8 of this Treaty and in accordance with Part III of the Petroleum Mining Code;

(b) "contract area" means the area constituted by the blocks specified in the contract that have not been relinquished or surrendered;

(c) "contractor" means a corporation or corporations which enter into a contract with the Joint Authority and which is registered as a contractor under Article 38 of the Petroleum Mining Code;

(d) "Contractors' Income Tax" means tax imposed by the Indonesian Laws No. 7 of 1983 on Income Tax and No. 6 of 1983 on General Tax Provisions and Procedures as amended from time to time;

(e) "criminal law" means any law in force in the Contracting States, whether substantive or procedural, that makes provision for or in relation to offences or for or in relation to the investigation or prosecution of offences or the punishment of offenders, including the carrying out of a penalty imposed by a court. For this purpose "investigation" includes entry to a structure in Area A, the exercise of powers of search and questioning and the apprehension of a suspected offender;

(f) "good oilfield practice" means all those things that are generally accepted as good and safe in the carrying on of petroleum operations;

(g) "Model Production Sharing Contract" means the model contract as appears in Annex C, on the basis of which production sharing contracts for Area A should be concluded, as may be modified from time to time by the Ministerial Council in accordance with paragraph 1(c) of Article 6 of this Treaty;

(h) "petroleum" means

(a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state;

(b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or

(c) any petroleum as defined by sub-paragraph (a) or (b) of this paragraph that has been returned to a reservoir in the contract area;

(i) "Petroleum Mining Code" means the "Petroleum Mining Code for Area A of the Zone of Cooperation" to govern operational activities relating to exploration for and exploitation of the petroleum resources in Area A of the Zone of Cooperation contained in Annex B, as amended from time to time by the Ministerial Council in accordance with paragraph 1(b) of Article 6 of this Treaty;

(j) "petroleum operations" means activities undertaken to produce petroleum and includes exploration, development, field processing, production and pipeline operations, and marketing authorized or contemplated under a production sharing contract;

(k) "Resource Rent Tax" means tax imposed by the Petroleum Resource Rent Tax Act 1987 of Australia as amended from time to time;

(l) "structure" means an installation or structure used to carry out petroleum operations;

(m) "Taxation Code" means the "Taxation Code for the Avoidance of Double Taxation in Respect of Activities Connected with Area A of the Zone of Cooperation", contained in Annex D;

(n) "taxation law" means the federal law of Australia or the law of the Republic of Indonesia, from time to time in force, in respect of taxes to which this Treaty applies but shall not include a tax agreement between the Contracting States and a tax agreement of either Contracting State with a third country;

(o) "Treaty" means this Treaty including Annexes A, B, C and D;

(p) "Zone of Cooperation" refers to the area so designated and described in Annex A and illustrated in the maps forming part of that Annex, which consists of the whole of the area embraced by Areas A, B and C designated in that Annex.

2. For the purposes of Article 10 of this Treaty and the Taxation Code, resident of a Contracting State means:

(a) in the case of Australia, a person who is liable to tax in Australia by reason of being a

resident of Australia under the tax law of Australia; and

(b) in the case of the Republic of Indonesia, a person who is liable to tax in the Republic of Indonesia by reason of being a resident of the Republic of Indonesia under the tax law of the Republic of Indonesia, but does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State.

3. Where by reason of the provisions of paragraph 2 of this Article, an individual is a resident of both Contracting States, then the status of the person shall be determined as follows:

(a) the person shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person;

(b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State in which the person has an habitual abode;

(c) if the person has an habitual abode in both Contracting States, or if the person does not have an habitual abode in either of them, the person shall be deemed to be a resident solely of the Contracting State with which the person's personal and economic relations are the closer.

4. Where by reason of the provisions of paragraph 2 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting State in which its place of effective management is situated.

Article 2. The Zone

1. A Zone of Cooperation is hereby designated in an area between the Indonesian Province of East Timor and northern Australia, which comprises Areas A, B and C.

2. Within the Zone of Cooperation activities in relation to the exploration for and exploitation of petroleum resources shall be conducted on the following basis:

(a) In Area A, there shall be joint control by the Contracting States of the exploration for and exploitation of petroleum resources, aimed at achieving optimum commercial utilization thereof and equal sharing between the two Contracting States of the benefits of the exploitation of petroleum resources, as provided for in this Treaty;

(b) In Area B, Australia shall make certain notifications and share with the Republic of Indonesia Resource Rent Tax collections arising from petroleum production on the basis of Article 4 of this Treaty; and

(c) In Area C, the Republic of Indonesia shall make certain notifications and share with Australia Contractors' Income Tax collections arising from petroleum production on the basis of Article 4 of this Treaty.

3. Nothing contained in this Treaty and no acts or activities taking place while this Treaty is in force shall be interpreted as prejudicing the position of either Contracting State on a permanent continental shelf delimitation in the Zone of Cooperation nor shall anything contained in it be considered as affecting the respective sovereign rights claimed by each Contracting State in the Zone of Cooperation.

4. Notwithstanding the conclusion of this Treaty, the Contracting States shall continue their efforts to reach agreement on a permanent continental shelf delimitation in the Zone of Cooperation.

Part II: Exploration and Exploitation in the Zone of Cooperation

Article 3. Area A

1. In relation to the exploration for and exploitation of petroleum resources in Area A, the rights and responsibilities of the two Contracting States shall be exercised by the Ministerial Council and the Joint Authority in accordance with this Treaty. Petroleum operations in Area A shall be carried out through production sharing contracts.

2. The Joint Authority shall enter into each production sharing contract with limited liability corporations specifically established for the sole purpose of the contract. This provision shall also apply to the successors or assignees of such corporations.

Article 4. Area B and Area C

1. In relation to the exploration for and exploitation of petroleum resources in Area B Australia shall:

(a) notify the Republic of Indonesia of the grant, renewal, surrender, expiry and cancellation of titles made by Australia being exploration permits, retention leases and production licences; and

(b) pay to the Republic of Indonesia ten (10) per cent of gross

Resource Rent Tax collected by Australia from corporations producing petroleum from Area B equivalent to sixteen (16) per cent of net Resource Rent Tax collected, calculated on the basis that general company tax is payable at the maximum rate.

2. In relation to exploration for and exploitation of petroleum resources in Area C the Republic of Indonesia shall:

   (a) notify Australia of the grant, renewal, surrender, expiry and cancellation of petroleum exploration and production agreements made by the Republic of Indonesia; and

   (b) pay to Australia ten (10) per cent of Contractors' Income Tax collected by the Republic of Indonesia from corporations producing petroleum from Area C.

3. In the event that Australia changes the basis upon which the Resource Rent Tax or general company tax is calculated or that the Republic of Indonesia changes the basis upon which Contractors' Income Tax is calculated, the Contracting States shall review the percentages set out in paragraphs 1(b) and 2(b) of this Article and agree on new percentages, ensuring that the relative shares paid by each Contracting State to the other in respect of revenue collected from corporations producing petroleum in Area B and Area C remain the same.

4. In the event of any change occurring in the relevant taxation regimes of either Contracting State, the Contracting States shall review the formulation set out in paragraphs 1(b) and 2(b) of this Article and agree on a new formulation, ensuring that the relative shares paid by each Contracting State to the other in respect of revenue collected from corporations producing petroleum in Area B and Area C remain the same.

5. With regard to Area B and Area C, the Contracting States shall enter into necessary administrative arrangements to give effect to the sharing arrangements in the two Areas as provided in paragraph 1(b) and paragraph 2(b) of this Article at the time that production from either Area commences. In particular, the arrangements shall provide for the manner in which such a share shall be paid from one Contracting State to the other Contracting State. A Contracting State when making a payment to the other Contracting State shall provide information on the basis on which the relevant payment was calculated.

6. The Contracting States shall take necessary measures to ensure the timely and optimum utilization of

the petroleum resources in Area B and Area C.

Part III: The Ministerial Council

Article 5. The Ministerial Council

1. A Ministerial Council for the Zone of Cooperation is hereby established.
2. The Ministerial Council shall consist of those Ministers who may from time to time be designated for that purpose by the Contracting States provided that, at any one time, there shall be an equal number of Ministers designated by each Contracting State.
3. The Ministerial Council shall meet annually or as often as may be required.
4. The Ministerial Council shall normally meet alternately in Australia or in the Republic of Indonesia. Its meetings shall be chaired alternately by a Minister nominated by each Contracting State.
5. Decisions of the Ministerial Council shall be arrived at by consensus. The Ministerial Council may establish procedures for taking decisions out of session.

Article 6. Functions of the Ministerial Council

1. The Ministerial Council shall have overall responsibility for all matters relating to the exploration for and exploitation of the petroleum resources in Area A of the Zone of Cooperation and such other functions relating to the exploration for and exploitation of petroleum resources as the Contracting States may entrust to it. The functions of the Ministerial Council shall include:

(a) giving directions to the Joint Authority on the discharge of its functions;

(b) of its own volition or on recommendation by the Joint Authority, in a manner not inconsistent with the objectives of this Treaty, amending the Petroleum Mining Code to facilitate petroleum operations in Area A;

(c) of its own volition or on recommendation by the Joint Authority, in a manner not inconsistent with the objectives of this Treaty, modifying the Model Production Sharing Contract to facilitate petroleum operations in Area A;

(d) approving production sharing contracts which the Joint Authority may propose to enter into with corporations;

(e) approving the termination of production sharing contracts entered into between the Joint Authority and corporations;

(f) approving the variation of the following provisions of a

production sharing contract, with the agreement of the contractor:

(i) the Joint Authority's or the contractor's production share;

(ii) the operating cost recovery provisions;

(iii) the term of the contract; and

(iv) the contract area relinquishment provisions;

(g) approving the variation of the annual contract service fee;

(h) giving approval to the Joint Authority to market any or all petroleum production in circumstances determined by the Ministerial Council;

(i) approving the transfer of rights and responsibilities by contractors to other corporations that will then become contractors;

(j) approving the distribution to Australia and the Republic of Indonesia of revenues derived from production sharing contracts in Area A;

(k) through consultation, settling disputes in the Joint Authority;

(l) approving financial estimates of income and expenditure of the Joint Authority;

(m) approving rules, regulations and procedures for the effective functioning of the Joint Authority including staff regulations;

(n) reviewing the operation of this Treaty and making recommendations to the Contracting States that the Council may consider necessary for the amendment of this Treaty;

(o) appointment of the Executive Directors of the Joint Authority;

(p) at the request of a member of the Ministerial Council inspecting and auditing the Joint Authority's books and accounts;

(q) approving the result of inspections and audits of contractors' books and accounts conducted by the Joint Authority;

(r) considering and adopting the annual report of the Joint Authority; and

(s) reviewing the distribution among the Republic of Indonesia, Australia and third countries, of expenditure on petroleum operations related to Area A.

2. The Ministerial Council in exercising its functions shall ensure the achievement of the optimum commercial utilization of the petroleum resources of Area A consistent with good oilfield and sound environmental practice.

3. The Ministerial Council shall authorize the Joint Authority to take all necessary steps to enable the commencement of exploration for and exploitation of the petroleum resources of Area A as soon as possible after the entry into force of this Treaty.

Part IV: The Joint Authority

Article 7. The Joint Authority

1. A Joint Authority is hereby established.
2. The Joint Authority shall have juridical personality and such legal capacities under the law of both Contracting States as are necessary for the exercise of its powers and the performance of its functions. In particular, the Joint Authority shall have the capacity to contract, to acquire and dispose of movable and immovable property and to institute and be party to legal proceedings.
3. The Joint Authority shall be responsible to the Ministerial Council.
4. Decisions of the Executive Directors of the Joint Authority shall be arrived at by consensus. Where consensus cannot be reached, the matter shall be referred to the Ministerial Council.
5. Unless otherwise decided by the Ministerial Council, the Joint Authority shall have its head office in the Republic of Indonesia and an office in Australia, each of which shall be headed by an Executive Director.
6. The Joint Authority shall commence to function on entry into force of this Treaty.

Article 8. Functions of the Joint Authority

The Joint Authority, subject to directions from the Ministerial Council, shall be responsible for the management of activities relating to exploration for and exploitation of the petroleum resources in Area A in accordance with this Treaty, and in particular the Petroleum Mining Code and with production sharing contracts. These management functions shall be:

(a) dividing Area A into contract areas, issuing prospecting approvals and commissioning environmental investigations prior to contract areas being advertised, advertising of contract areas, assessing applications, and making recommendations to the Ministerial Council on applications for production sharing contracts;

(b) entering into production sharing contracts with corporations, subject to Ministerial Council approval, and supervising the activities of the contractor pursuant to the requirements of the Petroleum Mining Code, including regulations and direc-

tions thereunder, and the terms and conditions set out in the contract;

(c) recommending to the Ministerial Council the termination of production sharing contracts where contractors do not meet the terms and conditions of those contracts;

(d) terminating production sharing contracts by agreement with contractors;

(e) recommending to the Ministerial Council the approval of transfer of rights and responsibilities by contractors to other corporations that will then become contractors;

(f) collecting and, with approval of the Ministerial Council, distributing between the two Contracting States the proceeds of the Joint Authority's share of petroleum production from contracts;

(g) preparation of annual estimates of income and expenditure of the Joint Authority for submission to the Ministerial Council. Any expenditure shall only be made in accordance with estimates approved by the Ministerial Council or otherwise in accordance with regulations and procedures approved by the Council;

(h) controlling movements into, within and out of Area A of vessels, aircraft, structures and other equipment employed in exploration for and exploitation of petroleum resources; and, subject to Article 23, authorizing the entry of employees of contractors and their subcontractors and other persons into Area A;

(i) establishment of safety zones and restricted zones, consistent with international law, to ensure the safety of navigation and petroleum operations;

(j) issuing regulations and giving directions under the Petroleum Mining Code on all matters related to the supervision of and control of petroleum operations including on health, safety, environmental protection and assessments and work practices, pursuant to the Petroleum Mining Code;

(k) making recommendations to the Ministerial Council to amend the Petroleum Mining Code and to modify the Model Production Sharing Contract consistent with the objectives of this Treaty;

(l) requesting action by the appropriate Australian and Indonesian authorities consistent with this Treaty

(i) for search and rescue operations In Area A; and

(ii) in the event of terrorist threat to the vessels and structures engaged in petroleum operations in Area A;

(m) requesting assistance with pollution prevention measures, equipment and procedures from appropriate Australian or Indonesian authorities or other bodies or persons;

(n) preparation of annual reports for submission to the Ministerial Council;

(o) with the approval of the Ministerial Council, the variation of the following provisions of a production sharing contract with the agreement of the contractor:

(i) the Joint Authority's or the contractor's production share;

(ii) the operating cost recovery provisions;

(iii) the term of the contract; and

(iv) the contract area relinquishment provisions;

(p) with the approval of the Ministerial Council, the variation of the annual contract service fee;

(q) variation, with the agreement of the contractor, of provisions in the production sharing contract other than those in paragraphs (o) and (p) of this Article;

(r) with the approval of the Ministerial Council, the marketing of any or all petroleum production in circumstances determined by the Ministerial Council;

(s) inspecting and auditing contractors' books and accounts relating to the production sharing contract for any calendar year;

(t) monitoring and reporting to the Ministerial Council the distribution among the Republic of Indonesia, Australia and third countries, of expenditure on petroleum operations related to Area A; and

(u) such other functions as may be conferred on it by the Ministerial Council.

Article 9. Structure of the Joint Authority

1. The Joint Authority shall consist of:

(a) Executive Directors appointed by the Ministerial Council comprising an equal number of persons nominated by each Contracting State;

(b) the following three Directorates responsible to the Executive Directors:

(i) a Technical Directorate responsible for operations involving exploration for and exploitation of petro-

leum resources including operations in respect of functions referred to in paragraph (l) of Article 8;

(ii) a Financial Directorate responsible for collecting fees and proceeds from the sale of the Joint Authority's share of production; and

(iii) a Legal Directorate responsible for providing advice on any legal issues relating to production sharing contracts and on the operation of law applying in Area A; and

(c) a Corporate Services Directorate, to provide administrative support to the Executive Directors and the three other Directorates and to service the meetings of the Ministerial Council.

2. The personnel of the Joint Authority shall be appointed by the Executive Directors under terms and conditions that have regard to the proper functioning of the Joint Authority and the nature of the exploration for and exploitation of petroleum resources being undertaken from time to time in Area A from amongst individuals nominated by each Contracting State. Of the four Directors heading the Directorates, the Executive Directors shall appoint two from each Contracting State. If an Indonesian nominee is appointed to head the Technical Directorate, then an Australian nominee shall be appointed to head the Financial Directorate, and vice versa.

3. Unless otherwise decided by the Ministerial Council, the Technical Directorate shall be in the Joint Authority office located in Australia.

4. The Executive Directors and the four Directors shall constitute the Executive Board.

5. The Executive Directors and personnel of the Joint Authority shall have no financial interest in any activity relating to exploration for and exploitation of petroleum resources in Area A.

Article 10. Taxation of the Joint Authority and its Officers

1. The Joint Authority shall be exempt from the following existing taxes:

(a) in Australia, the income tax imposed under the federal law of Australia;

(b) in Indonesia, the income tax (Pajak-Penghasilan) imposed under the law of the Republic of Indonesia,

as well as any identical or substantially similar taxes which are imposed after the date of signature of this Treaty in addition to, or in place of, the existing taxes.

2. The Executive Directors and other officers of the Joint Authority:

   (a) shall be exempt from taxation of salaries, allowances and other emoluments paid to them by the Joint Authority in connection with their service with the Joint Authority other than taxation under the law of the Contracting State in which they are deemed under the provisions of Article 1 of this Treaty to be resident for taxation purposes; and

   (b) shall, at the time of first taking up a post with the Joint Authority located in the Contracting State in which they are not resident under the provisions of Article 1 of this Treaty, be exempt from customs duties and other such charges (except payments for services) in respect of imports of furniture and other household and personal effects in their ownership or possession or already ordered by them and intended for their personal use or for their establishment; such goods shall be imported within six months of an officer's first entry but in exceptional circumstances an extension of time shall be granted by the Government of the Contracting State; goods which have been acquired or imported by officers and to which exemptions under this sub-paragraph apply shall not be given away, sold, lent, hired out, or otherwise disposed of except under conditions agreed in advance with the Government of the Contracting State in which the officer is located.

3. The Ministerial Council may recommend to the Contracting States that additional privileges be conferred on the Joint Authority or its officers, if that is necessary to promote the effective functioning of the Joint Authority. Such privileges shall be conferred only following the agreement of the two Contracting States.

Article 11. Financing

1. The Joint Authority shall be financed from fees collected under Part VI of the Petroleum Mining Code, provided that the Contracting States shall advance such funds as they jointly determine to be necessary to enable the Joint Authority to commence operations.

2. In the event that the Joint Authority cannot meet an obligation under an arbitral award arising from a dispute under a production sharing contract, the Contracting States shall contribute the necessary funds in equal shares to enable the Joint Authority to meet that obligation.

Part V: Cooperation on Certain Matters in Relation to Area A

Article 12. Surveillance

1. For the purposes of this Treaty, both Contracting States shall have the right to carry out surveillance activities in Area A.
2. The Contracting States shall cooperate on and coordinate any surveillance activities carried out in accordance with paragraph 1 of this Article.
3. The Contracting States shall exchange information derived from any surveillance activities carried out in accordance with paragraph 1 of this Article.

Article 13. Security Measures

1. The Contracting States shall exchange information on likely threats to, or security incidents relating to, exploration for and exploitation of petroleum resources in Area A.
2. The Contracting States shall make arrangements for responding to security incidents in Area A.

Article 14. Search and Rescue

The Contracting States shall cooperate on arrangements for search and rescue in Area A taking into account generally accepted international rules, regulations and procedures established through competent international organizations.

Article 15. Air Traffic Services

The Contracting States shall cooperate on the provision of air traffic services in Area A taking into account generally accepted international rules, regulations and procedures established through competent international organizations.

Article 16. Hydrographic and Seismic Surveys

1. Both Contracting States shall have the right to carry out hydrographic surveys to facilitate petroleum operations in Area A. Both Contracting States shall cooperate on:
   (a) the conduct of such surveys, including the provision of necessary on-shore facilities; and
   (b) exchanging hydrographic information relevant to petroleum operations in Area A.
2. For the purposes of this Treaty, the Contracting States shall cooperate in facilitating the conduct of seismic surveys in Area A, including in the provision of necessary on-shore facilities.

Article 17. Marine Scientific Research

Without prejudice to the rights under international law in relation to marine scientific research in Area A claimed by the two Contracting States, a Contracting State which receives a request for consent to conduct marine scientific research into the non-living resources

of the continental shelf in Area A shall consult with the other Contracting State on whether the research project is related to the exploration for and exploitation of petroleum resources in Area A. If the Contracting States decide that the research is so related they shall seek the views of the Joint Authority on the research project and, in the light of such views, mutually decide on the regulation, authorization and conduct of the research including the duty to provide data, samples and results of such research to both Contracting States and the Joint Authority and participation by both Contracting States in the research project.

Article 18. Protection of the Marine Environment

1. The Contracting States shall cooperate to prevent and minimize pollution of the marine environment arising from the exploration for and exploitation of petroleum in Area A. In particular:
   (a) the Contracting States shall provide such assistance to the Joint Authority as may be requested pursuant to paragraph (m) of Article 8 of this Treaty; and
   (b) where pollution of the marine environment occurring in Area A spreads beyond Area A, the Contracting States shall cooperate in taking action to prevent, mitigate and eliminate such pollution.
2. Pursuant to paragraph (j) of Article 8 of this Treaty the Joint Authority shall issue regulations to protect the marine environment in Area A. It shall establish a contingency plan for combating pollution from petroleum operations in that Area.

Article 19. Liability of Contractors for Pollution of the Marine Environment

Contractors shall be liable for damage or expenses incurred as a result of pollution of the marine environment arising out of petroleum operations in Area A in accordance with contractual arrangements with the Joint Authority and the law of the State in which a claim in respect of such damage or expenses is brought.

Article 20. Unitization between Area A and Areas Outside Area A

If any single accumulation of petroleum extends across any of the boundary lines of Area A of the Zone of Cooperation as designated and described in Article 1 and Annex A of this Treaty, and the part of such accumulation that is situated on one side of a line is exploitable, wholly or in part, from the other side of the line, the Contracting States shall seek to reach agreement on the manner in which the accumulation shall be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation.

Article 21. Construction of Facilities

In the event that exploration for and exploitation of petroleum resources in Area A necessitates the construction of facilities and provision of services outside Area A, the Contracting States shall provide every assistance to contractors and the Joint Authority to enable the construction and operation of those facilities, and the provision of those services. Construction and operation of such facilities and provision of such services shall be subject to the law and regulations of the relevant Contracting State and any terms and conditions set by the Contracting States.

Part VI: Applicable Laws

Article 22. Law Applicable to Production Sharing Contracts

The law applicable to a production sharing contract shall be specified in that contract.

Article 23. Application of Customs, Migration and Quarantine Laws

1. Each Contracting State may, subject to paragraphs 3 and 5 of this Article, apply customs, migration and quarantine laws to persons, equipment and goods entering its territory from, or leaving its territory for, Area A. The Contracting States may adopt arrangements to facilitate such entry and departure.
2. Contractors shall ensure, unless otherwise authorized by the Contracting States, that persons, equipment and goods do not enter structures in Area A without first entering Australia or the Republic of Indonesia, and that their employees and the employees of their subcontractors are authorized by the Joint Authority to enter Area A.
3. One Contracting State may request consultations with the other Contracting State in relation to the entry of particular persons, equipment and goods to structures in Area A aimed at controlling the movement of such persons, equipment or goods.
4. Nothing in this Article prejudices the right of either Contracting State to apply customs, migration and quarantine controls to persons, equipment and goods entering Area A without the authority of either Contracting State. The Contracting States may adopt arrangements to coordinate the exercise of such rights.
5. (a) Goods and equipment entering Area A for purposes related to petroleum operations shall not be subject to customs duties.

   (b) Goods and equipment leaving or in transit through a Contracting State for the purpose of entering Area A for purposes related to petroleum opera-

tions shall not be subject to customs duties.

(c) Goods and equipment leaving Area A for the purpose of being permanently transferred to a part of a Contracting State may be subject to customs duties of that Contracting State.

Article 24. Employment

1. The Contracting States shall take appropriate measures to ensure that preference is given in employment in Area A to nationals or permanent residents of Australia and the Republic of Indonesia, and to their employment in equivalent numbers over the term of a production sharing contract, but, with due regard to efficient operations and to good oilfield practice.

2. The terms and conditions under which persons are employed on structures in Area A shall be governed by employment contracts or collective agreements. The terms and conditions shall include provisions on insurance and compensation in relation to employment injuries, including death or disability benefits, and may provide for use of an existing compensation system established under the law of either Contracting State. The terms and conditions shall also include provisions in relation to remuneration, periods of duty or overtime, leave and termination. The terms and conditions shall be no less favourable than those which would apply from time to time to comparable categories of employment in both Australia and the Republic of Indonesia.

3. Paragraph 2 of this Article shall also apply to persons employed on seismic, drill, supply and service vessels regularly engaged in activities related to petroleum operations in Area A, regardless of the nationality of the vessel.

4. In relation to the provision of facilities and opportunities, there shall be no discrimination on the basis of nationality amongst persons to which paragraphs 2 and 3 of this Article apply.

5. Disputes arising between employers and employees shall be settled by negotiation in the first instance. Disputes which cannot be settled by negotiation shall be settled either by recourse to a tripartite dispute settlement committee, comprising representatives of employers, employees and persons nominated by the Contracting States, or by recourse to a conciliation and arbitration system available in either Contracting State.

6. Employer and employee associations recognised under the law of either Contracting State may respectively

represent employers and employees in the negotiation of contracts or collective agreements and in conciliation and arbitration proceedings.

7. An employment contract or collective agreement shall provide that it shall be subject to the law of one or other Contracting State and shall identify, consistent with paragraph 5 of this Article, the applicable dispute settlement mechanism. Any arbitration decision shall be enforceable under the law of the Contracting State under which it is made.

Article 25. Health and Safety for Workers

The Joint Authority shall develop, and contractors shall apply, occupational health and safety standards and procedures for persons employed on structures in Area A that are no less effective than those standards and procedures that would apply in relation to persons employed on similar structures in both Australia and the Republic of Indonesia. The Joint Authority may adopt, consistent with this Article, standards and procedures taking into account an existing system established under the law of either Contracting State.

Article 26. Petroleum Industry Vessels

Except as otherwise provided in this Treaty, vessels engaged in petroleum operations shall be subject to the law of the Contracting State whose nationality they possess and, unless they are a vessel with the nationality of the other Contracting State, the law of the Contracting State out of whose ports they operate, in relation to safety and operating standards, and crewing regulations. Such vessels that enter Area A and do not operate out of either Contracting State shall be subject to relevant international safety and operating standards under the law of both Contracting States.

Article 27. Criminal Jurisdiction

1. Subject to paragraph 3 of this Article a national or permanent resident of a Contracting State shall be subject to the criminal law of that State in respect of acts or omissions occurring in Area A connected with or arising out of exploration for and exploitation of petroleum resources, provided that a permanent resident of a Contracting State who is a national of the other Contracting State shall be subject to the criminal law of the latter State.

2. (a) Subject to paragraph 3 of this Article, a national of a third State, not being a permanent resident of either Contracting State, shall be subject to the criminal law of both Contracting States in respect of acts or omissions occurring in Area A connected with or arising out of the exploration for and exploitation of petroleum resources. Such a person shall not be subject to criminal proceedings under the law of one

Contracting State 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 Contracting State or where the competent authorities of one Contracting State, in accordance with its law, have decided in the public interest to refrain from prosecuting the person for that act or omission.

(b) In cases referred to in sub-paragraph (a) of this paragraph, the Contracting States 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 Contracting State most affected by the alleged offence.

3. 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, Area A.

4(a) The Contracting States shall provide assistance to and cooperate 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.

(b) Each Contracting State recognizes the interest of the other Contracting State where a victim of an alleged offence is a national of that other State and shall keep that other State informed to the extent permitted by its law of action being taken with regard to the alleged offence.

5. The Contracting States may make arrangements permitting officials of one Contracting State to assist in the enforcement of the criminal law of the other Contracting State. Where such assistance involves the detention of a person who under paragraph 1 of this Article is subject to the jurisdiction of the other Contracting State that detention may only continue until it is practicable to hand the person over to the relevant officials of that other Contracting State.

Article 28. Civil Actions

Claims for damages or restitution of expenses as a result of activities in Area A may be brought in the Contracting State which has or whose nationals or permanent residents have suffered the damage or incurred the expense. The court in which the action is brought shall apply the law and regulations of that State.

Article 29. Application of Taxation Law

1. For the purposes of the taxation law related directly or indirectly to:

(a) the exploration for or the exploitation of petroleum in Area A; or

(b) acts, matters, circumstances and things touching, concerning, arising out of or connected with any such exploration or exploitation,

Area A shall be deemed to be, and be treated by, each Contracting State as part of that Contracting State.

2. In the application of the taxation law:

(a) in Area A;

(b) to interest paid by a contractor; or

(c) to royalties paid by a contractor,

each Contracting State shall grant relief from double taxation in accordance with the Taxation Code.

3. A Contracting State shall not impose a tax not covered by the provisions of the Taxation Code in respect of or applicable to:

(a) the exploration for or exploitation of petroleum in Area A; or

(b) any petroleum exploration or exploitation related activity carried on in Area A,

unless the other Contracting State consents to the imposition of that tax.

Part VII: Settlement of Disputes

Article 30. Settlement of Disputes

1. Any dispute arising between the Contracting States concerning the interpretation or application of this Treaty shall be resolved by consultation or negotiation between the Contracting States.

2. Each production sharing contract entered into by the Joint Authority shall contain provisions to the effect that any dispute concerning the interpretation or application of such contract shall be submitted to a specified form of binding commercial arbitration. The Contracting States shall facilitate the enforcement in their respective courts of arbitral awards made pursuant to such arbitration.

Part VIII: Final Clauses

Article 31. Amendment

1. This Treaty may be amended at any time by agreement between the Contracting States.

2. The Petroleum Mining Code, in accordance with paragraph 1(b) of Article 6 of this Treaty and the Model Production Sharing Contract, in accordance with paragraph 1(c) of Article 6 of this Treaty, may also be amended or modified by decision of the Ministerial Council. Such amendments or modifications shall

have the same status as the Petroleum Mining Code and the Model Production Sharing Contract.

Article 32. Entry into Force

This Treaty shall enter into force thirty (30) days after the date on which the Contracting States have notified each other in writing that their respective requirements for entry into force of this Treaty have been complied with.[2]

Article 33. Term of This Treaty

1. This Treaty shall remain in force for forty (40) years from the date of entry into force of this Treaty.
2. Unless the two Contracting States agree otherwise, this Treaty shall continue in force after the initial forty (40) year term for successive terms of twenty (20) years, unless by the end of each term, including the initial term of forty years, the two Contracting States have concluded an agreement on a permanent continental shelf delimitation in the area covered by the Zone of Cooperation.
3. Where the Contracting States have not concluded an agreement on a permanent continental shelf delimitation in the area covered by the Zone of Cooperation five years prior to the end of any of the terms referred to in paragraphs 1 or 2 of this Article, representatives of the two Contracting States shall meet with a view to reaching agreement on such permanent continental shelf delimitation.
4. This Article shall be without prejudice to the continued operation of Article 34 of this Treaty.

Article 34. Rights of Contractors

1. In the event that
   (a) this Treaty ceases to be in force following conclusion of an agreement between the Contracting States on permanent continental shelf delimitation in the area of the Zone of Cooperation; and
   (b) there are in existence immediately prior to the date on which this Treaty ceases to be in force, production sharing contracts with the Joint Authority, production sharing contracts shall continue to apply to each Contracting State or some other person nominated by the Contracting State concerned, in place of the Joint Authority, in so far as the contract is to be performed within the territorial jurisdiction of each Contracting State, having regard to the agreement on delimitation. Each Contracting State shall apply to

2 Notes to this effect were exchanged at Canberra 10 January 1991. The Treaty entered into force 9 February 1991.

contractors performing contracts within its territorial jurisdiction a regime no more onerous than that set out in this Treaty and the relevant production sharing contract.

2. The two Contracting States shall at the time of the conclusion of the permanent delimitation agreement make arrangements to give effect to paragraph 1 of this Article.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE over the Zone of Cooperation[3] on this eleventh day of December, one thousand nine hundred and eighty nine, in two originals in the English language.

FOR AUSTRALIA:
[Signed:]
GARETH EVANS
Minister for Foreign Affairs

FOR THE REPUBLIC OF INDONESIA:
[Signed:]
ALI ALATAS
Trade Minister for Foreign Affairs

3 The Treaty was concluded aboard an aircraft flying above the Timor Sea in an area designated as the Zone of Cooperation under this Treaty.

Annex A: Designation and Description Including Maps[4] and Coordinates of the Areas Comprising the Zone of Cooperation

NOTE

Where for the purposes of this Treaty it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the Australian Geodetic Datum, that is to say, by reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6 378 160 metres and a flattening of 1/298.25 and by reference to the position of the Johnston Geodetic Station in the Northern Territory of Australia. That station shall be taken to be situated at Latitude 25°56'54.5515" South and at Longitude 133°12'30.0771" East and to have a ground level of 571.2 metres above the spheroid referred to above.

Zone of Cooperation Whole

The area bounded by the line-

(a) commencing at the point of Latitude 9deg. 12' 19" South, Longitude 127deg. 33' 32" East;

(b) running thence south-easterly along the geodesic to the point of Latitude 9deg. 22' 53" South, Longitude 127deg. 48' 42" East;

4 TwoA map of the Zone of Cooperation can be found in the CIL Workshop Folder.

(c) thence south-easterly along the geodesic to the point of Latitude 9deg. 28' 00" South, Longitude 127deg. 56' 00" East;

(d) thence south-easterly along the geodesic to the point of Latitude 9deg. 29' 57" South, Longitude 127deg. 58' 47" East;

(e) thence south-easterly along the geodesic to the point of Latitude 10deg. 29' 17" South, Longitude 128deg. 12' 24" East;

(f) thence south-easterly along the geodesic to the point of Latitude 11deg. 42' 10" South, Longitude 128deg. 29' 10" East;

(g) thence south-westerly along the geodesic to the point of Latitude 12deg. 03' 17" South, Longitude 127deg. 45' 00" East;

(h) thence south-westerly along the geodesic to the point of Latitude 12deg. 15' 28" South, Longitude 127deg. 08' 28" East;

(i) thence north-westerly along the geodesic to the point of Latitude 11deg. 20' 08" South, Longitude 126deg. 31' 54" East;

(j) thence north-westerly along the geodesic to the point of Latitude 10deg. 28' 00" South, Longitude 126deg. 00' 00" East;

(k) thence north-easterly along the geodesic to the point of Latitude 10deg. 06' 40" South, Longitude 126deg. 00' 25" East;

(l) thence north-easterly along the geodesic to the point of Latitude 9deg. 46' 01" South, Longitude 126deg. 00' 50" East; and

(m) thence north-easterly along the geodesic to the point of commencement.

Zone of Cooperation Area A

The area bounded by the line-

(a) commencing at the point of Latitude 9deg. 22' 53" South, Longitude 127deg. 48' 42" East;

(b) running thence south-westerly along the geodesic to the point of Latitude 10deg. 06' 40" South, Longitude 126deg. 00' 25" East;

(c) thence south-westerly along the geodesic to the point of Latitude 10deg. 28' 00" South, Longitude 126deg. 00' 00" East;

(d) thence south-easterly along the geodesic to the point of Latitude 11deg. 20' 08" South, Longitude 126deg. 31' 54" East;

(e) thence north-easterly along the geodesic to the point of Latitude 11deg. 19' 46" South, Longitude 126deg. 47' 04" East;

(f) thence north-easterly along the geodesic to the point of Latitude 11deg. 17' 36" South, Longitude 126deg. 57' 07" East;

(g) thence north-easterly along the geodesic to the point of Latitude 11deg. 17' 30" South, Longitude 126deg. 58' 13" East;

(h) thence north-easterly along the geodesic to the point of Latitude 11deg. 14' 24" South, Longitude 127deg. 31' 33" East;

(i) thence north-easterly along the geodesic to the point of Latitude 10deg. 55' 26" South, Longitude 127deg. 47' 04" East;

(j) thence north-easterly along the geodesic to the point of Latitude 10deg. 53' 42" South, Longitude 127deg. 48' 45" East;

(k) thence north-easterly along the geodesic to the point of Latitude 10deg. 43' 43" South, Longitude 127deg. 59' 16" East;

(l) thence north-easterly along the geodesic to the point of Latitude 10deg. 29' 17" South, Longitude 128deg. 12' 24" East;

(m) thence north-westerly along the geodesic to the point of Latitude 9deg. 29' 57" South, Longitude 127deg. 58' 47" East;

(n) thence north-westerly along the geodesic to the point of Latitude 9deg. 28' 00" South, Longitude 127deg. 56' 00" East; and

(o) thence north-westerly along the geodesic to the point of commencement.

Zone of Cooperation Area B

The area bounded by the line-

(a) commencing at the point of Latitude 10deg. 29' 17" South, Longitude 128deg. 12' 24" East;

(b) running thence south-easterly along the geodesic to the point of Latitude 11deg. 42' 10" South, Longitude 128deg. 29' 10" South;

(c) thence south-westerly along the geodesic to the point of Latitude 12deg. 03' 17" South, Longitude 127deg. 45' 00" East;

(d) thence south-westerly along the geodesic to the point of Latitude 12deg. 15' 28" South, Longitude 127deg. 08' 28" East;

(e) thence north-westerly along the geodesic to the point of Latitude 11deg. 20' 08" South, Longitude 126deg. 31' 54" East;

(f) thence north-easterly along the geodesic to the point of Latitude 11deg. 19' 46" South, Longitude 126deg. 47' 04" East;

(g) thence north-easterly along the geodesic to the point of Latitude 11deg. 17' 36" South, Longitude 126deg. 57' 07" East;

(h) thence north-easterly along the geodesic to the point of Latitude 11deg. 17' 30" South, Longitude 126deg. 58' 13" East;

(i) thence north-easterly along the geodesic to the point of Latitude 11deg. 14' 24" South, Longitude 127deg. 31' 33" East;

(j) thence north-easterly along the geodesic to the point of Latitude 10deg. 55' 26" South, Longitude 127deg. 47' 04" East;

(k) thence north-easterly along the geodesic to the point of Latitude 10deg. 53' 42" South, Longitude 127deg. 48' 45" East'

(l) thence north-easterly along the geodesic to the point of Latitude 10deg. 43' 43" South, Longitude 127deg. 59' 16" East; and

(m) thence north-easterly along the geodesic to the point of commencement.

Zone of Cooperation Area C

The area bounded by the line-

(a) commencing at the point of Latitude 9deg. 12' 19" South, Longitude 127deg. 33' 32" East;

(b) running thence south-easterly along the geodesic to the point of Latitude 9deg. 22' 53" South, Longitude 127deg. 48' 42" East;

(c) thence south-westerly along the geodesic to the point of Latitude 10deg. 06' 40" South, Longitude 126deg. 00' 25" East;

(d) thence north-easterly along the geodesic to the point of Latitude 9deg. 46' 01" South, Longitude 126deg. 00' 50" East; and

(e) thence north-easterly along the geodesic to the point of commencement.

Annex B: Petroleum Mining Code for Area A of the Zone of Cooperation

Part I: Definitions

Article 1. Definitions

1. For the purposes of this Petroleum Mining Code:

(a) "block" means a block constituted in accordance with Article 2 of this Petroleum Mining Code;

(b) "calendar year" means a period of twelve (12) months commencing on 1 January and ending on the following 31 December, according to the Gregorian Calendar;

(c) "contract operator" means the contractor appointed and authorized by the contractors to be responsible for petroleum operations and all dealings with the Joint Authority under the contract on behalf of the contractors;

(d) "contract year" means a period of twelve (12) consecutive months according to the Gregorian Calendar counted

from the effective date of the contract or from the anniversary of such effective date;

(e) "discovery area" means the blocks declared by the Joint Authority under Article 16 of this Petroleum Mining Code to contain petroleum;

(f) "effective date" means the date a production sharing contract is entered into by and between the Joint Authority and the contractor;

(g) "operating costs" means those costs defined in a production sharing contract which are incurred and are recoverable by the contract operator in the course of undertaking petroleum operations;

(h) "petroleum pool" means a discrete accumulation of petroleum under a single pressure system;

(i) "pipeline" means a pipe or system of pipes and associated equipment necessary for conveying petroleum;

(j) "work program and budget of operating costs" means the details of petroleum operations to be carried out in or related to the contract area and the aggregate cost estimates for those operations;

(k) "Treaty" means 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 to which this Petroleum Mining Code is an Annex.

2. The terms used in this Petroleum Mining Code shall, unless otherwise specified, have the same meaning as those in the Treaty.

Part II: Area A

Article 2. Graticulation of Area A

1. The surface of Area A shall be divided by the Joint Authority into graticular sections defined by meridians of five (5) minutes of longitude (reference the meridian of Greenwich) and by parallels of latitude of five (5) minutes (reference the Equator). A block shall constitute a graticular section as described above and shall include part graticular sections. Each block in Area A shall be allocated a discrete identifying number.

2. The Joint Authority may subdivide each block into graticular sections. Where this is done, the graticular sections shall be defined by meridians of longitude and by parallels of latitude, and each section shall form a block. Each block so defined shall

be allocated a discrete identifying number.

3. Contract areas within Area A shall be described in terms of the component blocks.

Article 3. Geodetic Datum

Whenever it is necessary to determine the position of a line in Area A that position shall be determined by reference to a spheroid having its centre at the centre of the earth and a major (equatorial) radius of 6378160 metres and a flattening of 100/29825 and by reference to the position of the Johnston Geodetic Station in the Northern Territory of Australia. That station shall be taken to be situated at 133 degrees, 12 minutes and 30.0771 seconds of East Longitude and at 25 degrees, 56 minutes and 54.5515 seconds of South Latitude and to have a ground level of 571.2 metres above the spheroid referred to above.

Part III: The Contract

Article 4. Rights Conferred by Contract

1. A production sharing contract entered into by the Joint Authority, with the approval of the Ministerial Council, shall give to the contractor the exclusive right and the responsibility to undertake petroleum operations in a contract area, subject to the provisions of the Treaty, relevant regulations and directions issued by the Joint Authority, and the terms and conditions of the contract.

2. During each calendar year, any petroleum production shall be shared between the Joint Authority and the contractor.

3. The contract shall not confer on the contractor ownership of petroleum in the ground but shall provide for the contractor to take a share of petroleum production as payment from the Joint Authority for the petroleum operations undertaken by the contract operator pursuant to the contract. Ownership of the Joint Authority's share of petroleum production shall remain with the Joint Authority. Except as provided in paragraph 5 of this Article, the Joint Authority shall authorize the marketing of its share of petroleum production by the contractor who shall market all petroleum produced from the contract area.

4. Title to the contractor's share of petroleum production shall pass to the contractor at the point of tanker loading. Petroleum production shall be measured at the point of tanker loading. For the purposes of a production sharing contract, all such measured production shall be deemed to have been produced on the day of the commencement of tanker loading. Subject to paragraph 5 of this Article the contractor shall have the right to lift, dispose of and

export its share of petroleum, and retain abroad the proceeds obtained therefrom. Except where the Joint Authority markets petroleum as provided in paragraph 5 of this Article, the contract shall require the contractor to pay to the Joint Authority, at regular periods during each calendar year, an amount of money estimated to be equal to the value of the Joint Authority's share of petroleum production lifted for those periods. The contract shall specify the length of each period, monthly if workable, the means by which the value of the Joint Authority's share of petroleum production is estimated for each period, and when each payment shall be made. The estimated value of the Joint Authority's share of petroleum production for each period shall be based on the work program and budget of operating costs and revisions to it, and the expected value of quantities of petroleum to be produced. The estimated value shall be revised during the calendar year having regard to the actual operating costs and value of sales of petroleum.

5. The Joint Authority, with the approval of the Ministerial Council, may market any or all petroleum production. Where it is the Joint Authority's share of petroleum production which is to be marketed by the Joint Authority, the method of determining the estimated value of the Joint Authority's share shall be based on that method described in paragraph 4 of this Article. Where petroleum production marketed by the Joint Authority includes the contractor's share, the contract shall require the Joint Authority to pay to the contractor, at regular periods during each calendar year, an amount of money estimated to be equal to the value of the contractor's share of petroleum production so lifted for those periods. The method of determining the estimated value of the Joint Authority's and the contractor's shares shall be based on that method described in paragraph 4 of this Article. The contract operator shall be obliged to coordinate the efficient lifting of the petroleum production, including tanker nomination and scheduling.

6. The contract shall also specify that within thirty (30) days after the end of each calendar year, adjustments and cash settlements between the contractor and the Joint Authority shall be made on the basis of the actual quantities, amounts and prices involved, in order to ensure that the Joint Authority receives the correct share of petroleum production for each calendar year.

7. In the case of a contract entered into with a group of corporations, each corporation shall be jointly

and severally liable for meeting the conditions of the contract, and for complying with the requirements of this Petroleum Mining Code and the regulations and directions issued by the Joint Authority. Each corporation shall be a signatory to the contract with the Joint Authority.

Article 5. The Contract

1. Without limiting the matters to be dealt with, the contract shall be concluded on the basis of the Model Production Sharing Contract and shall include:
   (a) the definition of the responsibilities and rights of the contractor, the contract operator and the Joint Authority;
   (b) the term of the contract and block relinquishment provisions;
   (c) the work program and expenditure commitments;
   (d) the definition of operating costs and the method of recovery of those costs by the contract operator;
   (e) the petroleum production share to be allocated to the contractor;
   (f) provisions for the termination of the contract;
   (g) provisions for exemption from and variation of contract conditions;
   (h) provisions for the resolution of disputes between the contractor and the Joint Authority; and
   (i) any other provisions that are consistent with the Treaty.

Article 6. Contract Operator

1. Where a number of corporations enters into a contract with the Joint Authority, the corporations shall appoint and authorize one of their number to be the contract operator responsible, on behalf of the group of corporations, for petroleum operations and all dealings with the Joint Authority under the contract.
2. The contract operator shall undertake petroleum operations in an efficient manner which minimizes costs and in a manner in accordance with the provisions of the production sharing contract. Costs incurred by the contract operator in undertaking petroleum operations shall not include any component of profit which accrues to the contract operator solely by virtue of its role as contract operator.
3. All communications on matters related to the contract shall be effected between the contract operator and the Joint Authority. The contract operator shall establish an office in either the Republic of Indonesia or Australia.

Article 7. Term of Contract

1. Subject to the provisions of this Article, and Articles 22 and 48 of this Petroleum Mining Code, the term of a production sharing contract shall be thirty (30) years. In addition, the provisions of the production sharing contract shall include:
   (a) an obligation on the Joint Authority to give sympathetic consideration to an extension of the term of the contract beyond the thirtieth (30th) contract year if petroleum production has not ceased by that year; and
   (b) automatic extension of the term of the contract to allow continuation of petroleum production to meet natural gas sales contracts the terms of which extend beyond the thirtieth (30th) contract year of the production sharing contract.
2. The production sharing contract may also include a specified term after which the contract may be terminated if a discovery is not made.

Part IV: Petroleum Exploration and Exploitation

Article 8. Advertisement of Blocks

1. The Joint Authority shall invite applications to enter into a contract over specific blocks. The invitation for applications shall specify:
   (a) the blocks over which the rights shall be granted;
   (b) the bidding system to apply;
   (c) the basis on which bids shall be assessed;
   (d) details of the contract to be entered into including the rights and responsibilities of the parties to the contract; and
   (e) the period within which applications may be made.
2. Details of the invitation for applications shall be published in official Australian and Indonesian Government Gazettes and in such other ways as the Joint Authority decides.

Article 9. Bidding System

1. The Joint Authority shall invite applications to enter into a contract over parts of Area A using a work program bidding system which identifies annual exploration work program and expenditure commitments to be undertaken in the contract area.
2. The Joint Authority shall make available full details of the bidding system to be used at the time applications are invited.

Article 10. Application for Contracts

1. The Joint Authority shall set out in formal guidelines the form in which applications shall be prepared and lodged. As a minimum require-

ment a draft contract based on the Model Production Sharing Contract shall be completed and lodged, and applications shall set out details of the work program and expenditure commitments, and the financial capability and technical knowledge and ability available to the applicant.

2. Where an application is lodged by a group comprising several corporations, the application shall be accompanied by evidence that an agreement can be reached between those corporations for cooperation in petroleum operations in the contract area.

3. The application shall be accompanied by the fee specified in Article 44 of this Petroleum Mining Code.

Article 11. Consideration of Application

1. The Joint Authority shall set out in formal guidelines the basis on which applications will be considered and the relevant criteria which applicants will be expected to meet. Contracts shall be offered in accordance with the published criteria for that bidding round. The principal criteria shall be the amount and quality of the exploration work bid.

2. The Joint Authority shall be satisfied that an applicant has the necessary financial capability and technical knowledge and ability to carry out petroleum operations in a manner consistent with the terms and conditions of the contract and this Petroleum Mining Code, including the necessary environmental and safety requirements.

Article 12. Grant or Refusal of Contracts

1. The Joint Authority shall seek prior approval from the Ministerial Council to enter into a contract with the preferred applicant or group of applicants.

2. Subject to that approval, the Joint Authority shall notify in writing the successful applicant that it has Ministerial Council approval to enter into a contract with the applicant covering petroleum operations in a specified contract area on terms and conditions set out in the contract. The applicant shall have thirty (30) days within which to accept or refuse the offer in writing. On the applicant accepting the offer, paying the contract service fee, and providing evidence that it has fulfilled any prerequisite conditions such as insurance cover, the Joint Authority shall enter into the contract with the applicant.

3. Unsuccessful applicants shall be advised accordingly.

Article 13. Publication of Contracts

The Joint Authority shall publish in official Australian and Indonesian Government Gazettes summary details of:

(a) contracts entered into; and

(b) termination of contracts.

Article 14. Commencement of Work

The contract operator shall commence petroleum operations within six (6) months from the date the contract is entered into, except for reasons of force majeure.

Article 15. Discovery of Petroleum

1. The contract operator shall notify the Joint Authority in writing within twenty four (24) hours whenever any petroleum is discovered and on request by the Joint Authority shall provide details in writing of the:

   (a) chemical composition and physical properties of the petroleum; and

   (b) the nature of the sub-soil in which the petroleum occurs.

2. The contract operator shall provide the Joint Authority with any other information concerning the discovery on request by the Joint Authority.

3. The contract operator shall also do such things as the Joint Authority requests to determine the chemical composition and physical properties of any petroleum discovered, and to determine the geographical extent of any petroleum pool and the quantity of petroleum in that pool.

Article 16. Declaration of Discovery Area

1. The Joint Authority shall declare the blocks within the contract area covering a petroleum pool as a discovery area, provided that the Joint Authority and contract operator agree that the petroleum pool can be produced commercially. These blocks shall form a single contiguous area.

2. At any time after a discovery area has been declared, the Joint Authority may, of its own volition or on request from the contract operator, agree that certain blocks be included in or excluded from the discovery area. Blocks included in the discovery area in this way shall be from within the contractor's contract area.

Article 17. Approval to Produce Petroleum

The contract operator shall not construct any production structures without the approval of the Joint Authority. The Joint Authority shall not unreasonably withhold approvals.

Article 18. Approval to Construct Pipeline

1. The contract operator shall not construct a pipeline for the purpose of conveying petroleum within or from Area A without the approval of the Joint Authority, nor shall the contract operator operate or remove that pipeline without the approval of the Joint Authority.

2. The Joint Authority may direct a contract operator owning a pipeline to enter into a commercial agreement with another contract operator to enable the second mentioned operator to transport petroleum.

Article 19. Petroleum Production Work

Unless otherwise agreed between the contract operator and the Joint Authority, work on a permanent structure to produce petroleum shall commence within six (6) months of approval to construct the structure.

Article 20. Rates of Production

The Joint Authority may direct and make regulations about the commencement of petroleum production and the specific rates of petroleum production. In giving such directions and making such regulations the Joint Authority shall take account of good oilfield practice.

Article 21. Unitization

Where a petroleum pool is partly within a contract area and partly within another contract area, but wholly within Area A, the Joint Authority shall require the contractors to enter into a unitization agreement with each other within a reasonable time, as determined by the Joint Authority, for the purpose of securing the more effective and optimized production of petroleum from the pool. If no agreement has been reached within such reasonable time, the Joint Authority shall decide on the unitization agreement. Without limiting the matters to be dealt with, the unitization agreement shall define or contain the approach to define the amount of petroleum in each contract area, the method of producing the petroleum, and shall appoint the contract operator responsible for production of the petroleum covered by the unitization agreement. The Joint Authority shall approve the unitization agreement before approvals under Article 17 of this Petroleum Mining Code are given. Any changes to the unitization agreement shall be subject to approval by the Joint Authority.

Article 22. Block Relinquishment

1. The contract shall contain provisions for the progressive relinquishment of blocks from the contract area.
2. In calculating the relinquishment requirements, the blocks in a discovery area shall not be counted as part of the original number of blocks in the contract area.
3. In the event that no discovery area has been declared in the contract area before the end of an initial period specified in the contract, the contract operator shall either relinquish all remaining blocks in the contract area and the contract shall be terminated, or the contract operator shall exercise the option provided in the contract to extend the term of the contract.

Article 23. Surrender of Blocks

1. The contractor may surrender some or all of the blocks in a contract area provided the conditions of the contract have been met to the satisfaction of the Joint Authority. Blocks surrendered in this way shall be credited towards the block relinquishment requirement in Article 22 of this Petroleum Mining Code.
2. Before agreeing to an application to surrender some or all of the blocks in a contract area, the Joint Authority may direct the contract operator to clean up the contract area or remove structures, equipment and other property from the contract area and the contract operator shall comply with that direction.

Part V: General Arrangements

Article 24. Work Practices

It shall be the responsibility of the contract operator to ensure that petroleum operations are carried out in a proper and workmanlike manner and in accordance with good oilfield practice. The contract operator shall take the necessary action to:

(a) protect the environment in and about the contract area; and

(b) secure the safety, health and welfare of persons engaged in petroleum operations in or about the contract area.

Article 25. Insurance

1. The Joint Authority shall require the contractor to take out and maintain from the effective date of the contract, to the satisfaction of the Joint Authority, insurance on a strict liability basis and for an amount determined by the Joint Authority in consultation with applicants for contracts. It shall also agree with the contractor on a mechanism whereby compensation claims can be determined. The insurance shall cover expenses or liabilities or any other specified things arising in connection with the carrying out of petroleum operations and other activities associated with those operations in the contract area, including expenses associated with the prevention and clean-up of the escape of petroleum.
2. The contract operator shall ensure that transportation of petroleum in bulk as cargo from Area A only takes place in tankers with appropriate insurance commensurate with relevant international agreements.

Article 26. Maintenance of Property

The contract operator shall be responsible for maintaining in safe and good condition and repair all structures, equipment and other property in the contract area.

Article 27. Removal of Property

1. As directed by the Joint Authority, the contract operator shall remove all property brought into the contract area and comply with regulations and directions concerning the containment and clean-up of pollution.

2. In the event that the contract operator does not remove property or pollution to the satisfaction of the Joint Authority or take such other action as is necessary for the conservation and protection of the marine environment in that contract area, the Joint Authority may direct the contract operator to take such remedial action as the Joint Authority deems necessary. If the contract operator does not comply with that direction, the contractor shall be liable for any costs incurred by the Joint Authority in rectifying the matter.

Article 28. Exemption from or Variation of Conditions

1. Subject to paragraph 2 of Article 28, the Joint Authority may agree to exempt the contractor from complying with the conditions of the contract.[5] The Joint Authority may also agree to vary those conditions.

2. The Joint Authority shall not exempt the contractor from or vary the following conditions of a contract without prior approval of the Ministerial Council:

   (a) the Joint Authority's or the contractor's production shares;

   (b) the operating cost recovery provisions;

   (c) the term of the contract;

   (d) the block relinquishment provisions;

   (e) the annual contract service fee;

   (f) obligations aimed at protecting the environment and preventing and cleaning up pollution as provided under the Treaty including the Petroleum Mining Code and the contract; and

   (g) the exploration work program required to be performed by a contractor in the first three (3) years of a contract.[6]

Article 29. Provision of Information

1. The Joint Authority may direct the contractor to provide the Joint Authority with data, documents or information relating to petroleum operations including but not limited to routine production and financial reports, technical reports and studies relating to petroleum operations.

5 The words "Subject to paragraph 2 of Article 28," were added at the Sixth Ministerial Council Meeting at Brisbane on 20 October 1995.

6 Sugparagraph (g) was added at the Sixth Ministerial Council Meeting at Brisbane on 20 October 1995.

2. The Joint Authority may require the contractor to provide that information in writing within a specified period. The Joint Authority shall have title to all data obtained from the petroleum operations.

3. A contractor shall not be excused from furnishing information on the grounds that the information might tend to incriminate the contractor but the information shall not be admissible in evidence against the contractor in criminal proceedings.

Article 30. Safety Zones

1. The Joint Authority may declare a safety zone around any specified structure in Area A, and may require the contract operator to install, maintain or provide thereon, navigation, fog and illumination lighting, acoustic and other devices and equipment necessary for the safety of the petroleum operations. A safety zone may extend up to five hundred (500) metres from the extremities of the structure. Unauthorized vessels shall be prohibited from entering the safety zone.

2. Additionally, a restricted zone of one thousand two hundred and fifty (1250) metres may be declared around the extremities of safety zones and pipelines in which area unauthorized vessels employed in exploration for and exploitation of petroleum resources are prohibited from laying anchor or manoeuvring.

Article 31. Records to be Kept

The Joint Authority shall require the contractor to keep accounts, records or other documents, including financial records, in connection with petroleum operations and to furnish to the Joint Authority in a specified manner data, reports, returns or other documents in connection with those activities. These arrangements shall also apply to cores, cuttings and samples taken in connection with petroleum operations in the contract area.

Article 32. Prospecting Approval

The Joint Authority may issue a prospecting approval to any person to carry out petroleum exploration activities in blocks not in contract areas. The prospecting approval shall specify those conditions to which the person shall be subject. The conditions of a prospecting approval shall not include any preference for or rights to enter into a contract over those blocks. All data and reports resulting from such activities shall be submitted to the Joint Authority for its own free use.

Article 33. Access Approval

1. In order to promote the optimum exploration for and exploitation of petroleum resources in Area A, the Joint Authority may give approval

to a contract operator, and persons holding prospecting approvals or undertaking marine scientific research, to enter a contract area, not being its contract area, to carry out activities in accordance with that approval. The Joint Authority shall consult with the contract operator of the contract area into which access is sought before giving approval. The terms and conditions of approval shall include an obligation to furnish to the Joint Authority in a specified manner data, reports, returns or other documents in connection with activities carried out under the access approval and a prohibition on the drilling of exploration wells.

2. The Joint Authority may also give approval to a contract operator to lay and fix petroleum production facilities on the seabed in a contract area not being its contract area, provided that such activities do not interfere with the petroleum operations in the first contract area.

Article 34. Inspectors

1. The Joint Authority may appoint a person to be an inspector for the purposes of this Petroleum Mining Code, the regulations and directions issued under Article 37 of this Petroleum Mining Code, and contract terms and conditions applying to petroleum operations in Area A. A person so appointed shall, at all reasonable times and on production of a certificate of appointment:

   (a) have the right to enter any structure, vessel or aircraft in Area A being used for petroleum operations;

   (b) have the right to inspect and test any equipment being used or proposed to be used for petroleum operations; and

   (c) have the right to enter any structure, vessel, aircraft or building in which it is thought there are any documents relating to petroleum operations in Area A and may inspect, take extracts from and make copies of any of those documents.

2. The contractor shall provide an inspector with all reasonable facilities and assistance that the inspector requests for the effective exercise of the inspector's powers.

Article 35. Service of Notices

1. A document to be served on a person other than the Joint Authority or a corporation shall be served:

   (a) by delivering the document to that person;

   (b) by posting the document as a letter addressed to that person;

   (c) by delivering the document to that address and leaving the document with a person ap-

parently in the service of that person;

(d) by sending the document in the form of a telex or facsimile to that person's telex or facsimile number, as appropriate; or

(e) by sending the document as a telegram addressed to that person.

2. A document to be served on a corporation shall be served by complying with sub-paragraphs (b), (c), (d) or (e) of paragraph 1 of this Article.

3. A document to be served on the Joint Authority shall be served by leaving it with a person apparently employed in connection with the Joint Authority, at a place of business of the Joint Authority specified in the contract or by posting the document as a letter or telegram addressed to the Joint Authority at that place of business or by sending the document as a telex or facsimile to the Joint Authority's telex or facsimile number.

4. Where a document is posted as a letter, service shall be deemed to have been effected within seven (7) days of the letter having been posted, unless the contrary is proved.

Article 36. Release of Information and Data

1. The Joint Authority may make such use as it wishes of information and data contained in a report, return or other document furnished to the Joint Authority, provided that information and data is not made publicly known before the periods of confidentiality identified below have expired.

2. Basic information and data about petroleum operations in a contract area may be released two (2) years after it was lodged with the Joint Authority or when the blocks to which that information and data relates cease to be part of the contract area, if earlier. However, conclusions drawn or opinions based in whole or in part on that information and data shall not be released until five (5) years after that information and data was lodged with the Joint Authority.

3. Information and data relating to a seismic or other geochemical or geophysical survey shall be deemed to have been lodged no later than six (6) months after the survey was essentially completed. Information and data on wells shall be deemed to have been lodged no later than three (3) months after the well was essentially completed.

4. Notwithstanding paragraph 2 of this Article, the contract operator shall have the right to have access to and use all information held by the Joint Authority relating to the blocks in Area A adjacent to its contract area. Where information and data

has been released by the person or some party acting on the person's behalf, the Joint Authority shall not be obliged to maintain the confidentiality of that information and data.

5. The Joint Authority shall be free to use any information and data relating to relinquished, surrendered and other blocks outside the contract area, including releasing it to any party.

6. Contractors shall not use such information and data outside Australia or the Republic of Indonesia without the approval of the Joint Authority.

7. Officials of the Australian and Indonesian Governments may have access to information and data provided to the Joint Authority under this Petroleum Mining Code, provided such officials comply with the provisions of this Article.

Article 37. Regulations and Directions

1. The Joint Authority shall issue regulations and directions to apply to persons, consistent with the Treaty including this Petroleum Mining Code, in order to carry out its functions. In particular, the regulations and directions shall deal with, but are not limited to, the following matters:

   (a) the exploration for petroleum and the carrying on of operations, and the execution of works, for that purpose;

   (b) the production of petroleum and the carrying on of operations, and the execution of works, for that purpose;

   (c) the measurement and the sale or disposal of the Joint Authority's and the contractor's petroleum production, and the carrying on of operations for that purpose, including procedures for transfer of title to petroleum and measurement and verification of petroleum so transferred;

   (d) the conservation, and prevention of the waste of, the natural resources, whether petroleum or otherwise;

   (e) the construction, erection, maintenance, operation, use, inspection and certification and re-certification of structures, pipelines or equipment;

   (f) the control of the flow or discharge, and the prevention of the escape, of petroleum, water or drilling fluid, or a mixture of water or drilling fluid with petroleum or any other matter;

   (g) the clean-up or other remedying of the effects of the escape of petroleum;

   (h) the prevention of damage to petroleum-bearing strata;

(i) the prevention of the waste or escape of petroleum;

(j) the removal from a contract area of structures, equipment and other property brought into the contract area for or in connection with petroleum operations;

(k) the carrying on of petroleum operations in a safe and environmentally sound manner;

(l) the preparation of assessments of the impact of petroleum operations on the environment;

(m) the authorization by the Joint Authority of entry into Area A by the employees of contractors and the employees of their sub-contractors; and

(n) the control of movement into, within and out of Area A of vessels, aircraft, structures and equipment employed in petroleum operations.

2. The Joint Authority may, by instrument in writing served on a person or class of persons, make a regulation or direction on a matter consistent with the above to apply specifically to that person or class of persons.

Article 38. Register of Contractors

The Joint Authority shall maintain a register setting out summary details of:

(a) areas over which contracts are in force;

(b) the contract operator and the contractor for each contract area;

(c) work and expenditure commitments relating to the contract area;

(d) changes to contract conditions, the contract operator and the undivided participating interest of the contractor in a contract area;

(e) blocks relinquished or surrendered from contract areas;

(f) changes in names and addresses of the contract operator and the contractor; and

(g) unitization agreements.

Article 39. Approval of Contractors

Corporations wishing to hold an undivided participating interest which would result in changes to the contractor or the contract operator in a contract area shall be required to obtain the Joint Authority's approval of those changes. The Joint Authority shall note such approval in the register. Until such approval is given by the Joint Authority, with the prior consent of the Ministerial Council, the new participating interest holders' agreement shall not be recognized by the Joint Authority, and the contractor's and contract operator's liabilities under a contract shall remain unchanged.

Article 40. Inspection of Register

The Joint Authority shall ensure the register is available for inspection by any person at all convenient times.

Article 41. Auditing of Contractor's Books and Accounts

The contractor's books and accounts shall be subject to audit by the Joint Authority, which shall be conducted annually. The Joint Authority may issue regulations and directions with respect to the auditing of books and accounts.

Article 42. Security of Structures

1. Operators of vessels, drilling rigs and structures in Area A shall be responsible for controlling access to their facilities; providing adequate surveillance of safety zones and their approaches; and establishing communications with, and arranging action by, the appropriate authorities in the event of an accident or incident involving threat to life or security.
2. To assist operators in meeting these responsibilities, the Joint Authority shall appoint persons, to be stationed at the office of the Technical Directorate of the Joint Authority, responsible for liaising with appropriate Australian and Indonesian authorities.

Article 43. Amendment of Petroleum Mining Code

Except in the case of amendments to Part VI of this Petroleum Mining Code, where the provisions of this Petroleum Mining Code are amended, to the extent that the amendments are not consistent with the provisions of contracts in force prior to the amendments, those amendments may only apply to such contracts by agreement between the contract operator and the Joint Authority.

Part VI: Fees

Article 44. Application Fees

1. The fee to be lodged with applications for production sharing contracts is US$ six thousand (6000).
2. The fee to be lodged with applications for a prospecting approval is US$ one thousand (1000).
3. Application fees shall not be refunded to unsuccessful applicants.

Article 45. Contract Service Fee

1. At the beginning of each contract year, the contract operator shall pay to the Joint Authority a contract service fee of US$ one hundred and twenty five thousand (125,000). Upon termination of a contract during the first six (6) contract years of the term of the contract, the contractor must immediately pay the Joint Authority the sum of

US$ seven hundred and fifty thousand (750,000) less any contract service fee previously paid by the contractor, to compensate the Joint Authority for any expense or loss incurred or suffered by the Joint Authority as a result of the termination of the contract.[7]

2. In addition, if one or more discovery areas have been declared in the contract area, the contract operator shall pay to the Joint Authority at the beginning of the contract year a service fee of:

   (a) US$ forty thousand (40,000) for the first discovery area; and

   (b) US$ twenty thousand (20,000) for each additional discovery area within the contract area.

3. Where more than one production structure is installed in a discovery area in the contract area, the contract operator shall pay to the Joint Authority at the beginning of the contract year an additional service fee of US$ twenty thousand (20,000).

7 Paragraph 1 was amended at the Sixth Ministerial Council Meeting at Brisbane on 20 October 1995. It originally read: "At the beginning of each contract year, the contract operator shall pay to the Joint Authority a contract service fee of US$ one hundred thousand (100,000)."

Article 46. Registration Fees

For the approval and registration of agreements between corporations which result in changes to the undivided participating interests of the contractor in a contract area, a fee of US$ five hundred (500) shall be payable.

Article 47. Amendment of Fees

With the approval of the Ministerial Council, the Joint Authority may change the fees specified in this Part to reflect any changes in the costs of administration. Those changes in fees shall not be made more frequently than once a year and shall not be applied retrospectively.

Part VII. Penal Provisions

Article 48. Termination of Contracts

1. Where the contractor has not complied with the provisions of this Petroleum Mining Code, the regulations and directions issued by the Joint Authority, or the terms of the contract the Joint Authority may recommend to the Ministerial Council that the contract be terminated. The Joint Authority shall give thirty (30) days written notice to the contractor of the Joint Authority's intention to recommend termination of the contract.

2. The Ministerial Council shall not agree to the termination of the contract until the contractor has had an opportunity to provide the Joint

Authority with reasons why the contract should not be terminated, and the Joint Authority has given full consideration to those reasons. The contractor must provide reasons for non-termination within thirty (30) days of receipt of notice of the Joint Authority's intention to terminate.

3. Notwithstanding the termination of a contract, the contractor shall remain liable to take such action as is necessary to clean-up the contract area and remove all property brought into that area. The contractor shall remain liable to the Joint Authority to pay any outstanding debts due to the Authority.

Annex C: Model Production Sharing Contract between the Joint Authority and (Contractors)

This production sharing contract, which has been approved by the Ministerial Council established under 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 (hereinafter called the Treaty), is made and entered into on this

day of, 19 by and between the Joint Authority established under the Treaty and , (a) corporation(s) organized and existing under the law of hereinafter called the "contractor", both hereinafter sometimes referred to either individually as the "Party" or collectively as the "Parties".

WITNESSETH

WHEREAS, petroleum existing within Area A of the Zone of Cooperation established by the Treaty is a resource to be exploited jointly by the Contracting States;

WHEREAS, the Joint Authority, with the approval of the Ministerial Council, has an exclusive authority to contract for petroleum operations in and throughout the area described in Appendix A of this Contract and outlined on the map which is Appendix B of this contract, which area is hereinafter referred to as the "contract area";

WHEREAS, the Joint Authority wishes to promote petroleum operations in the contract area and the contractor desires to join and assist the Joint Authority in accelerating the exploration and development of the potential petroleum resources within the contract area;

WHEREAS, the contractor has the necessary financial capability, and technical knowledge and ability to carry out the petroleum operations hereinafter described;

WHEREAS, in accordance with the Treaty, including the Petroleum Mining Code set out in Annex B of the Treaty, a cooperative agreement in the form of a production sharing contract may be entered into between the Joint Author-

ity and corporations for the purpose of petroleum operations; and

NOW, therefore, in consideration of the mutual covenants herein contained, it is agreed as follows:

Section 1: Scope and Definitions

Scope

1.1. This contract is a production sharing contract subject to the Treaty, including the Petroleum Mining Code. The Joint Authority shall be responsible for the management of the operations contemplated hereunder in accordance with its management functions defined under the Treaty, including the Petroleum Mining Code. The contractor appoints and authorizes (name of corporation to be the contract operator), being one of the contracting corporations, to be the contract operator who, on behalf of the contractor, shall be responsible to the Joint Authority for the execution of petroleum operations in accordance with the provisions of this contract, and is hereby appointed and constituted as the exclusive corporation to conduct petroleum operations. The contractor shall provide all human, financial and technical resources required for the performance of petroleum operations authorized by the contract, and shall therefore have an economic interest in the development of the petroleum pools in the contract area and be entitled to share in petroleum produced from the contract area in accordance with the provisions of Section 7 of this contract.

1.2. Except for expenditures on capital costs for the development of petroleum pools, the contractor shall not incur interest expenses to finance petroleum operations.

Definitions

1.3. Words and terms used in this contract shall have the same meaning as those defined in the Treaty, including the Petroleum Mining Code set out in Annex B to the Treaty, except where a new definition is expressly provided for in this contract.

(a) "Affiliated corporation or affiliate" means a corporation or other entity that controls, or is controlled by, a Party to this contract, it being understood that control shall mean ownership by one corporation or entity of at least fifty (50) per cent of:

(i) the voting stock, if the other corporation is a corporation issuing stock; or

(ii) the controlling rights or interests, if the other entity is not a corporation.

(b) "Barrel" means a quantity or unit of oil, having a volume of forty-two (42) United States gallons at the temperature of sixty (60) degrees Fahrenheit.

(c) "Contract area" means the area not relinquished or surrendered, constituted by the blocks which are the subject of this contract and which are specified in Appendices A and B of this contract.

(d) "Crude oil" means crude mineral oil and all liquid hydrocarbons in their natural state or obtained from natural gas by condensation or extraction.

(e) "Development plan" means a description of the proposed petroleum reservoir development and management program, details of the production facilities, the production profile for the expected life of the project, the estimated capital and non-capital expenditure covering the feasibility, fabrication, installation and pre-production stages of the project, and an evaluation of the commerciality of the development of the petroleum from within a discovery area.

(f) "Exploration and appraisal strategy" means a brief description of the exploration/geological play concepts for, the extent to which the leads and prospects are identified in, and the data reviews, seismic surveys and exploration wells planned for the contract area.

(g) "First tranche petroleum" means the quantity of petroleum production defined in subsection 9 of Section 7.

(h) "Force majeure" means circumstances beyond the control and without the fault or negligence of the contract operator and the Joint Authority including but not restricted to acts of God or the public enemy, perils of navigation, fire, hostilities, war (declared or undeclared), blockade, labor disturbances, strikes, riots, insurrections, civil commotion, quarantine restrictions, epidemics, storms, earthquakes, or accidents.

(i) "Natural gas" means all gaseous hydrocarbons, including wet mineral gas, dry mineral gas, casinghead gas and residue gas remaining after the extraction of liquid hydrocarbons from wet gas.

Section 2: Term of This Contract

2.1. Subject to the provisions of this Section and Section 13, the term of this contract shall be thirty (30) years as from the effective date.

2.2. If at the end of the initial six (6) years as from the effective date, no

petroleum is discovered in commercial quantities in the contract area, the contractor shall have the option either to terminate this contract or to request the Joint Authority, by means of a sixty (60) days written notice prior to the end of the initial six (6) years, to extend this contract to the end of the tenth year from the effective date. Where a discovery is made but has not been appraised before the end of the tenth contract year, the Joint Authority shall extend the term of this contract so as to allow completion of an expeditious appraisal of the discovery, or if necessary in the case of a natural gas discovery, until marketing arrangements and sales contracts are completed. The extension shall be promptly granted, without prejudice to the provisions of Section 13 of this contract relating to termination, provided a work program and expenditures are agreed in accordance with subsection 3 of Section 4 of this contract.

2.3. If, at the end of the term of this contract as extended under subsection 2 of this Section, no petroleum is discovered in commercial quantities in the contract area, this contract shall automatically terminate in its entirety.

2.4. If petroleum is discovered in any block or blocks of the contract area within the initial six (6) year period or any extension pursuant to subsection 2 of this Section, which the Joint Authority and the contract operator agree can be produced commercially, based on the consideration of all pertinent operating and financial data, then as to that particular block or blocks of the contract area the Joint Authority shall declare a discovery area and the contract operator shall commence development. In other blocks in the contract area, the contract operator shall continue exploration without prejudice to the provisions of Section 3 regarding the relinquishment of blocks.

2.5. If petroleum production has not ceased permanently in and from the contract area by the end of the thirtieth contract year, the Joint Authority shall give sympathetic consideration to extending the term of this contract beyond the thirtieth contract year until production ceases permanently. In the case of a natural gas project, the contract term shall be automatically extended to the end of the term of the natural gas sales contract.

2.6. If petroleum production has ceased permanently in and from the contract area before the end of the thirtieth contract year, then this contract shall be terminated upon the permanent cessation of production.

Section 3: Relinquishment of Blocks

3.1. On or before the end of the third contract year as from the effective date, the contract operator shall relinquish twenty-five (25) per cent of the blocks in the original contract area.

3.2. On or before the end of the sixth contract year the contract operator shall relinquish an additional twenty-five (25) per cent of the blocks in the original total contract area.

3.3. Subject to the provisions of Section 2 of this contract, on or before the end of the tenth contract year, the contract operator shall relinquish all of the blocks in the contract area not contained in discovery areas.

3.4. The contract operator's obligation to relinquish parts of the contract area under the preceding provisions shall not apply to any blocks in the contract area declared as a discovery area. In this respect, in calculating the percentages under subsections 1 and 2 of this Section, blocks in discovery areas shall be excluded from the original contract area.

3.5. Upon thirty (30) days written notice to the Joint Authority prior to the end of any contract year, the contract operator shall have the right to surrender some, but not all, of the blocks in the contract area, provided the conditions of the contract have been met to the satisfaction of the Joint Authority and such blocks shall then be credited against the blocks in the contract area which the contract operator is next required to relinquish under the provisions of subsections 1, 2 and 3 of this Section.

3.6. The contract operator shall advise the Joint Authority in advance of the date of relinquishment of the blocks to be relinquished. For the purpose of relinquishments, the contract operator and the Joint Authority shall consult with each other regarding which blocks are to be relinquished. So far as is reasonable, such blocks shall form an area of sufficient size and convenient shape to enable petroleum operations to be conducted thereon.

3.7. For the purposes of calculating the number of blocks to be relinquished under subsections 1 and 2 of this Section, where the number of blocks is not exactly divisible by four (4), only the whole number of blocks after the division by four (4) shall be relinquished.

Section 4: Work Program and Expenditures

4.1. The contract operator shall commence petroleum operations not later than six (6) months after the effective date.

4.2. The amount of exploration work to be undertaken by the contract

operator pursuant to the terms of this contract during the first six (6) years following the effective date shall, subject to any negotiated change to the exploration work program and expenditures for contract years four (4) to six (6), be at least that specified for each of these six (6) years as follows:[8]

	Data Review	Seismic Surveys		Wells	Expenditure
	US$	Kms	No.		US$
First Contract Year					
Second Contract Year					
Third Contract Year					
Fourth Contract Year					
Fifth Contract Year					
Sixth Contract Year					

4.3. If the contract is still in force after the sixth contract year, the Joint Authority and the contract operator shall agree to an exploration work program and expenditures for those subsequent contract years.

4.4. The Joint Authority and the contract operator may negotiate a change to the exploration work program and expenditures covering contract years four (4) to ten (10), provided the changes are made at least three (3) months prior to the beginning of the contract year affected by the changes. No changes will be made to the exploration work program and expenditures for contract years one (1) to three (3).

4.5. If during:

(a) the first three (3) contract years the contract operator completes less than the amount of exploration work required to be completed during those years, the Joint Authority shall terminate the contract;

(b) any of the contract years four (4) to ten (10) the contract operator completes less than the amount of exploration work required within that year, the Joint Authority may terminate the contract and, if the contract is not terminated, the Joint Authority shall require the completion of that work in the following contract year; or

(c) any contract year the contract operator completes more than the amount of exploration

8 First paragraph of subsection 4.2 was amended at the Sixth Ministerial Council Meeting at Brisbane on 20 October 1995. It originally read:
"The amount of exploration work to be undertaken by the contract operator pursuant to the terms of this contract during the first six (6) years following the effective date shall, unless otherwise approved by the Joint Authority, be at least that specified for each of these six (6) years as follows:"

work required to be completed by the end of that year, the excess shall be counted towards meeting the exploration work obligations of the contract operator during succeeding contract years.

4.6. For the purpose of subsection 5 of this Section, the Joint Authority, in determining whether the contract operator has completed the exploration work required to be completed in the first three (3) contract years, and in later contract years if work commitments are specified, shall have regard to the actual physical work completed, and not the estimates of expenditure. Where work commitments are not specified, the Joint Authority shall have regard to the estimates of expenditure.

4.7. At least two (2) months prior to the beginning of each calendar year, the contract operator shall prepare and submit, for approval by the Joint Authority, an exploration and appraisal strategy to be adopted for the ensuing contract year for the contract area.

4.8. At least one (1) month prior to the beginning of each calendar year, the contract operator shall prepare and submit, for approval by the Joint Authority, a work program and budget of operating costs to be carried out during the ensuing calendar year for the contract area.

4.9. Before work can commence on the development of a petroleum discovery, the contract operator shall prepare and submit, for approval by the Joint Authority, a development plan.

4.10. Should the Joint Authority wish to propose a revision to specified aspects of the work program and budget of operating costs, the Joint Authority shall specify its reasons for requesting those changes but shall not require the contract operator to undertake more petroleum operations than the minimum work program and expenditure commitments specified in this contract. The Parties shall reach agreement on any changes before they become effective.

4.11. It is recognized by the Joint Authority that the details of the work program and budget of operating costs, and the development plan may require changes in the light of existing circumstances and nothing herein contained shall limit the rights of the contract operator to make such changes, provided they do not change the general objective, quantity and quality of the petroleum operations.

4.12. The Joint Authority shall ensure that every effort is made to avoid

delays in approving the exploration and appraisal strategy, the work program and budget of operating costs, and the development plan.

Section 5: Rights and Obligations of the Parties

5.1. The contract operator shall have the rights accorded to it under the Treaty, including the Petroleum Mining Code and the Taxation Code, and in particular shall:

(a) subject to paragraph (k) of subsection 2 of this Section, have the right to enter and leave the contract area and move to and from the contract operator's facilities wherever located at all times;

(b) have the right to have access to and use all geological, geophysical, drilling, well (including well location maps), production and other information held by the Joint Authority relating to the contract area; and

(c) in accordance with the provisions of the Petroleum Mining Code, have the right to have access to and use all geological, geophysical, drilling, well, production and other information now or in the future held by the Joint Authority relating to the blocks in Area A adjacent to the contract area.

5.2. The contract operator shall comply with all of the obligations imposed on it by the Treaty, including the Petroleum Mining Code and the Taxation Code, and the regulations and directions issued under the Petroleum Mining Code and, in particular, shall:

(a) provide all human, financial and technical resources required for the performance of the petroleum operations;

(b) carry out petroleum operations in a proper and workmanlike manner and in accordance with good oilfield practice;

(c) take the necessary precautions to avoid interference with navigation and fishing;

(d) develop an environmental management plan to be approved by the Joint Authority, prevent pollution of the marine environment, and pay for the costs associated with clean-up of any pollution from any petroleum operations within the contract area;

(e) upon the termination of this contract, clean-up the contract area and remove all structures, equipment and other property brought into the contract area;

(f) submit to the Joint Authority copies of all original geological, geophysical, drilling, well, production and other data

(including cores, cuttings and samples taken in connection with petroleum operations in the contract area) and reports compiled during the term of this contract;

(g) appoint and authorize a person to represent the contract operator and communicate with the Joint Authority, and that person shall have an office in either Jakarta or Darwin or both;

(h) give preference to goods and services which are produced in Australia or the Republic of Indonesia, or provided by subcontractors operating out of Australia or the Republic of Indonesia, provided they are offered on competitive terms and conditions compared with those available from other countries;

(i) give preference to the employment of Indonesian and Australian nationals and permanent residents, and employ them in equivalent numbers over the term of this contract, having due regard to safe and efficient operations and good oilfield practice;

(j) take out and maintain, to the Joint Authority's satisfaction, from the effective date of this contract, insurance cover to the value of US$ in accordance with Article 25 of the Petroleum Mining Code;

(k) except as otherwise approved by the Joint Authority, ensure that all persons, equipment and goods do not enter structures in the contract area without first entering Australia or the Republic of Indonesia, and notify the Joint Authority of all persons, vessels, aircraft and structures entering or leaving the contract area, and of movements within the contract area; and

(l) make secure and safe all structures in the contract area, including the installation of warning lights, radar and other appropriate equipment.

5.3. The contractor shall have the rights accorded under the Treaty, including the Petroleum Mining Code and the Taxation Code, and in particular shall:

(a) have the right to appoint a new contract operator subject to prior approval by the Joint Authority;

(b) have the right to transfer all or part of its undivided participating interest in this contract to any affiliated corporation or any other corporation with the approval of the Joint Authority. Such approval shall not be

unreasonably withheld provided the corporation taking up those rights and obligations under this contract has, in the opinion of the Joint Authority, the necessary financial capability and technical knowledge and ability, in accordance with Article 11 of the Petroleum Mining Code;

(c) have the right during the term of this contract to lift, dispose of and export its share of petroleum production, subject to Section 7 of this contract, and retain abroad the proceeds obtained therefrom; and

(d) have the right to retain ownership and control of all property purchased or leased for the purposes of complying with the conditions of this contract, and be entitled to freely remove the same from the contract area, Australia or the Republic of Indonesia provided the conditions of this contract have been met.

5.4. The contractor shall comply with all of the obligations imposed on it by the Treaty, including the Petroleum Mining Code and the Taxation Code, and the regulations and directions issued under the Petroleum Mining Code and, in particular, shall:

(a) be jointly and severally liable to meet the obligations imposed on the contract operator; and

(b) be subject to the taxation law of the Contracting States, in accordance with Article 29 of the Treaty.

5.5. The Joint Authority shall comply with all of the obligations imposed on it by the Treaty, including the Petroleum Mining Code and, in particular, shall be responsible for the management of the petroleum operations contemplated hereunder having regard to the contract operator's responsibilities for undertaking the petroleum operations.

Section 6: Operating Costs

General Provisions

6.1. The accounting procedures in this Section shall be followed and observed in the performance of the contractor's obligations under the contract.

6.2. The contractor's books and accounts shall be prepared and maintained in accordance with a generally accepted and recognized accounting system consistent with modern petroleum industry practices and procedures. Books and accounts shall be available for the use of the Joint Authority in order that it may carry out its auditing responsibilities under this contract.

6.3. "Operating costs" means the sum of the following costs incurred in petroleum operations undertaken

before or at the point of tanker loading:

(a) current calendar year exploration costs;

(b) current calendar year non-capital costs;

(c) current calendar year depreciation of capital costs; and

(d) allowable operating costs incurred in previous calendar years which have not been recovered in accordance with subsection 2 of Section 7 of this contract;

less

(e) miscellaneous receipts as defined in subsection 8 of this Section.

6.4. All calculations required to determine operating costs shall be done in United States dollars. Where costs are denoted in any other currency, they shall be translated into United States dollars at the exchange rate set, on the day the cost was incurred, by a bank designated by the Joint Authority.

Exploration Costs

6.5. "Exploration costs" means those operating costs incurred which relate directly to the current calendar year's exploration operations in the contract area and include but are not limited to the following:

(a) costs of exploratory and appraisal drilling in the contract area including labor, materials and services used in the drilling of wells with the object of finding unproven reservoirs of petroleum;

(b) costs of surveys in the contract area including labor, materials and services (including desk studies and analysis of survey data) used in aerial, geological, geochemical, geophysical and seismic surveys, and core hole drilling; and

(c) costs of other exploration directly related to petroleum operations in the contract area, including the cost of auxiliary or temporary facilities used in exploration.

Non-Capital Costs

6.6. "Non-capital costs" means those operating costs incurred that relate directly to the current calendar year's operations in the contract area, excluding exploration costs and capital costs. Non-capital costs include, but are not limited to the following:

(a) costs of labor, materials and services used in day to day well operations, field production facilities operations, secondary recovery operations, storage handling, transportation and

delivery operations, gas processing auxiliaries and utilities, and other operating activities, including repairs and maintenance;

(b) costs of office, services and general administration directly related to the petroleum operations carried out in the contract area including technical and related services, office supplies, office rentals and other rentals of services and property, and personnel expenses;

(c) costs of production drilling in the contract area including labor, materials and services used in drilling wells with the object of penetrating a proven reservoir such as the drilling of delineation wells as well as redrilling, deepening or recompleting wells;

(d) costs of feasibility studies and environmental impact assessments directly related to petroleum operations in the contract area;

(e) application fees, contract service fees, and registration fees directly related to petroleum operations in the contract area;

(f) premiums paid for insurance normally required to be carried for the petroleum operations carried out by the contract operator under this contract;

(g) closing down costs, being those expenditures incurred at the end of the production life of a petroleum pool in the contract area which could include the costs of:

(i) removal of all production facilities including the removal of platforms and associated facilities;

(ii) environmental restoration including any feasibility studies; and

(h) costs of purchased geological and geophysical information.

Capital Costs

6.7. "Capital costs" means expenditures made for items directly related to petroleum operations in the contract area and which normally have a useful life of more than one (1) year. Capital costs include but are not limited to the following:

(a) costs of construction utilities and auxiliaries, workshops, power and water facilities, warehouses, site offices, access and communication facilities;

(b) costs of production facilities including offshore platforms (including the costs of labor, fuel hauling and supplies for both the offsite fabrication and onsite installation of platforms, and other construction costs

in erecting platforms), well-head production tubing, sucker rods, surface pumps, flow lines, gathering equipment, delivery lines, storage facilities, all other equipment, facilities and modules on platforms, oil jetties and anchorages, treating plants and equipment, secondary recovery systems, gas plants and steam systems;

(c) costs of pipelines and other facilities for the transporting of petroleum produced in the contract area to the point of tanker loading;

(d) costs of movable assets and subsurface drilling and production tools, equipment and instruments, and miscellaneous equipment used for production in the contract area;

(e) costs of floating craft, automotive equipment, furniture and office equipment; and

(f) if approved by the Joint Authority, costs of employee and welfare housing, recreational, educational, health and meals facilities, and other similar costs necessary for petroleum operations in Area A.

Miscellaneous Receipts

6.8. "Miscellaneous receipt" means the value of property defined in paragraph (c) below and all monies received by the contractor, other than for the disposal of petroleum produced from the contract area, which are directly related to the conduct of petroleum operations in the contract area. Miscellaneous receipts include, but are not limited to, the following:

(a) any amounts received from the sale or disposal of petroleum produced from production testing operations undertaken in exploration and appraisal wells;

(b) any amounts received for the disposal, loss, or destruction of property the cost of which is an operating cost;

(c) the value of property, the cost of which is an operating cost, when that property ceases to be used in petroleum operations in the contract area;

(d) any amounts received by the contract operator under an insurance policy, the premiums of which are operating costs, in respect of damage to or loss of property;

(e) any amounts received as insurance, compensation or indemnity in respect of petroleum production lost or destroyed prior to the point of tanker loading;

(f) any amounts received from the hiring or leasing of property,

the cost of which is an operating cost;

(g) any amounts received from supplying information obtained from surveys, appraisals, or studies the cost of which is an operating cost;

(h) any amounts received as charges for the use of employee amenities, the cost of which is an operating cost; and

(i) any amounts received in respect of expenditures which are operating costs, by way of indemnity or compensation for the incurring of the expenditure, refund of the expenditure, or rebate, discount or commission in respect of the expenditure.

Ineligible Costs

6.9. The following expenditures are not eligible as operating costs:

(a) payments of principal or interest on a loan or other borrowing costs unless approved by the Joint Authority under paragraph (c) of subsection 10 of this Section;

(b) payments of interest components of credit-purchase payments;

(c) payments of dividends or the cost of issuing shares;

(d) repayments of equity capital;

(e) payments of private override royalties;

(f) payments associated with a farm-in agreement;

(g) payments of taxes under the taxation law of either Contracting State made in accordance with Article 29 of the Treaty;

(h) payments of administrative accounting costs, and other costs indirectly associated with petroleum operations in the contract area;

(i) costs incurred once petroleum production has passed the point of tanker loading;

(j) costs incurred as a result of non-compliance by the contract operator with the provisions of this contract, the Petroleum Mining Code or the regulations and directions issued under the Petroleum Mining Code; and

(k) unless otherwise approved by the Joint Authority, costs incurred by contractors other than the contract operator.

Accounting Methods to be Used to Calculate Recovery of Operating Costs

6.10. The following methods shall be used to calculate the recovery of operating costs.

(a) Depreciation

Depreciation shall be calculated beginning in the calendar year in

which the asset to be depreciated is placed into service. A full year's depreciation shall be allowed in that calendar year. In each calendar year the allowable recovery of capital cost depreciation shall be twenty (20) per cent of the individual asset's initial capital cost (calculated using the straight line method of depreciation).

(b) Allocation of overhead costs

General and administration costs, such as those listed in paragraph (b) of subsection 6 of this Section, but other than direct charges, allocable to petroleum operations in the contract area shall be determined by a detailed study, and the method determined by such a study shall be applied each year consistently. The method determined shall require agreement of the Joint Authority and the contractor.

(c) Interest Recovery

Interest on loans obtained by a contractor at rates not exceeding prevailing commercial interest rates on loans for capital investments in development of petroleum pools may be recoverable as an operating cost provided the Joint Authority has given its approval. The Joint Authority may give its approval if it is satisfied that recovery of interest is necessary to ensure the financial viability of the project.

(d) Gas Costs

The following procedures shall be used to allocate operating costs related to natural gas production.

(i) Operating costs directly related to the production of natural gas shall be directly chargeable against natural gas revenues in determining the entitlements of the Joint Authority and the contractor under Section 7.

(ii) Operating costs incurred for the production of both natural gas and crude oil shall be allocated to natural gas and crude oil revenues based on the relative value of the products produced for the current calendar year. Common support costs shall be allocated on an equitable basis agreed to by both Parties.

(iii) If after commencement of production, the natural gas revenues do not permit full recovery of natural gas costs, as outlined above, then the excess costs shall be recovered from crude oil revenues. Likewise, if

there are excess crude oil costs (crude oil costs less crude oil revenues), this excess shall be recovered from natural gas revenues.

(iv) If production of either natural gas or crude oil has commenced while the other has not, the allocable production costs and common support costs shall be allocated on an equitable basis agreed to by both Parties. Propane and butane fractions extracted from natural gas but not spiked in crude oil shall be deemed as natural gas for the purpose of accounting.

(e) Inventory Accounting

Inventory levels shall be based on normal good oilfield practice. The value of inventory items used outside the contract area or sold, the cost of which has been recovered as an operating cost, shall be treated as miscellaneous receipts in accordance with subsection 8 of this Section. The costs of items purchased for inventory shall be recoverable as operating costs at such time as the items are landed in Area A.

(f) Insurance and Claims

Operating costs shall include premiums paid for insurance normally required to be carried for the petroleum operations relating to the contractor's obligations conducted under the contract, together with all expenditures incurred and paid in settlement of any and all losses, claims, damages, judgements and other expenses, including fees relating to the contractor's obligations under the contract.

(g) Apportioning of Costs and Miscellaneous Receipts

Where property, or any other thing, for which an operating cost is allowable or a miscellaneous receipt is assessable, is only used partially in conducting petroleum operations in the contract area, only that proportion of the cost or the receipt which relates to the conduct of petroleum operations in the contract area shall be allowed as an operating cost or assessed as a miscellaneous receipt.

Section 7: Recovery of Operating Costs and Sharing of Petroleum Production

7.1. The contractor is authorized by the Joint Authority and obliged to market all petroleum produced and saved from the contract area subject to the following provisions.

7.2. Subject to subsections 9 and 10 of this Section, to recover operating costs, the contract operator shall be

entitled to a quantity of petroleum production, which is produced and saved hereunder and not used in petroleum operations, equal in value to those costs. If in any calendar year, the operating costs exceed the value of petroleum produced and saved hereunder and not used in petroleum operations, then the unrecovered excess of operating costs shall be carried forward and recovered in succeeding years.

7.3. In each calendar year in which petroleum is produced from the contract area, if the investment credit and operating costs recoverable under subsections 10 and 2 of this Section respectively are less than the value of the quantity of petroleum produced from the contract area, then of the petroleum production remaining after deducting the quantity of petroleum production equal in value to the investment credit and operating costs, the Parties shall be entitled to take and receive the following:

(a) the Joint Authority fifty (50) per cent and the contractor fifty (50) per cent for the tranche of 0 to 50,000 barrels daily average of all crude oil production from the contract area for the calendar year;

(b) the Joint Authority sixty (60) per cent and the contractor forty (40) per cent for the tranche of 50,001 to 150,000 barrels daily average of all crude oil production from the contract area for the calendar year; and

(c) the Joint Authority seventy (70) per cent and the contractor thirty (30) per cent for the tranche of more than 150,000 barrels daily average of all crude oil production from the contract area for the calendar year.

For the purposes of calculating the daily average of all crude oil production in the calendar year when the first commercial production of crude oil from the contract area is produced, the daily average production shall be calculated by reference to the number of days in the calendar year from the day when commercial production commenced. In the calendar year when commercial production of crude oil from a contract area is terminated, the daily average production shall be calculated by reference to the number of days in the calendar year up to the day on which production is terminated in the contract area.

7.4. The method of recovering investment credits and operating costs before the entitlements are taken by each Party as provided under subsection 3 of this Section shall be subject to the following proration method. For each calendar year, the

recoverable investment credits and operating costs shall be apportioned for deduction from the production of each of the tranches defined in subsection 3 of this Section using the same ratios as the production from each such tranche over the total production of that calendar year.

7.5. Of the amount of natural gas, including propane and butane fractions extracted from natural gas but not spiked in crude oil, remaining after recovering investment credits and operating costs associated with natural gas operations, the Joint Authority shall be entitled to take and receive fifty (50) per cent and the contractor shall be entitled to take and receive fifty (50) per cent.

7.6. Title to the contractor's share of petroleum production under subsections 3, 5 and 9 of this Section as well as to the shares of petroleum production exported and sold to recover investment credits and operating costs under subsections 10 and 2 of this Section respectively shall pass to the contractor at the point of tanker loading.

7.7. The contractor shall use its best reasonable efforts to market petroleum production to the extent markets are available.

7.8. Any natural gas produced from the contract area and not used in petroleum operations hereunder may be flared if the processing and utilization of the natural gas is not considered by the Parties to be economic. Such flaring shall be permitted to the extent that gas is not required to enable the maximum economic recovery of petroleum by secondary recovery operations, including repressuring and recycling.

7.9. Notwithstanding the other provisions of this Section, in the initial five (5) calendar years of production from the contract area, the Parties shall be entitled to take and receive a quantity of petroleum equal to ten (10) per cent of the petroleum production in those years, called the "first tranche petroleum", before any recovery of investment credits and operating costs. In each subsequent calendar year, the first tranche petroleum shall be equal to twenty (20) per cent of the petroleum produced in that year. The quantity of first tranche petroleum from crude oil production for each calendar year shall be shared between the Joint Authority and the contractor in accordance with the sharing percentages as provided under subsection 3 of this Section, by apportioning it as applicable to the respective production tranches as therein defined, using the same ratios as the production from each such tranche over the total production of that calendar year. The quan-

tity of first tranche petroleum from natural gas production for each calendar year shall be shared between the Joint Authority and the contractor in accordance with the sharing percentages as provided under subsection 5 of this Section. The initial five (5) calendar years of production is to commence on the day when the first commercial production of petroleum is produced and shall end at midnight (2400 hours) local time, being 1600 hours Greenwich Mean, Time on the day preceding the fifth anniversary of this first commercial production from the contract area.

7.10. Investment credits for exploration and capital costs defined in subsection 5 of Section 6 and paragraphs (b), (c) and (d) of subsection 7 of Section 6 shall be allowed to the contract operator, and, in each calendar year, shall be recoverable by the contract operator after the sharing of the first tranche petroleum but before the recovery of operating costs. The contract operator shall recover the investment credits, as a quantity of petroleum production equal in value to one hundred and twenty seven (127) per cent of such exploration and capital costs incurred. Investment credits not recovered in the calendar year in which the exploration and capital costs were incurred may be carried forward and recovered in subsequent years.

7.11. Notwithstanding the provisions of subsection 1 of this Section which oblige the contractor to market all petroleum produced from the contract area, the Joint Authority may market any or all petroleum when the Joint Authority secures a net realized price for the petroleum, f.o.b. the contract area, which is greater than the price which can be realized by the contractor. The Joint Authority's right to market any or all of the petroleum shall continue for such period as it can secure a net realized price, f.o.b. the contract area, greater than that which can be realized by the contractor. The contract operator shall coordinate the efficient lifting of the petroleum production, including tanker nomination and scheduling.

Section 8: Valuation of Petroleum Production

8.1. Petroleum production sold to third parties shall be valued as follows:

(a) all petroleum production to which the contractor is entitled under this contract and which is sold to third parties, shall be valued at the net realized price, f.o.b. the contract area;

(b) all petroleum production to which the Joint Authority is entitled under this contract which is sold to third parties shall be

valued at the net realized price, f.o.b. the contract area; and

(c) where a contract of sale involves other than a net realized price f.o.b., the Joint Authority shall determine a fair and reasonable net f.o.b. price for the purposes of that sale.

8.2. Petroleum production sold to other than third parties shall be valued by the Joint Authority as follows:

(a) by using the weighted average per unit price, adjusted as necessary for quality, quantity, grade and specific gravity of the petroleum production, received by the contractor and the Joint Authority from sales to third parties during the three (3) months preceding such sale, excluding commissions and brokerages incurred in relation to such third party sales; and

(b) if there are no third party sales as defined in paragraph (a), at prevailing market prices, adjusted to take account of quality, quantity, grade and specific gravity of the petroleum production and taking into consideration any special circumstances with respect to sales of such petroleum production.

8.3. For the purpose of this Section, "third party sales" means sales by the contractor to independent purchasers with whom, at the time the sale is made, the contractor has no direct or indirect contractual relationship or joint interest.

8.4. Commissions or brokerages incurred in connection with sales to third parties, if any, shall not exceed the customary and prevailing rate.

8.5. During any calendar year in which petroleum is produced from the contract area, the contractor shall be liable to make provisional payments to the Joint Authority, equal to the estimated value of petroleum to which the Joint Authority is entitled under Section 7 of this contract. The provisional payments shall be made on a monthly basis unless the Joint Authority and the contractor agree on alternate arrangements. The amount of each provisional payment shall be calculated by the contractor using the estimates of operating costs contained in the work program and budget of operating costs, and the contractor's estimate of the value of quantities of petroleum sold. During the calendar year the provisional payments may be adjusted having regard to actual operating costs and the actual value of sales of petroleum. Within thirty (30) days after the end of the calendar year, adjustments and cash settlements between the Joint Authority and the contractor shall be made on the

basis of the actual amounts of the operating costs and actual value of sales of petroleum made during the calendar year, in order to comply with Section 7. Similarly, where the Joint Authority markets petroleum production pursuant to subsection 11 of Section 7, the Joint Authority shall be liable to make provisional payments to the contractor in a manner consistent with this subsection.

8.6. Petroleum production disposed of other than by sale or destruction shall be valued using the method defined in subsection 2 of this Section.

8.7. The contractor shall notify the Joint Authority of quantities and sales prices of all petroleum production sold or disposed of before the sales or disposals are made.

Section 9: Payments

9.1. The contract operator shall make all payments to the Joint Authority for which it is liable under this contract in United States dollars or some other currency agreed between the contract operator and the Joint Authority. Payments shall be made to a bank designated by the Joint Authority. Where a payment is made in currency other than United States dollars, the exchange rate used to convert the United States dollars liability into that currency shall be the exchange rate set down on the day of payment by a bank designated by the Joint Authority.

9.2. The Joint Authority shall make all payments to the contract operator in United States dollars or some other currency agreed between the contract operator and the Joint Authority. Where a payment is made in currency other than United States dollars, the exchange rate used to convert the United States dollar liability into that currency shall be the exchange rate set down on the day of payment by a bank designated by the Joint Authority.

9.3. Any payments required to be made pursuant to this contract shall be made within ten (10) days following the end of the month in which the obligation to make such payments is incurred.

Section 10: Tenders for Petroleum Operations

10.1. The contract operator shall draw invitations to tender for sub-contracts to the attention of Australian and Indonesian sub-contractors.

10.2. Subject to subsection 4 of this Section, all tenders for petroleum operations called by the contract operator shall be subject to approval by the Joint Authority.

10.3. The Joint Authority shall provide its approval or non-approval

within thirty (30) days of receipt of the tender details from the contract operator. The tender details to be provided by the contract operator shall include a summary of the tenders received compared against the tender criteria determined by the contract operator and the reasons for the selection of the preferred tender.

10.4. Notwithstanding subsection 2 of this Section, the contract operator may enter into sub-contracts without the approval of the Joint Authority where:

(a) the tender for petroleum operations is expected to involve expenditure of less than US$ two million (2,000,000);

(b) the tender for petroleum operations is expected to involve expenditure of less than US$ ten million (10,000,000) and those operations form part of a project for the development of petroleum resources, the cost of which is expected to exceed US$ one hundred million (100,000,000); or

(c) the tender selected by the contract operator is the lowest cost tender and has been submitted by an Australian or Indonesian corporation.

10.5. The contract operator shall provide the Joint Authority, for information, with the full financial details of the sub-contract, irrespective of the amount of the expenditure involved.

Section 11: Title to Equipment

11.1. Equipment purchased by the contract operator pursuant to the work program and budget of operating costs remains the property of the contractor and shall be used in petroleum operations.

Section 12: Consultation and Arbitration

12.1. Periodically, the Joint Authority and the contract operator shall meet to discuss the conduct of petroleum operations under this contract and shall make every effort to settle amicably any problems arising therefrom.

12.2. Disputes, if any, arising between the Joint Authority and contractor relating to this contract or the interpretation and performance of this contract which cannot be settled amicably shall be submitted to arbitration.

12.3. Except as may be otherwise agreed by the Parties, arbitration shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce.

12.4. The Joint Authority on the one hand and the contractor on the other hand shall each appoint one arbitrator and so advise the other

Party, and these two arbitrators shall appoint a third. If either Party fails to appoint an arbitrator within thirty (30) days after receipt of a written request to do so, such arbitrator shall, at the request of the other Party, if the Parties do not otherwise agree, be appointed by the President of the International Chamber of Commerce. If the first two arbitrators appointed as aforesaid fail to agree on a third within thirty (30) days following the appointment of the second arbitrator, the third arbitrator shall, if the Parties do not otherwise agree, be appointed, at the request of either Party, by the President of the International Chamber of Commerce. If an arbitrator fails or is unable to act, that arbitrator's successor shall be appointed in the same manner as the arbitrator who is replaced.

12.5. The decision of a majority of the arbitrators shall be final and binding upon the Parties and an award may be enforced in any court having jurisdiction for that purpose. In accordance with paragraph 2 of Article 11 of the Treaty, in the event that the Joint Authority cannot meet an obligation under an arbitral award arising from a dispute under this contract, the Contracting States shall contribute the necessary funds in equal shares to enable the Joint Authority to meet that obligation.

12.6. The place of arbitration shall be (to be agreed by the Parties before the contract is signed). The language of the arbitration shall be (to be agreed by the Parties before the contract is signed).

Section 13: Termination

13.1. This contract shall not be terminated during the first three (3) years from the effective date.

13.2. Subject to subsection 1 of this Section, this contract may be terminated at any time by agreement of the Parties or in accordance with Article 48 of the Petroleum Mining Code.

Section 14: Books, Accounts and Audits

Books and Accounts

14.1. In addition to any requirements pursuant to paragraph (b) of subsection 4 of Section 5, the contractor shall keep complete books and accounts recording all operating costs as well as monies received from the sale or disposal of petroleum production.

Audits

14.2. The Joint Authority may require independent auditing of the contractor's books and accounts relating to this contract for any calendar year and may require the independent auditor to perform such auditing

procedures as are deemed appropriate by the Joint Authority. The contractor shall forward a copy of the independent accountant's report to the Joint Authority within sixty (60) days following the completion of the audit. The Joint Authority reserves the right to inspect and audit the contractor's books and accounts relating to this contract.

Section 15: Other Provisions

Notices

15.1. Any notices required or given by either Party to the other shall be served in accordance with Article 35 of the Petroleum Mining Code.

15.2. All notices to be served on the contract operator shall be addressed to:

(contract operator's address)

15.3. All notices to be served on the Joint Authority relating to matters for which the head office of the Joint Authority is responsible shall be addressed to:

(address of the Joint Authority's head office)

15.4. All notices to be served on the Joint Authority relating to matters for which the Technical Directorate of the Joint Authority is responsible shall be addressed to:

(address of the Joint Authority's Technical Directorate)

15.5. Either Party may substitute or change the above such address by giving written notice to the other.

Applicable Law

15.6. Subject to the provisions of the Treaty, including the Petroleum Mining Code, the law of shall apply to this contract.

Suspension of Obligations

15.7. Any failure or delay on the part of either Party in the performance of its obligations or duties under the contract shall be excused to the extent that such failure or delay is attributable to force majeure.

15.8. If exploration is delayed, curtailed or prevented by force majeure the Joint Authority shall agree to vary the work program and expenditure commitments or exempt the contract operator from part or all of the work program and expenditure commitments during the period of force majeure.

15.9. The Party whose ability to perform its obligations is so affected by force majeure shall immediately notify the other Party in writing, stating the cause, and both Parties shall do all that is reasonably within their power to discharge their obligations.

Section 16: Effectiveness

16.1. This contract shall come into effect on the day it is entered into by and between the Joint Authority and the contractor.

16.2. This contract shall not be amended or modified in any respect, except by the mutual consent in writing of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this contract, in triplicate and in the English language, on this day of, 19 .

Annex D: Taxation Code for the Avoidance of Double Taxation in Respect of Activities Connected with Area A of the Zone of Cooperation

Article 1. General Definitions

1. In this Taxation Code, unless the context otherwise requires:
   (a) the term "Australian tax" means tax imposed by Australia, other than any penalty or interest, being tax to which this Taxation Code applies;
   (b) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
   (c) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of the Republic of Indonesia, the Minister of Finance or an authorised representative of the Minister;
   (d) the term "Indonesian tax" means tax imposed by the Republic of Indonesia, other than any penalty or interest, being tax to which this Taxation Code applies;
   (e) the term "law of a Contracting State" means the law of that Contracting State from time to time in force relating to the taxes to which this Taxation Code applies;
   (f) the term "person" includes an individual, a company and any other body of persons; and
   (g) the terms "tax" or "taxation" mean Australian tax or Indonesian tax, as the context requires.
2. In the application of this Taxation Code by a Contracting State any term not defined in this Taxation Code or elsewhere in the Treaty shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State from time to time in force relating to the taxes to which this Taxation Code applies.

Article 2. Personal Scope

The provisions of this Taxation Code shall apply to persons who are residents of one or both of the Contracting States as well as in respect of persons who are not residents of either of the Contracting States, but only for taxation purposes related directly or indirectly to:

(a) the exploration for or the exploitation of petroleum in Area A; or

(b) acts, matters, circumstances and things touching, concerning, arising out of or connected with any such exploration or exploitation.

Article 3. Taxes Covered

1. The existing taxes to which this Taxation Code shall apply are:

   (a) in Australia:

      (i) the income tax imposed under the federal law of Australia;

      (ii) the fringe benefits tax imposed under the federal law of Australia; and

      (iii) the sales tax imposed under the federal law of Australia;

   (b) in Indonesia:

      (i) the income tax (Pajak-Penghasilan), including the tax on profits after income tax payable by a contractor, imposed under the law of the Republic of Indonesia, and its implementing regulations;

      (ii) the value-added tax on goods and services and sales tax on luxury goods (Pajak Pertambahan Nilai atas Barang dan Jasa dan Pajak Penjualan atas Barang Mewah) imposed under the law of the Republic of Indonesia, and its implementing regulations.

2. The provisions of this Taxation Code shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Treaty in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

Article 4. Business Profits

1. For the purposes of the taxation law of each Contracting State, the business profits or losses of a person, other than an individual, derived from, or incurred in, Area A in a year shall be reduced by fifty (50) per cent.

2. Business profits derived from Area A in a year by an individual who is a

resident of a Contracting State shall be taxable only in that Contracting State.

3. Business profits derived from Area A in a year by an individual who is not a resident of either Contracting State may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of fifty (50) per cent of the gross tax payable on those profits in that Contracting State.

4. Business losses, incurred in Area A in a year by an individual who is not a resident of either Contracting State, that are eligible under the law of a Contracting State to be carried forward for deduction against future income shall, for the purposes of that law, be reduced by fifty (50) per cent.

5. For the purposes of paragraphs 1 and 4 of this Article any losses brought forward from prior years in accordance with the law of a Contracting State as a deduction from income shall not be taken into account in determining the profit or loss for the year.

6. For the purposes of this Article:
   (a) the term "year" means:
      (i) in Australia, any year of income;
      (ii) in Indonesia, any taxable year; and
   (b) the terms "business profits" and "business losses" do not include gains or losses of a capital nature to which Article 8 of this Taxation Code applies.

Article 5. Dividends

1. Dividends which are paid by a company which is a resident of a Contracting State wholly or partly out of profits derived from sources in Area A, and which are beneficially owned by a resident of the other Contracting State, may be taxed only in that other Contracting State.

2. The term "dividends" as used in this Article means income from shares or other rights participating in profits and not relating to debt claims, as well as other income which is subjected to the same taxation treatment as income from shares by the law of the Contracting State of which the company making the distribution is a resident.

Article 6. Interest

1. Interest paid by a contractor, being interest to which a resident of a Contracting State is beneficially entitled, may be taxed in that Contracting State.

2. Such interest may also be taxed in the other Contracting State, but the tax so charged shall not exceed ten (10) per cent of the gross amount of the interest.

3. Where such interest is taxed in the other Contracting State in accordance with paragraph 2 of this Article, that interest shall, for the purposes of determining a foreign tax credit entitlement under the taxation law of the Contracting State referred to in paragraph 1 of this Article, be deemed to be income derived from sources in the other Contracting State.

4. Interest paid by a contractor, being interest to which a person who is not a resident of either Contracting State is beneficially entitled, may be taxed in both Contracting States but the taxable amount of any such interest shall be an amount equivalent to fifty (50) per cent of the amount that would be the taxable amount but for this paragraph.

Article 7. Royalities

1. Royalties paid by a Contractor, being royalties to which a resident of a Contracting State is beneficially entitled, may be taxed in that Contracting State.

2. Such royalties may also be taxed in the other Contracting State, but the tax so charged shall not exceed ten (10) per cent of the gross amount of the royalties.

3. Where such royalties are taxed in the other Contracting State in accordance with paragraph 2 of this Article, those royalties shall, for the purposes of determining a foreign tax credit entitlement under the taxation law of the Contracting State referred to in paragraph 1 of this Article, be deemed to be income derived from sources in the other Contracting State.

4. Royalties paid by a Contractor, being royalties to which a person who is not a resident of either Contracting State is beneficially entitled, may be taxed in both Contracting States but the taxable amount of any such royalties shall be an amount equivalent to fifty (50) per cent of the amount that would be the taxable amount but for this paragraph.

Article 8. Alienation of Property

1. Where a gain or loss of a capital nature accrues to or is incurred by an individual who is a resident of a Contracting State, from the alienation of property situated in Area A or shares or comparable interests in a company, the assets of which consist wholly or principally of property situated in Area A, the amount of the gain or loss shall be taxable, or otherwise recognised for taxation purposes, only in that Contracting State.

2. Where a gain or loss of a capital nature accrues to or is incurred by a person, other than an individual who is a resident of a Contracting

State, from the alienation of property situated in Area A or shares or comparable interests in a company, the assets of which consist wholly or principally of property situated in Area A, the amount of the gain or loss shall, for the purposes of the law of a Contracting State, be an amount equivalent to fifty (50) per cent of the amount that would be the gain or loss but for this paragraph.

Article 9. Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services, or other independent activities of a similar character, performed in Area A shall be taxable only in that Contracting State.

2. Income derived by an individual who is not a resident of either Contracting State in respect of professional services, or other independent activities of a similar character, performed in Area A may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of fifty (50) per cent of the gross tax payable in that Contracting State on the income referred to in this paragraph.

Article 10. Dependent Personal Services

1. Salaries, wages and other similar remuneration derived by an individual who is a resident of a Contracting State in respect of employment exercised in Area A shall be taxable only in that Contracting State.

2. Remuneration derived by an individual who is not a resident of either Contracting State in respect of employment exercised in Area A may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of fifty (50) per cent of the gross tax payable in that Contracting State on the income referred to in this paragraph.

Article 11. Other Income

1. Items of income of a resident of a Contracting State, derived from sources in Area A, not dealt with in the foregoing Articles of this Taxation Code shall be taxable only in that Contracting State.

2. Items of income of a person who is not a resident of either Contracting State, derived from sources in Area A and not dealt with in the foregoing Articles of this Taxation Code may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of fifty (50) per cent of the gross tax payable in that Contracting State on the income referred to in this paragraph.

Article 12. Fringe Benefits

For the purposes of the taxation law of Australia, the taxable value of any fringe benefits provided in a year of tax to employees, who are not residents of either Contracting State, in a year of tax in respect of employment exercised in Area A shall be reduced by fifty (50) per cent.

Article 13. Goods Imported into Area A

Goods imported into Area A from a place other than either Contracting State shall not be taxable in either Contracting State unless and until such goods are permanently transferred to another part of a Contracting State in which case the goods may be taxed only in the Contracting State last referred to.

Article 14. Mutual Agreement Procedure

1. Where a person considers that the actions of the competent authority of one or both of the Contracting States result or will result for the person in taxation not in accordance with the provisions of this Taxation Code, the person may, irrespective of the remedies provided by the domestic law of the Contracting States, present a case to the competent authority of the Contracting State of which the person is a resident, or to either competent authority in the case of persons who are not residents of either Contracting State. The case must be presented within three (3) years from the first notification of the action resulting in taxation not in accordance with the provisions of this Taxation Code.
2. The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Taxation Code. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Taxation Code.

Article 15. Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Taxation Code or of the domestic law of the Contracting States concerning taxes covered by this Taxation Code, insofar as the taxation thereunder is not contrary to this Taxation Code, in particular for the prevention of avoidance or evasion of such taxes. Any information

received by the competent authority of a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Taxation Code and shall be used only for such purposes.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on the competent authority of a Contracting State the obligation:

(a) to carry out administrative measures at variance with the law or the administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the law or in the normal course of the administration of that or of the other Contracting State; or

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

B. 2002 Timor Sea Treaty between the Government of East Timor and the Government of Australia

Adopted on 20 May 2002 in Dili, East Timor

Entered into force on 2 April 2003

THE GOVERNMENT OF AUSTRALIA

and

THE GOVERNMENT OF EAST TIMOR

CONSCIOUS of the importance of promoting East Timor's economic development;

AWARE of the need to maintain security of investment for existing and planned petroleum activities in an area of seabed between Australia and East Timor;

RECOGNISING the benefits that will flow to both Australia and East Timor by providing a continuing basis for petroleum activities in an area of seabed between Australia and East Timor to proceed as planned;

EMPHASISING the importance of developing petroleum resources in a way that minimizes damage to the natural environment, that is economically sustainable, promotes further investment and contributes to the long-term development of Australia and East Timor;

CONVINCED that the development of the resources in accordance with this Treaty will provide a firm foundation for continuing and strengthening the friendly relations between Australia and East Timor;

TAKING INTO ACCOUNT the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982, which provides in Article 83 that the delimitation of the 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;

TAKING FURTHER INTO ACCOUNT, in the absence of delimitation, the further obligation for States to make every effort, in a spirit of understanding and co-operation, to enter into provisional arrangements of a practical nature which do not prejudice a final determination of the seabed delimitation;

NOTING the desirability of Australia and East Timor entering into a Treaty providing for the continued development of the petroleum resources in an area of seabed between Australia and East Timor;

HAVE AGREED as follows:

Article 1. Definitions

For the purposes of this Treaty:

(a) "Treaty" means this Treaty, including Annexes A-G and any Annexes subsequently agreed between Australia and East Timor.

(b) "contractor" means a corporation or corporations which enter into a contract with the Designated Authority and which is registered as a contractor under the Petroleum Mining Code".

(c) "criminal law" means any law in force in Australia and East Timor, whether substantive or procedural, that makes provision for or in relation to offences or for or in relation to the investigation or prosecution of offences or the punishment of offenders, including the carrying out of a penalty imposed by a court. For this purpose, "investigation" includes entry to an installation or structure in the JPDA, the exercise of powers of search and questioning and the apprehension of a suspected offender.

(d) "Designated Authority" means the Designated Authority established in Article 6 of this Treaty.

(e) "fiscal scheme" means a royalty, a Production Sharing Contract, or other scheme for determining Australia's and East Timor's share of petroleum or revenue from petroleum activities and does not include taxes referred to in Article 5 (b) of this Treaty.

(f) "initially processed" means processing of petroleum to a point where it is ready for off-take from the production facility and may include such processes as the removal of water, volatiles and other impurities.

(g) "Joint Commission" means the Australia-East Timor Joint Commission established in Article 6 of this Treaty.

(h) "JPDA" means the Joint Petroleum Development Area established in Article 3 of this Treaty.

(i) "Ministerial Council" means the Australia-East Timor Ministerial Council established in Article 6 of this Treaty.

(j) "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 substances produced in association with such hydrocarbons;

and includes any petroleum as defined by sub-paragraphs (i), (ii)

or (iii) that has been returned to a natural reservoir.

(k) "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.

(l) "Petroleum Mining Code" means the Code referred to in Article 7 of this Treaty.

(m) "petroleum project" means petroleum activities taking place in a specified area within the JPDA.

(n) "petroleum produced" means initially processed petroleum extracted from a reservoir through petroleum activities.

(o) "Production Sharing Contract" means a contract between the Designated Authority and a limited liability corporation or entity with limited liability under which production from a specified area of the JPDA is shared between the parties to the contract.

(p) "reservoir" means an accumulation of petroleum in a geological unit limited by rock, water or other substances without pressure communication through liquid or gas to another accumulation of petroleum.

(q) "taxation code" means the code referred to in Article 13 (b) of this Treaty.

Article 2. Without Prejudice

(a) 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.

(b) Nothing contained in this Treaty and no acts taking place while this Treaty is in force shall be interpreted as prejudicing or affecting Australia's or East Timor's position on or rights relating to a seabed delimitation or their respective seabed entitlements.

Article 3. Joint Petroleum Development Area

(a) The Joint Petroleum Development Area (JPDA) is established. It is the area in the Timor Sea contained within the lines described in Annex A.

(b) Australia and East Timor shall jointly control, manage and facilitate

the exploration, development and exploitation of the petroleum resources of the JPDA for the benefit of the peoples of Australia and East Timor.

(c) Petroleum activities conducted in the JPDA shall be carried out pursuant to a contract between the Designated Authority and a limited liability corporation or entity with limited liability specifically established for the sole purpose of the contract. This provision shall also apply to the successors or assignees of such corporations.

(d) Australia and East Timor shall make it an offence for any person to conduct petroleum activities in the JPDA otherwise than in accordance with this Treaty.

Article 4. Sharing of Petroleum Production

(a) Australia and East Timor shall have title to all petroleum produced in the JPDA. Of the petroleum produced in the JPDA, ninety (90) percent shall belong to East Timor and ten (10) percent shall belong to Australia.

(b) To the extent that fees referred to in Article 6(b)(vi) and other income are inadequate to cover the expenditure of the Designated Authority in relation to this Treaty, that expenditure shall be borne in the same proportion as set out in paragraph (a).

Article 5. Fiscal Arrangements and Taxes

Fiscal arrangements and taxes shall be dealt with in the following manner:

(a) Unless a fiscal scheme is otherwise provided for in this Treaty:

i. Australia and East Timor shall make every possible effort to agree on a joint fiscal scheme for each petroleum project in the JPDA.

ii. If Australia and East Timor fail to reach agreement on a joint fiscal scheme referred to in sub-paragraph (i), they shall jointly appoint an independent expert to recommend an appropriate joint fiscal scheme to apply to the petroleum project concerned.

iii. If either Australia or East Timor does not agree to the joint fiscal scheme recommended by the independent expert, Australia and East Timor may each separately impose their own fiscal scheme on their proportion of the production of the project as calculated in accordance with the formula contained in Article 4 of this Treaty.

iv. If Australia and East Timor agree on a joint fiscal scheme pursuant to this Article, neither Australia nor East Timor may during the life of the project vary that scheme except by

mutual agreement between Australia and East Timor.

(b) Consistent with the formula contained in Article 4 of this Treaty, Australia and East Timor may, in accordance with their respective laws and the taxation code, impose taxes on their share of the revenue from petroleum activities in the JPDA and relating to activities referred to in Article 13 of this Treaty.

Article 6. Regulatory Bodies

(a) A three-tiered joint administrative structure consisting of a Designated Authority, a Joint Commission and a Ministerial Council is established.

(b) Designated Authority:

i. For the first three years after this Treaty enters into force, or for a different period of time if agreed to jointly by Australia and East Timor, the Joint Commission shall designate the Designated Authority.

ii. After the period specified in sub-paragraph (i), the Designated Authority shall be the East Timor Government Ministry responsible for petroleum activities or, if so decided by the Ministry, an East Timor statutory authority.

iii. For the period specified in sub-paragraph (i), the Designated Authority has juridical personality and such legal capacities under the law of both Australia and East Timor as are necessary for the exercise of its powers and the performance of its functions. In particular, the Designated Authority shall have the capacity to contract, to acquire and dispose of movable and immovable property and to institute and be party to legal proceedings.

iv. The Designated Authority shall be responsible to the Joint Commission and shall carry out the day-today regulation and management of petroleum activities.

v. A non-exclusive listing of more detailed powers and functions of the Designated Authority is set out in Annex C. The Annexes to this Treaty may identify other additional detailed powers and functions of the Designated Authority. The Designated Authority also has such other powers and functions as may be conferred upon it by the Joint Commission.

vi. The Designated Authority shall be financed from fees collected under the Petroleum Mining Code.

vii. For the period specified in sub-paragraph (i), the Designated

Authority shall be exempt from the following existing taxes:

(1) in East Timor, the income tax imposed under the law of East Timor;

(2) in Australia, the income tax imposed under the federal law of Australia; as well as any identical or substantially similar taxes which are imposed after the date of signature of this Treaty in addition to, or in place of, the existing taxes.

viii. For the period specified in subparagraph (i), personnel of the Designated Authority:

(1) shall be exempt from taxation of salaries, allowances and other emoluments paid to them by the Designated Authority in connection with their service with the Designated Authority other than taxation under the law of Australia or East Timor in which they are deemed to be resident for taxation purposes; and

(2) shall, at the time of first taking up the post with the Designated Authority located in either Australia or East Timor in which they are not resident, be exempt from customs duties and other such charges (except payments for services) in respect of imports of furniture and other household and personal effects in their ownership or possession or already ordered by them and intended for their personal use or for their establishment; such goods shall be imported within six months of an officer's first entry but in exceptional circumstances an extension of time shall be granted by the Government of Australia or the Government of East Timor; goods which have been acquired or imported by officers and to which exemptions under this subparagraph apply shall not be given away, sold, lent or hired out, or otherwise disposed of except under conditions agreed in advance with the Government of Australia or the Government of East Timor depending on in which country the officer is located.

(c) Joint Commission:

i. The Joint Commission shall consist of commissioners appointed by Australia and East Timor. There shall be one more commissioner appointed by East Timor

than by Australia. The Joint Commission shall establish policies and regulations relating to petroleum activities in the JPDA and shall oversee the work of the Designated Authority.

ii. A non-exclusive listing of more detailed powers and functions of the Joint Commission is set out in Annex D. The Annexes to this Treaty may identify other additional detailed powers and functions of the Joint Commission.

iii. Except as provided for in Article 8(c), the commissioners of either Australia or East Timor may at any time refer a matter to the Ministerial Council for resolution.

iv. The Joint Commission shall meet annually or as may be required. Its meetings shall be chaired by a member nominated by Australia and East Timor on an alternate basis.

(d) Ministerial Council:

i. The Ministerial Council shall consist of an equal number of Ministers from Australia and East Timor. It shall consider any matter relating to the operation of this Treaty that is referred to it by either Australia or East Timor. It shall also consider any matter referred to in sub-paragraph (c) (iii).

ii. In the event the Ministerial Council is unable to resolve a matter, either Australia or East Timor may invoke the dispute resolution procedure set out in Annex B.

iii. The Ministerial Council shall meet at the request of either Australia or East Timor or at the request of the Joint Commission.

iv. Unless otherwise agreed between Australia and East Timor, meetings of the Ministerial Council where at least one member representing Australia and one member representing East Timor are physically present shall be held alternately in Australia and East Timor. Its meetings shall be chaired by a representative of Australia or East Timor on an alternate basis.

v. The Ministerial Council may, if it so chooses, permit members to participate in a particular meeting, or all meetings, by telephone, closed-circuit television or any other means of electronic communication, and a member who so participates is to be regarded as being pres-

ent at the meeting. A meeting may be held solely by means of electronic communication.

(e) Commissioners of the Joint Commission and personnel of the Designated Authority shall have no financial interest in any activity relating to exploration for and exploitation of petroleum resources in the JPDA.

Article 7. Petroleum Mining Code

(a) Australia and East Timor shall negotiate an agreed Petroleum Mining Code which shall govern the exploration, development and exploitation of petroleum within the JPDA, as well as the export of petroleum from the JPDA.

(b) In the event Australia and East Timor are unable to conclude a Petroleum Mining Code by the date of entry into force of this Treaty, the Joint Commission shall in its inaugural meeting adopt an interim code to remain in effect until a Petroleum Mining Code is adopted in accordance with paragraph (a).

Article 8. Pipelines

(a) The construction and operation of a pipeline within the JPDA for the purposes of exporting petroleum from the JPDA shall be subject to the approval of the Joint Commission. Australia and East Timor shall consult on the terms and conditions of pipelines exporting petroleum from the JPDA to the point of landing.

(b) A pipeline landing in East Timor shall be under the jurisdiction of East Timor. A pipeline landing in Australia shall be under the jurisdiction of Australia.

(c) In the event a pipeline is constructed from the JPDA to the territory of either Australia or East Timor, the country where the pipeline lands may not object to or impede decisions of the Joint Commission regarding a pipeline to the other country. Notwithstanding Article 6(c)(iii), the Ministerial Council may not review or change any such decisions.

(d) Paragraph (c) shall not apply where the effect of constructing a pipeline from the JPDA to the other country would cause the supply of gas to be withheld from a limited liability corporation or limited liability entity which has obtained consent under this Treaty to obtain gas from a project in the JPDA for contracts to supply gas for a specified period of time.

(e) Neither Australia nor East Timor may object to, nor in any way impede, a proposal to use floating gas to liquids processing and off-take in the JPDA on a commercial basis where such proposal shall produce higher revenues to Australia and East Timor from royalties and taxes earned from

activities conducted within the JPDA than would be earned if gas were transported by pipeline.

(f) Paragraph (e) shall not apply where the effect of floating gas to liquids processing and off-take in the JPDA would cause the supply of gas to be withheld from a limited liability corporation or limited liability entity which has obtained consent under this Treaty to obtain gas from the JPDA for contracts to supply gas for a specified period of time.

(g) Petroleum from the JPDA and from fields which straddle the boundaries of the JPDA shall at all times have priority of carriage along any pipeline carrying petroleum from and within the JPDA.

(h) There shall be open access to pipelines for petroleum from the JPDA. The open access arrangements shall be in accordance with good international regulatory practice. If Australia has jurisdiction over the pipeline, it shall consult with East Timor over access to the pipeline. If East Timor has jurisdiction over the pipeline, it shall consult with Australia over access to the pipeline.

Article 9. Unitisation

(a) Any reservoir of petroleum that extends across the boundary of the JPDA shall be treated as a single entity for management and development purposes.

(b) Australia and East Timor shall work expeditiously and in good faith to reach agreement on the manner in which the deposit will be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation.

Article 10. Marine Environment

(a) Australia and East Timor shall co-operate to protect the marine environment of the JPDA so as to prevent and minimise pollution and other environmental harm from petroleum activities. Special efforts shall be made to protect marine animals including marine mammals, seabirds, fish and coral. Australia and East Timor shall consult as to the best means to protect the marine environment of the JPDA from the harmful consequences of petroleum activities.

(b) Where pollution of the marine environment occurring in the JPDA spreads beyond the JPDA, Australia and East Timor shall co-operate in taking action to prevent, mitigate and eliminate such pollution.

(c) The Designated Authority shall issue regulations to protect the marine environment in the JPDA. It shall establish a contingency plan for combating pollution from petroleum activities in the JPDA.

(d) Limited liability corporations or limited liability entities shall be liable for damage or expenses incurred as a result of pollution of the marine environment arising out of petroleum activities within the JPDA in accordance with:

i. their contract, licence or permit or other form of authority issued pursuant to this Treaty; and

ii. the law of the jurisdiction (Australia or East Timor) in which the claim is brought.

Article 11. Employment

(a) Australia and East Timor shall:

i. take appropriate measures with due regard to occupational health and safety requirements to ensure that preference is given in employment in the JPDA to nationals or permanent residents of East Timor; and

ii. facilitate, as a matter of priority, training and employment opportunities for East Timorese nationals and permanent residents.

(b) Australia shall expedite and facilitate processing of applications for visas through its Diplomatic Mission in Dili by East Timorese nationals and permanent residents employed by limited liability corporations or limited liability entities in Australia associated with petroleum activities in the JPDA.

Article 12. Health and Safety for Workers

The Designated Authority shall develop, and limited liability corporations or limited liability entities shall apply, occupational health and safety standards and procedures for persons employed on structures in the JPDA that are no less effective than those standards and procedures that would apply to persons employed on similar structures in Australia and East Timor. The Designated Authority may adopt, consistent with this Article, standards and procedures taking into account an existing system established under the law of either Australia or East Timor.

Article 13. Application of Taxation Law

(a) For the purposes of taxation law related directly or indirectly to:

i. the exploration for or the exploitation of petroleum in the JPDA; or

ii. acts, matters, circumstances and things touching, concerning arising out of or connected with such exploration and exploitation the JPDA shall be deemed to be, and treated by, Australia and East Timor, as part of that country.

(b) The taxation code to provide relief from double taxation relating to

petroleum activities is set out in Annex G.

(c) The taxation code contains its own dispute resolution mechanism. Article 23 of this Treaty shall not apply to disputes covered by that mechanism.

Article 14. Criminal Jurisdiction

(a) A national or permanent resident of Australia or East Timor shall be subject to the criminal law of that country in respect of acts or omissions occurring in the JPDA connected with or arising out of exploration for and exploitation of petroleum resources, provided that a permanent resident of Australia or East Timor who is a national of the other country shall be subject to the criminal law of the latter country.

(b) Subject to paragraph (d), a national of a third state, not being a permanent resident of either Australia or East Timor, shall be subject to the criminal law of both Australia and East Timor in respect of acts or omissions occurring in the JPDA connected with or arising out of petroleum activities. Such a person shall not be subject to criminal proceedings under the law of either Australia or East Timor 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.

(c) In cases referred to in paragraph (b), Australia and East Timor 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.

(d) 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 JPDA.

(e) Australia and East Timor 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.

(f) Both Australia and East Timor 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.

(g) Australia and East Timor 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 (a) 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 15. Customs, Quarantine and Migration

(a) Australia and East Timor may, subject to paragraphs (c), (e), (f) and (g), apply customs, migration and quarantine laws to persons, equipment and goods entering its territory from, or leaving its territory for, the JPDA. Australia and East Timor may adopt arrangements to facilitate such entry and departure.

(b) Limited liability corporations or other limited liability entities shall ensure, unless otherwise authorised by Australia or East Timor, that persons, equipment and goods do not enter structures in the JPDA without first entering Australia or East Timor, and that their employees and the employees of their subcontractors are authorised by the Designated Authority to enter the JPDA.

(c) Either country may request consultations with the other country in relation to the entry of particular persons, equipment and goods to structures in the JPDA aimed at controlling the movement of such persons, equipment or goods.

(d) Nothing in this Article prejudices the right of either Australia or East Timor to apply customs, migration and quarantine controls to persons, equipment and goods entering the JPDA without the authority of either country. Australia and East Timor may adopt arrangements to co-ordinate the exercise of such rights.

(e) Goods and equipment entering the JPDA for purposes related to petroleum activities shall not be subject to customs duties.

(f) Goods and equipment leaving or in transit through either Australia or East Timor for the purpose of entering the JPDA for purposes related to petroleum activities shall not be subject to customs duties.

(g) Goods and equipment leaving the JPDA for the purpose of being permanently transferred to a part of either Australia or East Timor may be subject to customs duties of that country.

Article 16. Hydrographic and Seismic Surveys

(a) Australia and East Timor shall have the right to carry out hydrographic surveys to facilitate petroleum activities in the JPDA. Australia and East Timor shall co-operate on:

  i. the conduct of such surveys, including the provision of necessary on-shore facilities; and

  ii. exchanging hydrographic information relevant to petroleum activities in the JPDA.

(b) For the purposes of this Treaty, Australia and East Timor shall co-operate in facilitating the conduct of seismic surveys in the JPDA, including in the provision of necessary on-shore facilities.

Article 17. Petroleum Industry Vessel - Safety, Operating Standards and Crewing

Except as otherwise provided in this Treaty, vessels of the nationality of Australia or East Timor engaged in petroleum activities in the JPDA shall be subject to the law of their nationality in relation to safety and operating standards and crewing regulations. Vessels with the nationality of other countries shall apply the law of Australia or East Timor depending on whose ports they operate, in relation to safety and operating standards, and crewing regulations. Such vessels that enter the JPDA and do not operate out of either Australia or East Timor under the law of both Australia or East Timor shall be subject to the relevant international safety and operating standards.

Article 18. Surveillance

(a) For the purposes of this Treaty, Australia and East Timor shall have the right to carry out surveillance activities in the JPDA.

(b) Australia and East Timor shall co-operate on and co-ordinate any surveillance activities carried out in accordance with paragraph (a).

(c) Australia and East Timor shall exchange information derived from any surveillance activities carried out in accordance with paragraph (a).

Article 19. Security Measures

(a) Australia and East Timor shall exchange information on likely threats to, or security incidents relating to, exploration for and exploitation of petroleum resources in the JPDA.

(b) Australia and East Timor shall make arrangements for responding to security incidents in the JPDA.

Article 20. Search and Rescue

Australia and East Timor shall, at the request of the Designated Authority and consistent with this Treaty, co-operate on and assist with search and rescue operations in the JPDA taking into account

generally accepted international rules, regulations and procedures established through competent international organisations.

Article 21. Air Traffic Services

Australia and East Timor shall, in consultation with the Designated Authority or at its request, and consistent with this Treaty, co-operate in relation to the operation of air services, the provision of air traffic services and air accident investigations, within the JPDA, in accordance with national laws applicable to flights to and within the JPDA, recognizing established international rules, regulations and procedures where these have been adopted by Australia and East Timor.

Article 22. Duration of the Treaty

This Treaty shall be in force until there is a permanent seabed delimitation between Australia and East Timor or for thirty years from the date of its entry into force, whichever is sooner. This Treaty may be renewed by agreement between Australia and East Timor. Petroleum activities of limited liability corporations or other limited liability entities entered into under the terms of the Treaty shall continue even if the Treaty is no longer in force under conditions equivalent to those in place under the Treaty.

Article 23. Settlement of Disputes

(a) With the exception of disputes falling within the scope of the taxation code referred to in Article 13(b) of this Treaty and which shall be settled in accordance with that code, any dispute concerning the interpretation or application of this Treaty shall, as far as possible, be settled by consultation or negotiation.

(b) Any dispute which is not settled in the manner set out in paragraph (a) and any unresolved matter relating to the operation of this Treaty under Article 6(d)(ii) shall, at the request of either Australia or East Timor, be submitted to an arbitral tribunal in accordance with the procedure set out in Annex B.

Article 24. Amendment

This Treaty may be amended at any time by written agreement between Australia and East Timor.

Article 25. Entry into Force

(a) This Treaty shall enter into force upon the day on which Australia and East Timor have notified each other in writing that their respective requirements for entry into force of this Treaty have been complied with.[9]

(b) Upon entry into force, the Treaty will be taken to have effect and all of

9 Entered into force on 2 April 2003 following an exchange of diplomatic notes.

its provisions will apply and be taken to have applied on and from the date of signature.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

DONE at Dili, on this twentieth day of May, Two thousand and two in two originals in the English language.

For the Government of Australia
John Howard (Prime Minister)

For the Government of East Timor
Mari Alkatiri (Prime Minister)

Annex A: Under Article 3 of This Treaty Designation and Description of the JPDA

NOTE

Where for the purposes of the Treaty it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the Australian Geodetic Datum, that is to say, by reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6 378 160 metres and a flattening of 1/298.25 and by reference to the position of the Johnston Geodetic Station in the Northern Territory of Australia. That station shall be taken to be situated at Latitude 25°56'54.5515" South and at Longitude 133°12'30.0771" East and to have a ground level of 571.2 metres above the spheroid referred to above.

THE AREA

The area bounded by the line-

(a) commencing at the point of Latitude 9deg. 22' 53" South, Longitude 127deg. 48' 42" East;

(b) running thence south-westerly along the geodesic to the point of Latitude 10deg. 06' 40" South, Longitude 126deg. 00' 25" East;

(c) thence south-westerly along the geodesic to the point of Latitude 10deg. 28' 00" South, Longitude 126deg. 00' 00" East;

(d) thence south-easterly along the geodesic to the point of Latitude 11deg. 20' 08" South, Longitude 126deg. 31' 54" East;

(e) thence north-easterly along the geodesic to the point of Latitude 11deg. 19' 46" South, Longitude 126deg. 47' 04" East;

(f) thence north-easterly along the geodesic to the point of Latitude 11deg. 17' 36" South, Longitude 126deg. 57' 07" East;

(g) thence north-easterly along the geodesic to the point of Latitude 11deg. 17' 30" South, Longitude 126deg. 58' 13" East;

(h) thence north-easterly along the geodesic to the point of

Latitude 11deg. 14' 24" South, Longitude 127deg. 31' 33" East;

(i) thence north-easterly along the geodesic to the point of Latitude 10deg. 55' 26" South, Longitude 127deg. 47' 04" East;

(j) thence north-easterly along the geodesic to the point of Latitude 10deg. 53' 42" South, Longitude 127deg. 48' 45" East;

(k) thence north-easterly along the geodesic to the point of Latitude 10deg. 43' 43" South, Longitude 127deg. 59' 16" East;

(l) thence north-easterly along the geodesic to the point of Latitude 10deg. 29' 17" South, Longitude 128deg. 12' 24" East;

(m) thence north-westerly along the geodesic to the point of Latitude 9deg. 29' 57" South, Longitude 127deg. 58' 47" East;

(n) thence north-westerly along the geodesic to the point of Latitude 9deg. 28' 00" South, Longitude 127deg. 56' 00" East; and

(o) thence north-westerly along the geodesic to the point of commencement.

Annex B: Under Article 23 of This Treaty

Dispute Resolution Procedure

(a) An arbitral tribunal to which a dispute is submitted pursuant to Article 23 (b), shall consist of three persons appointed as follows:

i. Australia and East Timor shall each appoint one arbitrator;

ii. the arbitrators appointed by Australia and East Timor shall, within sixty (60) days of the appointment of the second of them, by agreement, select a third arbitrator who shall be a citizen, or permanent resident of a third country which has diplomatic relations with both Australia and East Timor;

iii. Australia and East Timor shall, within sixty (60) days of the selection of the third arbitrator, approve the selection of that arbitrator who shall act as Chairman of the Tribunal.

(b) Arbitration proceedings shall be instituted upon notice being given through the diplomatic channel by the country instituting such proceedings to the other country. Such notice shall contain a statement setting forth in summary form the grounds of the claim, the nature of the relief sought, and the name of the arbitrator appointed by the country instituting such proceedings. Within sixty (60) days after the giving of such notice the respondent country shall notify the country instituting proceedings of the name of the arbitrator appointed by the respondent country.

(c) If, within the time limits provided for in sub-paragraphs (a) (ii) and (iii) and paragraph (b) of this Annex, the required appointment has not been made or the required approval has not been given, Australia or East Timor may request the President of the International Court of Justice to make the necessary appointment. If the President is a citizen or permanent resident of Australia or East Timor or is otherwise unable to act, the Vice-President shall be invited to make the appointment. If the Vice-President is a citizen, or permanent resident of Australia or East Timor or is otherwise unable to act, the Member of the International Court of Justice next in seniority who is not a citizen or permanent resident of Australia or East Timor shall be invited to make the appointment.

(d) In case any arbitrator appointed as provided for in this Annex shall resign or become unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

(e) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Chairman of the Tribunal. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(f) The Arbitral Tribunal shall decide all questions relating to its competence and shall, subject to any agreement between Australia and East Timor, determine its own procedure.

(g) Before the Arbitral Tribunal makes a decision, it may at any stage of the proceedings propose to Australia and East Timor that the dispute be settled amicably. The Arbitral Tribunal shall reach its award by majority vote taking into account the provisions of this Treaty and relevant international law.

(h) Australia and East Timor shall each bear the costs of its appointed arbitrator and its own costs in preparing and presenting cases. The cost of the Chairman of the Tribunal and the expenses associated with the conduct of the arbitration shall be borne in equal parts by Australia and East Timor.

(i) The Arbitral Tribunal shall afford to Australia and East Timor a fair hearing. It may render an award on the default of either Australia or East Timor. In any case, the Arbitral Tribunal shall render its award within six (6) months from the date it is convened by the Chairman of the Tribunal. Any award shall be rendered in writing and shall state its legal basis. A signed counterpart

of the award shall be transmitted to Australia and East Timor.

(j) An award shall be final and binding on Australia and East Timor.

Annex C: Under Article 6(B)(V) of This Treaty

Powers and Functions of the Designated Authority

The powers and functions of the Designated Authority shall include:

(a) day-to-day management and regulation of petroleum activities in accordance with this Treaty and any instruments made or entered into under this Treaty, including directions given by the Joint Commission;

(b) preparation of annual estimates of income and expenditure of the Designated Authority for submission to the Joint Commission. Any expenditure shall only be made in accordance with estimates approved by the Joint Commission or otherwise in accordance with regulations and procedures approved by the Joint Commission;

(c) preparation of annual reports for submission to the Joint Commission;

(d) requesting assistance from the appropriate Australian and East Timor authorities consistent with this Treaty

i. for search and rescue operations in the JPDA;

ii. in the event of a terrorist threat to the vessels and structures engaged in petroleum operations in the JPDA ; and

iii. for air traffic services in the JPDA;

(e) requesting assistance with pollution prevention measures, equipment and procedures from the appropriate Australian and East Timor authorities or other bodies or persons;

(f) establishment of safety zones and restricted zones, consistent with international law, to ensure the safety of navigation and petroleum operations;

(g) controlling movements into, within and out of the JPDA of vessels, aircraft, structures and other equipment employed in exploration for and exploitation of petroleum resources in a manner consistent with international law; and, subject to Article 15, authorising the entry of employees of contractors and their subcontractors and other persons into the JPDA;

(h) issuing regulations and giving directions under this Treaty on all matters related to the supervision and control of petroleum activities including on health, safety, environmental protection and assessments

and work practices, pursuant to the Petroleum Mining Code; and

(i) such other powers and functions as may be identified in other Annexes to this Treaty or as may be conferred on it by the Joint Commission.

Annex D: Under Article 6(C)(II) of This Treaty

Powers and Functions of the Joint Commission

1. The powers and functions of the Joint Commission shall include:
   (a) giving directions to the Designated Authority on the discharge of its powers and functions;
   (b) conferring additional powers and functions on the Designated Authority;
   (c) adopting an interim Petroleum Mining Code pursuant to Article 7(b) of the Treaty, if necessary;
   (d) approving financial estimates of income and expenditure of the Designated Authority;
   (e) approving rules, regulations and procedures for the effective functioning of the Designated Authority;
   (f) designating the Designated Authority for the period referred to in Article 6(b)(i);
   (g) at the request of a member of the Joint Commission inspecting and auditing the Designated Authority's books and accounts or arranging for such an audit and inspection;
   (h) approving the result of inspections and audits of contractors' books and accounts conducted by the Joint Commission;
   (i) considering and adopting the annual report of the Designated Authority;
   (j) of its own volition or on recommendation by the Designated Authority, in a manner not inconsistent with the objectives of this Treaty amending the Petroleum Mining Code to facilitate petroleum activities in the JPDA;
2. The Joint Commission shall exercise its powers and functions for the benefit of the peoples of Australia and East Timor having regard to good oilfield, processing, transport and environmental practice.

Annex E: Under Article 9(B) of This Treaty

Unitisation of Greater Sunrise

(a) Australia and East Timor agree 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.

(b) Either Australia or East Timor may request a review of the production sharing formula. Following such a review, the production sharing formula may be altered by agreement between Australia and East Timor.

(c) The unitisation agreement referred to in paragraph (a) shall be without prejudice to a permanent delimitation of the seabed between Australia and East Timor.

(d) In the event of a permanent delimitation of the seabed, Australia and East Timor shall reconsider the terms of the unitisation agreement referred to in paragraph (a). Any new agreement shall preserve the terms of any production sharing contract, licence or permit which is based on the agreement in paragraph (a).

Annex F: Under Article 5(A) of This Treaty

Fiscal Scheme for Certain Petroleum Deposits

Contracts shall be offered to those corporations holding, immediately before entry into force of the Treaty, contracts numbered 91-12, 91-13, 95-19, and 96-20 in the same terms as those contracts, modified to take into account the administrative structure under this Treaty, or as otherwise agreed by Australia and East Timor.

Annex G: Under Article 13 (B) of This Treaty

Taxation Code for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion in Respect of Activities Connected with the Joint Petroleum Development Area

Article 1. General definitions

1. In this Taxation Code, unless the context otherwise requires:

   (a) the term "Australian tax" means tax imposed by Australia, other than any penalty or interest, being tax to which this Taxation Code applies;

   (b) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;

   (c) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of East Timor, the Minister for Finance or an authorised representative of the Minister;

   (d) the term "East Timor tax" means tax imposed by East Timor, other than any penalty

or interest, being tax to which this Taxation Code applies;

(e) the term "framework percentage" means, in the case of Australia, ten (10) percent and, in the case of East Timor, ninety (90) percent;

(f) the term "law of a Contracting State" means the law from time to time in force in that Contracting State relating to the taxes to which this Taxation Code applies;

(g) the term "person" includes an individual, a company and any other body of persons;

(h) the term "reduction percentage" means, in the case of Australia, ninety (90) percent and, in the case of East Timor, ten (10) percent;

(i) the terms "tax" or "taxation" mean Australian tax or East Timor tax, as the context requires; and

(j) the term "year" means, in Australia, any year of income and, in East Timor, any tax year.

2. In the application of this Taxation Code at any time by a Contracting State any term not defined in this Taxation Code or elsewhere in the Treaty shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that Contracting State for the purposes of the taxes to which this Taxation Code applies, any meaning under the applicable tax law of that State prevailing over a meaning given to the term under other law of that State.

Article 2. Personal scope

The provisions of this Taxation Code shall apply to persons who are residents of one or both of the Contracting States as well as in respect of persons who are not residents of either of the Contracting States, but only for taxation purposes related directly or indirectly to:

(a) the exploration for or the exploitation of petroleum in the JPDA; or

(b) acts, matters, circumstances and things touching, concerning, arising out of or connected with any such exploration or exploitation.

Article 3. Resident

1. For the purposes of this Taxation Code, resident of a Contracting State means:

(a) in the case of Australia, a person who is liable to tax in Australia by reason of being a resident of Australia under the tax law of Australia; and

(b) in the case of East Timor, a person who is liable to tax in East Timor by reason of being a resident of East Timor under the

tax law of East Timor, but does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State.

2. Where by reason of the provisions of paragraph 1 of this Article, an individual is a resident of both Contracting States, then the status of the person shall be determined as follows:

   (a) the person shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person;

   (b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State in which the person has an habitual abode;

   (c) if the person has an habitual abode in both Contracting States, or if the person does not have an habitual abode in either of them, the person shall be deemed to be a resident solely of the Contracting State with which the person's personal and economic relations are the closer. For the purposes of this subparagraph, an individual's nationality or citizenship of one of the Contracting States shall be a factor in determining the degree of the individual's personal and economic relations with that Contracting State;

   (d) if it cannot be determined with which Contracting State the person's personal and economic relations are the closer, the competent authorities of the Contracting States shall consult with a view to settling the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting State in which its place of effective management is situated.

Article 4. Taxes covered

1. The existing taxes to which this Taxation Code shall apply are:

   (a) in Australia:

   (i) the income tax, but excluding the petroleum resource rent tax;

   (ii) the fringe benefits tax;

   (iii) the goods and services tax; and

   (iv) the superannuation guarantee charge,

   imposed under the federal law of Australia;

   (b) in East Timor:

(i) the income tax, including either the tax on profits after income tax or the additional profits tax, as applicable to a specified petroleum project or part of a project;

(ii) the value added tax and sales tax on luxury goods ("value added tax"); and

(iii) the sales tax,

imposed under the law of East Timor.

2. The provisions of this Taxation Code shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Treaty in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any relevant changes which have been made in their respective taxation law as soon as possible after such changes.

3. A Contracting State shall not impose a tax not covered by the provisions of the Taxation Code in respect of or applicable to:

(a) the exploration for or exploitation of petroleum in the JPDA; or

(b) any petroleum exploration or exploitation related activity carried on in the JPDA, unless the other Contracting State consents to the imposition of that tax.

4. Nothing in paragraph 3 of this Article shall be taken to prevent a Contracting State from imposing, in accordance with its law, penalty or interest charges relating to the taxes covered by this Taxation Code.

Article 5. Business profits

1. For the purposes of the taxation law of each Contracting State, the business profits or losses of a person, other than an individual, derived from, or incurred in, the JPDA in a year shall be reduced by the reduction percentage.

2. (a) Business profits or losses derived from the JPDA in a year by an individual who is a resident of a Contracting State may be taxed in both Contracting States as reduced by the reduction percentage.

(b) Notwithstanding subparagraph 2(a), the Contracting State of which the individual is a resident may tax those profits or recognise those losses without such reduction. In such a case, that Contracting State shall provide a tax offset against the tax payable on those profits by the individual in that State for the tax paid in the other Contracting State.

3. Business profits derived from the JPDA in a year by an individual who is not a resident of either Contracting State may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of the reduction percentage of the gross tax payable on those profits in that Contracting State.

4. Business losses, incurred in the JPDA in a year by an individual who is not a resident of either Contracting State, that are eligible under the law of a Contracting State to be carried forward for deduction against future income shall, for the purposes of that law, be reduced by the reduction percentage.

5. Where losses are brought forward from prior years as a deduction, those losses may not also be taken into account when calculating the business profits or business losses for the year in which they are brought forward as a deduction.

6. Where profits include items of income which are dealt with separately in other Articles of this Taxation Code or where losses are dealt with separately in other Articles of this Taxation Code, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. In establishing whether business profits are derived from the JPDA for the purposes of this Article, regard is to be had to internationally accepted principles on the source of business profits, particularly taking into consideration the extent to which activities in the JPDA, or assets located in the JPDA, rather than elsewhere, contributed to those business profits. In applying such internationally accepted principles special regard shall be had to the location of:

   (a) any activities or functions contributing to the business profits;

   (b) any assets relevant to the derivation of the business profits; and

   (c) any business and financial risks assumed by an entity and which relate to the business profits.

8. For the purposes of paragraph 7, particular account should be had to the terms of any relevant unitisation agreement to the extent to which they do not conflict with the internationally accepted principles referred to in that paragraph.

9. In determining whether business losses are incurred in the JPDA, regard is to be had to internationally accepted principles as to where business losses are incurred, with a view to an approach consistent with paragraphs 7 and 8 of this Article.

10. Where particular business profits are derived wholly or principally from the JPDA, or particular business losses are incurred wholly or principally in the JPDA, then such profits or losses shall be treated as fully derived from or fully incurred in, as the case may be, the JPDA. In other cases, the relevant proportion should be attributed to the JPDA. In the application of this paragraph the Contracting States shall seek a consistent approach, including as between the treatment of profits and losses, and should consult if necessary to this end.

11. For the purposes of this Taxation Code, the East Timor additional profits tax shall be regarded as a tax on business profits.

Article 6. Shipping and air transport

1. Profits from all shipping and air transport, where the transport of the relevant goods or persons commences at a place in the JPDA to any other place, whether inside or outside the JPDA, shall in their entirety be regarded as business profits derived from the JPDA.

2. Profits from all shipping and air transport internal to the JPDA, shall in their entirety be regarded as business profits derived from the JPDA.

3. Profits from all shipping and air transport, where the transport of the relevant goods or persons commences outside the JPDA, and ends in the JPDA, shall not be regarded as derived from the JPDA.

Article 7. Petroleum Valuation

The value of petroleum shall for all purposes under the taxation law of both Contracting States be the value as determined in accordance with internationally accepted arm's length principles having due regard to functions performed, assets used and risks assumed.

Article 8. Dividends

1. Dividends paid or credited by a company which is a resident of a Contracting State wholly or mainly out of profits, income or gains derived from sources in the JPDA, and which are beneficially owned by a resident of the other Contracting State, may be taxed in that other Contracting State. However, such dividends may also be taxed in the first-mentioned Contracting State and according to the law of that State, but the tax so charged shall not exceed fifteen (15) per cent of the gross amount of the dividends.

2. Dividends paid or credited by a company which is a resident of a Contracting State wholly or mainly out of profits, income or gains derived from sources in the JPDA, and which are beneficially owned by

a resident of that Contracting State, shall be taxable only in that State.

3. Dividends paid or credited by a company which is a resident of a Contracting State wholly or mainly out of profits, income or gains derived from sources in the JPDA, and which are beneficially owned by a person who is not a resident of either Contracting State, may be taxed in both Contracting States but the taxable amount of any such dividends shall be an amount equivalent to the framework percentage of the amount that would be the taxable amount but for this paragraph.

4. The term "dividends" as used in this Article means income from shares or other rights participating in profits and not relating to debt claims, as well as other income which is subjected to the same taxation treatment as income from shares by the law of the Contracting State of which the company making the distribution is a resident.

5. Notwithstanding any other provisions of this Taxation Code, where a company which is a resident of a Contracting State derives profits, income or gains from the JPDA, such profits, income or gains may be subject in the other Contracting State to a tax on profits after income tax in accordance with its law, but such tax shall not exceed fifteen (15) per cent of the gross amount of such profits, income or gains after deducting from those profits, income or gains the income tax imposed on them in that other State. Such tax shall be imposed upon the amount equivalent to the framework percentage of the amount that would be taxed but for this paragraph.

6. For the purposes of this Article, "derived from" has the same meaning as expressed in Article 5.

Article 9. Interest

1. Interest paid or credited by a contractor, being interest to which a resident of a Contracting State is beneficially entitled, may be taxed in that Contracting State.

2. Such interest may also be taxed in the other Contracting State, but the tax so charged shall not exceed ten (10) per cent of the gross amount of the interest.

3. Interest paid or credited by a contractor, being interest to which a person who is not a resident of either Contracting State is beneficially entitled, may be taxed in both Contracting States but the taxable amount of any such interest shall be an amount equivalent to the framework percentage of the amount that would be the taxable amount but for this paragraph.

4. The term "interest" in this Taxation Code, includes interest from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, interest from any form of indebtedness and all other income assimilated to income from money lent by law, relating to tax, of the Contracting State in which the income arises.

Article 10. Royalties

1. Royalties paid or credited by a contractor, being royalties to which a resident of a Contracting State is beneficially entitled, may be taxed in that Contracting State.

2. Such royalties may also be taxed in the other Contracting State, but the tax so charged shall not exceed ten (10) per cent of the gross amount of the royalties.

3. Royalties paid or credited by a contractor, being royalties to which a person who is not a resident of either Contracting State is beneficially entitled, may be taxed in both Contracting States but the taxable amount of any such royalties shall be an amount equivalent to the framework percentage of the amount that would be the taxable amount but for this paragraph.

4. The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

   (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;

   (b) the use of, or the right to use, any industrial, commercial or scientific equipment;

   (c) the supply of scientific, technical, industrial or commercial knowledge or information;

   (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c); or

   (e) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

Article 11. Alienation of property

1. Where a gain or loss of a capital nature accrues to or is incurred by a person, other than an individual who is a resident of a Contracting State, from the alienation of

property situated in the JPDA or of shares or comparable interests in a company, the assets of which consist (directly or indirectly, including for example through a chain of companies), wholly or principally of property situated in the JPDA, the amount of gain or loss shall, for the purposes of the law of a Contracting State, be an amount equivalent to the framework percentage of the amount that would be the gain or loss but for this paragraph.

2. When a gain or loss of a capital nature accrues to or is incurred by an individual who is a resident of a Contracting State, from the alienation of property situated in the JPDA or of shares or comparable interests in a company, the assets of which consist (directly or indirectly, including for example through a chain of companies), wholly or mainly of property situated in the JPDA, the amount of the gain or loss may, for the purposes of the law of a Contracting State, be an amount equivalent to the reduction percentage of the amount that would be the gain or loss but for this paragraph.

3. Notwithstanding paragraph 2, the Contracting State of which the individual is a resident may tax that gain or recognise that loss of a capital nature without such reduction. In such a case, that Contracting State shall provide a tax offset against the tax payable on that gain by the individual in that other Contracting State.

Article 12. Independent personal services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services, or other independent activities of a similar character, performed in the JPDA may be taxed in both Contracting States as reduced by the reduction percentage.

2. Notwithstanding paragraph (1), the Contracting State of which the individual is a resident may tax such income without such reduction. In such a case, that Contracting State shall provide a tax offset against the tax payable on that income by the individual in that State for the tax paid in the other Contracting State.

3. Income derived by an individual who is not a resident of either Contracting State in respect of professional services, or other independent activities of a similar character, performed in the JPDA may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of the reduction percentage of the gross tax payable in that Contracting State on income referred to in this paragraph.

Article 13. Dependent personal services

1. Salaries, wages and other similar remuneration derived by an individual who is a resident of a Contracting State in respect of employment exercised in the JPDA may be taxed in both Contracting States as reduced by the reduction percentage.
2. Notwithstanding paragraph (1), the Contracting State in which the individual is a resident may tax such remuneration without such reduction. In such a case, that State shall provide a tax offset against the tax payable on such remuneration by the individual in that Contracting State for the tax paid in the other Contracting State.
3. Remuneration derived by an individual who is not a resident of either Contracting State in respect of employment exercised in the JPDA may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of the reduction percentage of the gross tax payable in that Contracting State on the income referred to in this paragraph.

Article 14. Other income

1. Items of income of a resident of a Contracting State other than an individual, derived from sources in the JPDA and not dealt with in the foregoing Articles of this Taxation Code, shall be reduced by the reduction percentage.
2. Items of income of a resident individual of a Contacting State derived from sources in the JPDA and not dealt with in the foregoing Articles of this Taxation Code, may be taxed in both Contracting States as reduced by the reduction percentage.
3. Notwithstanding paragraph (2), the Contracting State in which the individual is a resident may tax such items of income without such reduction. In such a case, that State shall provide a tax offset against the tax payable on those items of income by the individual in that State for the tax paid in the other Contracting State.
4. Items of income of a person who is not a resident of either Contracting State, derived from sources in the JPDA and not dealt with in the foregoing Articles of this Taxation Code may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of the reduction percentage of the gross tax payable in that Contracting State on the income referred to in this paragraph.
5. For the purposes of this Article, "derived from" has the same meaning as expressed in Article 5.

Article 15. Fringe benefits

For the purposes of the taxation law of Australia, the amount of Australian fringe benefits tax payable in relation to fringe benefits provided to employees in a year, in respect of employment exercised in the JPDA, shall be:

(a) in the case of such employees who are residents of Australia, the fringe benefits tax may be applied without reduction;

(b) in respect of employees who are residents of East Timor, the fringe benefits tax shall not be applied; and

(c) in respect of employees who are not residents of either Contracting State, the amount payable shall be reduced by the reduction percentage.

Article 16. Superannuation guarantee charge

The superannuation guarantee charge imposed by Australia in respect of employment exercised in the JPDA in a year may be applied only in so far as it relates to employees who are residents of Australia, in which case it may be applied without reduction.

Article 17. Miscellaneous

In any case where income, profits or gains are not derived from the JPDA as that term is used in Article 5, for the purposes of this Code, neither Contracting State shall tax those income, profits or gains on a basis, in effect, of their source in the JPDA.

Article 18. Indirect taxes

Goods introduced into the JPDA, whether or not from a Contracting State, and services provided to a person in the JPDA, may, at or following introduction, be taxed in both Contracting States in accordance with applicable Australian goods and services tax law or the East Timor value added tax or sales tax law as the case may be, but the taxable amount in relation to such goods and services shall be an amount equivalent to the framework percentage of the amount that would be the taxable amount but for this paragraph.

Article 19. Avoidance of double taxation

1. In the case of Australia, subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle of this Article), East Timor tax paid under the law of East Timor and in accordance with this Taxation Code, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia of the following types:

   (a) dividends paid wholly or mainly out of profits, income or gains

as referred to in paragraph 1 of Article 8;

(b) interest paid by a contractor as referred to in paragraph 2 of Article 9;

(c) royalties paid by a contractor as referred to in paragraph 2 of Article 10; or

(d) profits, income or gains after income tax as referred to in paragraph 5 of Article 8, shall be allowed as a credit against Australian tax payable in respect of that income.

2. In the case of East Timor, subject to the provisions of the law of East Timor from time to time in force which relate to the allowance of a credit against East Timor tax of tax paid in a country outside East Timor (which shall not affect the general principle of this Article), Australian tax paid under the law of Australia and in accordance with this Taxation Code, whether directly or by deduction, in respect of income derived by a person who is a resident of East Timor of the following types:

(a) dividends paid wholly or mainly out of profits, income or gains as referred to in paragraph 1 of Article 8;

(b) interest paid by a contractor as referred to in paragraph 2 of Article 9;

(c) royalties paid by a contractor as referred to in paragraph 2 of Article 10; or

(d) profits, income or gains after income tax as referred to in paragraph 5 of Article 8, shall be allowed as a credit against East Timor tax payable in respect of that income.

3. The dividends, interest or royalties taxed by a Contracting State in accordance with the provisions of this Taxation Code and referred to in this Article shall for the purposes of determining a foreign tax credit entitlement under the law of the other Contracting State, be deemed to be income derived from sources in the first-mentioned Contracting State.

Article 20. Mutual agreement procedure

1. Where a person considers that the actions of the competent authority of one or both of the Contracting States result or will result for the person in taxation not in accordance with the provisions of this Taxation Code, the person may, irrespective of the remedies provided by the domestic law of the Contracting States, present a case to the competent authority of the Contracting State of which the person is a resident, or to either competent authority in the case of persons who are not residents of either Contracting State. The case must

be presented within thirty-six (36) months from the first notification of the action resulting in taxation not in accordance with the provisions of the Taxation Code.

2. The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Taxation Code. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. In considering whether the actions of a Contracting State are or are not in accordance with the provisions of this Taxation Code for the purposes of this Article, particular regard is to be had to the objects and purposes of this Taxation Code, including especially that of the avoidance of double taxation.

4. The competent authorities of the Contracting States shall jointly endeavour to resolve any difficulties or doubts arising as to the interpretation or application of this Taxation Code. The competent authorities of the Contracting States may meet from time to time or otherwise communicate for the purposes of discussing the operation and application of this Taxation Code. They may also consult together in relation to juridical or economic double taxation in cases not specifically provided for in this Taxation Code.

5. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Taxation Code may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 4 of this Article or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

Article 21. Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Taxation Code or of the domestic law of the Contracting States concerning taxes covered by this Taxation Code, insofar as the taxation thereunder is not contrary to this Taxation Code, in particular for

the prevention of avoidance or evasion of such taxes. Any information received by the competent authority of a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Taxation Code and shall be used only for such purposes. Such persons or authorities may disclose the information in public courts or tribunal proceedings or in judicial or tribunal decisions relating to taxes covered by this Taxation Code.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on the competent authority of a Contracting State the obligation:

   (a) to carry out administrative measures at variance with the law or the administrative practice of that or of the other Contracting State;

   (b) to supply information which is not obtainable under the law or in the normal course of the administration of that or of the other Contracting State; or

   (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or to supply information the disclosure of which would be contrary to public policy.

Article 22. Interaction with other taxation arrangements

Nothing in this Taxation Code is intended to limit the operation of a taxation arrangement concluded by either Contracting State with a third country or territory unless so provided for in such treaty.

Article 23. Transitional provisions

1. Business losses incurred in the JPDA by a person in a year previous to the year in which this Taxation Code enters into force and business losses apportionable in accordance with paragraph 2 to that part of the year prior to the date that this Taxation Code enters into domestic law effect, may, for the purposes of the taxation law of a Contracting State and in accordance with the provisions of that law, be carried forward for deduction against income which is subject to the provisions of this Taxation Code, in accordance with the provisions of this Taxation Code.

2. In the year in which this Taxation Code enters into force the Contracting States shall only apply the

framework percentage or reduction percentage to that proportion of income, losses and other items addressed by this Taxation Code which corresponds to that portion of the period from the date of entry into domestic law effect to the end of the year.

Article 24. Review mechanism

At the request of either of the Contracting States, the Contracting States shall review the terms and operations of this Taxation Code with a view to amending the Taxation Code, if considered necessary.

Article 25. Entry into force

This Taxation Code shall enter into force at the same time as the Treaty to which it forms part.

C. 2003 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

Concluded on 6 March 2003 in Dili, East Timor

Entered into force on 23 February 2007

THE GOVERNMENT OF AUSTRALIA

and

THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE,

CONSIDERING that the exploration in the Timor Sea between Australia and Timor-Leste has proved the existence of petroleum deposits which extend across the eastern boundary of the Joint Petroleum Development Area; those deposits being known as the Sunrise and Troubadour deposits (collectively known as Greater Sunrise);

NOTING 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;

DESIRING, before production commences, to make provisions for the integrated exploitation of Greater Sunrise;

ACKNOWLEDGING that Australia and Timor-Leste agreed under Annex E of the Timor Sea Treaty to unitise Greater Sunrise on the basis that 20.1% of Greater Sunrise lies within the JPDA and that 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;

RECALLING further the Memorandum of Understanding between the Government of Australia and the Government of the Democratic Republic of Timor-Leste of 20 May 2002 in which they agreed to work expeditiously and in good faith to conclude a unitisation agreement for Greater Sunrise;

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement, unless the context otherwise requires:

(a) "Apportionment Ratio" means the ratio as set out in Article 7 of this Agreement or such other ratio as applies from time to time as a result of any redetermination under Article 8.

(b) "Commercial Sale", in relation to Petroleum, means a transfer of title

between parties, whether or not at arm's length.

(c) "Development Plan" means a description of the proposed petroleum reservoirs development and management program that includes details of the sub-surface evaluation and production facilities, the production profile for the expected life of the project, the estimated capital and non-capital expenditure covering the feasibility, fabrication, installation and pre-production stages of the project, and an evaluation of the commerciality of the development of Petroleum from the Unit Reservoirs.

(d) "Export Pipeline" means any pipeline by which petroleum is discharged from the Unit Area.

(e) "Joint Commission" means the Joint Commission of the Joint Petroleum Development Area established under Article 6 of the Timor Sea Treaty.

(f) "Joint Petroleum Development Area" ("JPDA") means the area referred to in Article 3 of the Timor Sea Treaty.

(g) "Joint Venturers' Agreement" means any agreement between all Sunrise Joint Venturers relating to the exploitation of the Unit Reservoirs including a unitisation agreement, a unit operating agreement and any other agreement relating to the exploitation of those reservoirs.

(h) "Marketable Petroleum Commodity" means any of the following products produced from petroleum:

(i) stabilised crude oil;

(ii) sales gas;

(iii) condensate;

(iv) liquefied petroleum gas;

(v) ethane;

(vi) any other product declared by the Regulatory Authorities to be a marketable petroleum commodity.

A marketable petroleum commodity cannot be a product produced from another product of a kind referred to in subparagraphs (i) to (vi) inclusive.

(i) "MPC Point" means that point where each Marketable Petroleum Commodity is produced, and may vary between Marketable Petroleum Commodities.

(j) "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 sub-

stances produced in association with such hydrocarbons; including any Petroleum as defined in subparagraph (i), (ii) or (iii) that has been returned to a natural reservoir.

(k) "Regulatory Authorities" means the competent authority for administering petroleum activities in that part of the Joint Petroleum Development Area within the Unit Area and the competent Australian authority for administering petroleum activities in that part of the Unit Area outside of the Joint Petroleum Development Area.

(l) "Sunrise Commission" has the meaning given in Article 9 of this Agreement.

(m) "Sunrise Joint Venturers" means all those individuals or bodies corporate holding for the time being a licence or contract in respect of an area within the Unit Area under which exploration or exploitation of Petroleum may be carried out.

(n) "Unit Area" means the area described in Annex I.

(o) "Unit Installation" means any structure or device installed or to be installed above, on, or under the seabed of the Unit Area for the purpose of extracting Petroleum from the Unit Reservoirs in accordance with the Development Plan. Unit Installations exclude any structure or device after the Valuation Point.

(p) "Unit Operator" has the meaning given in Article 6 of this Agreement.

(q) "Unit Petroleum" means all Petroleum contained in or produced from the Unit Reservoirs, up to the Valuation Point.

(r) "Unit Property" means all Unit Installations in the Unit Area.

(s) "Unit Reservoirs" has the meaning given in Annex I.

(t) "Valuation Point" means the point of the first commercial sale of Petroleum produced from the Unit Reservoirs, which shall occur no later than the earlier of

(i) the point where the Petroleum enters an Export Pipeline and

(ii) the MPC point for the Petroleum.

Article 2. Without Prejudice

(1) Nothing contained in this Agreement, no acts taking place while this Agreement is in force or as a consequence of this Agreement and no law operating in the Unit Area by virtue of this Agreement

(a) shall be interpreted as prejudicing or affecting the position of either Australia or Timor-Leste with regard to their respective maritime boundaries or rights or claims thereto; and

(b) may be relied on as a basis for asserting, supporting, denying or limiting the position of either Australia or Timor-Leste with regard to their respective maritime boundaries or rights or claims thereto.

(2) This article applies notwithstanding any other provision of this Agreement including, in particular, Article 4 of this Agreement.

Article 3. Exploitation of the Unit Reservoirs

(1) The exploitation of the Unit Reservoirs shall be undertaken in an integrated manner in accordance with the terms of this Agreement.

(2) Australia and Timor-Leste shall ensure that the obligations of the Regulatory Authorities contained in this Agreement, with respect to ensuring compliance by the Sunrise Joint Venturers with the terms of this Agreement, shall be fully observed.

Article 4. Application of Laws

For the purposes of this Agreement but not otherwise and unless otherwise provided in this Agreement:

(a) the Timor Sea Treaty shall be deemed to apply to petroleum activities within the JPDA and petroleum activities attributed to the JPDA pursuant to the Apportionment Ratio;

(b) Australian legislation shall be deemed to apply to petroleum activities attributed to Australia pursuant to the Apportionment Ratio.

Article 5. Agreements

(1) Australia and Timor-Leste shall require Sunrise Joint Venturers, as comprised at the date on which this Agreement enters into force, to conclude Joint Venturers' Agreements to regulate the exploitation of the Unit Reservoirs in accordance with this Agreement.

(2) Any Joint Venturers' Agreement shall incorporate provisions to ensure that, in the event of a conflict between that Joint Venturers' Agreement and this Agreement, the terms of this Agreement shall prevail. Any Joint Venturers' Agreement requires the prior approval of the Regulatory Authorities.

(3) Any Joint Venturers' Agreement shall incorporate provisions to ensure that, except in so far as the contrary is expressly stated in that Agreement,

(a) any agreed proposal to amend, modify, or otherwise change the Joint Venturers' Agreement, and

(b) any agreed proposal to waive or depart from any provision of the Joint Venturers' Agreement

shall require the approval of the Regulatory Authorities before any such proposal may be implemented. The Regulatory Authorities shall acknowledge receipt of notice of any such proposal and shall specify the date of receipt. Approval shall be deemed to have been given unless the Unit Operator has been notified to the contrary by either Regulatory Authority not later than 45 days after the later of the specified dates.

Article 6. Unit Operator

A single Sunrise Joint Venturer shall be appointed by agreement between the Sunrise Joint Venturers as their agent for the purposes of exploiting the Unit Reservoirs in accordance with this Agreement ("the Unit Operator"). The appointment of and any change of the Unit Operator shall be subject to prior approval of the Regulatory Authorities.

Article 7. Apportionment of Unit Petroleum

Production of Petroleum from the Unit Reservoirs shall be apportioned between the JPDA and Australia according to the Apportionment Ratio 20.1:79.9, with 20.1% apportioned to the JPDA and 79.9% apportioned to Australia.

Article 8. Reapportionment of the Unit Petroleum

(1) Technical redetermination of the Apportionment Ratio from the Unit Reservoirs may take place in accordance with the following:

(a) Either Australia or Timor-Leste may request the Unit Operator to undertake a redetermination of the Apportionment Ratio.

(b) Australia and Timor-Leste shall have regard to the desirability of minimising the number of reviews of the Apportionment Ratio.

(c) Any redetermination of the Apportionment Ratio shall not occur within five (5) years of any prior redetermination, except that a redetermination may occur within twelve (12) months of the commencement of production from the Unit Reservoirs.

(d) The Unit Operator shall use only commercially available software in a redetermination of the Apportionment Ratio. Only data that is available to both Governments as at the date the redetermination is requested shall be utilised by the Unit Operator and all data and analyses pursuant to the Unit Operator's proposal for the redetermined Apportionment Ratio shall be provided to both

Governments with the proposal. The Unit Operator shall use all reasonable endeavours to complete the redetermination within 120 days.

(e) Any change to the Apportionment Ratio arising from a redetermination requested under subparagraph (a) has effect when it is agreed by the Regulatory Authorities or, if referred to an expert for determination, when the expert makes a final decision.

(f) Any change to the Apportionment Ratio shall be retrospective and past receipts and expenditures shall be adjusted.

(2) Notwithstanding paragraph 1, either Australia or Timor-Leste may request a review of the Apportionment Ratio. Following such a review, the Apportionment Ratio may be altered by agreement between Australia and Timor-Leste.

Article 9. Administration of the Unit Area

(1) For the purposes of this Agreement but not otherwise and unless otherwise provided in this Agreement, the Regulatory Authorities that will regulate petroleum activities in the Unit Area or in relation to Unit Petroleum shall be those Regulatory Authorities established through application of laws as provided in Article 4.

(2) A Sunrise Commission ("the Commission") shall be established for the purpose of facilitating the implementation of this Agreement and shall consult on issues relating to exploration and exploitation of petroleum in the Unit Area.

(3) The Commission shall facilitate coordination between the Regulatory Authorities to promote the development of the petroleum reservoir as a single entity.

(4) The Commission may review, and make recommendations to the Regulatory Authorities with regard to, a Development Plan.

(5) The Commission shall consider matters referred to it by the Regulatory Authorities, facilitate inspection of measuring systems and coordinate the provision of information by contractors to the Regulatory Authorities.

(6) The Commission may monitor the application of the laws referred to in Annex II and may make recommendations to the Regulatory Authorities concerning the application of such laws.

(7) Regulatory Authorities may refer disputes to the Commission in the first instance for resolution by consultation and negotiation. In the event that the dispute cannot be resolved by the Commission, disputes

shall be settled in accordance with Article 26.

(8) The Sunrise Commission shall consist of three members. Two shall be nominated by Australia and one shall be nominated by Timor-Leste.

Article 10. Apportionment of Receipts and Expenditures

All receipts and expenditures up to the Valuation Point shall be apportioned in accordance with the Apportionment Ratio.

Article 11. Taxation Applying in Relation to Unit Property

For the purposes of company taxation, resource taxation, cost recovery and production sharing in relation to Unit Property,

(a) receipts and expenditures for that part of production attributed to the JPDA in accordance with the Apportionment Ratio shall be taxed in accordance with arrangements specified in the Timor Sea Treaty and elsewhere in this Agreement;

(b) receipts and expenditures for that part of production attributed to Australia in accordance with the Apportionment Ratio shall be taxed in accordance with Australia's domestic taxation arrangements.

Article 12. Development Plan

(1) Production of petroleum shall not commence until a Development Plan for the effective exploitation of the Unit Reservoirs, which has been submitted by the Unit Operator and contains a programme and plans agreed in accordance with Joint Venturers' Agreements, has been approved by the Regulatory Authorities. The Unit Operator shall submit copies of the Development Plan to the Regulatory Authorities for approval.

(2) The Commission may review, and make recommendations to the Regulatory Authorities with regard to, a Development Plan.

(3) The Regulatory Authorities shall approve the Development Plan where:

(a) the project is commercially viable;

(b) the contractor or licensee possesses the competence and resources needed to exploit the reservoir to the best commercial advantage;

(c) the contractor or licensee is seeking to exploit the reservoir to the best commercial advantage consistent with good oilfield practice;

(d) the contractor or licensee could reasonably be expected to carry out the exploitation of

the reservoir during the specified period;

(e) the contractor or licensee has entered into contracts for the sale of gas from the project which are consistent with arm's length transactions.

(4) The Regulatory Authorities shall specify their reasons for not approving a Development Plan including identification of the criteria in paragraph (2) that the contractor or licensee has failed to meet.

(5) The Regulatory Authorities shall ensure that the exploitation of the Unit Area shall be in accordance with the Development Plan.

(6) The Unit Operator may at any time submit, and if at any time the Regulatory Authorities so decide may be required to submit, proposals to bring up to date or otherwise amend the Development Plan. All amendments or additions to the Development Plan require the prior approval of the Regulatory Authorities.

(7) Where the Unit Operator has been notified by either Regulatory Authority that the Development Plan or an amendment to the Development Plan has not been approved, the Regulatory Authorities shall consult with each other and with the Unit Operator with a view to reaching agreement.

(8) The Regulatory Authorities shall require the Sunrise Joint Venturers not to change the status or function of any Unit Installation in the Unit Area in any way except in accordance with an amendment to the Development Plan in accordance with paragraph (2).

(9) Where a Sunrise Joint Venturer has entered into contracts for the sale of gas from the project that are part of an approved Development Plan, no action may be taken by the Regulatory Authorities to withhold the supply of that gas.

Article 13. Abandonment

(1) The abandonment of any or all parts of Unit Property shall be undertaken in accordance with laws that have entered into force as at the date of this Agreement and as amended from time to time as applied by the Regulatory Authorities.

(2) At least two years before the abandonment of any part of Unit Property is undertaken, including the preliminary removal of any large item of machinery or the decommissioning of any installation or pipeline, the Unit Operator shall be required to submit a revised Development Plan, in accordance with the provisions of Article 12, which contains a plan for the cessation of production from Unit Property.

(3) The Sunrise Joint Venturers shall enter into an agreement to share the costs of discharging the abandonment obligations referred to in paragraph (1) above for Unit Property.

(4) The costs of abandonment of any or all parts of Unit Property shall be apportioned in accordance with the Apportionment Ratio.

Article 14. Structures Located in the Unit Area

(1) The Regulatory Authorities shall require the Unit Operator to inform them of the exact position of every structure located in the Unit Area.

(2) For the purposes of exploiting the Unit Reservoirs and subject to Article 22 and to the requirements of safety, neither Government shall hinder the free movement of personnel and materials between structures located in the Unit Area and landing facilities on those structures shall be freely available to vessels and aircraft of Australia and Timor-Leste.

Article 15. Point of Sale for Unit Petroleum Attributed to the JPDA

(1) Title to Unit Petroleum attributed to the JPDA shall pass from Australia and Timor-Leste to the contractor acting in the JPDA at the Valuation Point.

(2) This shall be the taxing point and point of valuation of Petroleum for cost recovery and production sharing purposes, for that part of Unit Petroleum apportioned to the JPDA in accordance with the Apportionment Ratio.

Article 16. Valuation of Unit Petroleum for Cost Recovery and Production Sharing Purposes

(1) Where Australia and Timor-Leste agree that a licensee or contractor has entered into contracts for the sale of Unit Petroleum which are consistent with arm's length transactions as outlined in Annex III, then for that part of Unit Petroleum apportioned to the JPDA in accordance with the Apportionment Ratio, the transacted price will be accepted as the Petroleum valuation for cost recovery and production sharing purposes.

(2) Where Australia and Timor-Leste do not agree that a licensee or contractor has entered into contracts for the sale of Unit Petroleum which are consistent with arm's length transactions, then for that part of Unit Petroleum apportioned to the JPDA in accordance with the Apportionment Ratio, Australia and Timor-Leste shall determine the Petroleum valuation for cost recovery and production sharing purposes in accordance with internationally ac-

cepted arm's length principles having due regard to functions performed, assets used and risks assumed, as outlined in Annex III.

Article 17. Use of Unit Property for Non-Sunrise Operations

(1) Australia and Timor-Leste recognise that, subject to paragraphs (2) and (3) below, the exploitation of Petroleum other than Petroleum from the Unit Reservoirs is a legitimate use of Unit Property.

(2) Either Regulatory Authority shall, on receipt of a request from the Unit Operator for such use of any part of Unit Property, consult with the other Regulatory Authority with regard to that request. After such consultation, and having consulted the Sunrise Joint Venturers, the relevant Regulatory Authority will allow such use of any part of Unit Property provided that such use does not adversely affect the effective exploitation of the Unit Area and the transmission of Unit Petroleum in accordance with this Agreement and the Development Plan.

(3) In the event that the consultations under paragraph (2) above indicate that any supplementary agreement to this Agreement is necessary to give effect to paragraph (2), Australia and Timor-Leste shall negotiate in order to conclude such agreement after having sought the views of the Sunrise Joint Venturers. In order to facilitate such negotiations, Australia and Timor-Leste shall, subject to Article 25, exchange any relevant information.

(4) Notwithstanding paragraphs (1) to (3) above, neither Australia nor Timor-Leste shall permit a use the subject of this Article until relevant tax authorities of Australia and Timor-Leste have reached agreement regarding the taxation of such use.

Article 18. Employment and Training

Australia and Timor-Leste shall take appropriate measures with due regard to occupational health and safety requirements, efficient operations and good oilfield practice to ensure that preference is given in employment and training in the Unit Area to nationals or permanent residents of Australia and Timor-Leste.

Article 19. Safety

(1) Legislation as set out in Annex II as amended from time to time shall apply for the purposes of safety in the Unit Area.

(2) The Regulatory Authorities shall administer the legislation in the Unit Area.

Article 20. Occupational Health and Safety

(1) Legislation as set out in Annex II as amended from time to time shall apply for the purposes of occupational health and safety in the Unit Area.

(2) The Regulatory Authorities shall administer the legislation in the Unit Area.

Article 21. Environmental Protection

(1) Legislation as set out in Annex II as amended from time to time shall apply for the purposes of protection of the environment in the Unit Area.

(2) The Regulatory Authorities shall administer the legislation in the Unit Area.

Article 22. Customs

(1) Australia and Timor-Leste shall consult at the request of either of them in relation to the entry of particular goods and equipment to structures in the Unit Area aimed at controlling the movement of such persons, equipment and goods. Australia and Timor-Leste may adopt arrangements to facilitate such movement of persons, equipment and goods.

(2) Australia and Timor-Leste may, subject to paragraphs 3, 4, and 5, apply customs law to equipment and goods entering their respective territory from, or leaving that territory for, the Unit Area.

(3) Goods and equipment entering the Unit Area for purposes related to petroleum activities shall not be subject to customs duties.

(4) Goods and equipment leaving or in transit through either Australia or Timor-Leste for the purpose of entering the Unit Area for purposes related to petroleum activities shall not be subject to customs duties.

(5) Goods and equipment leaving the Unit Area for the purpose of being permanently transferred to either Australia or Timor-Leste may be subject to customs duties of that country.

Article 23. Security Arrangements

Australia and Timor-Leste shall make arrangements for responding to security incidents in the Unit Area and for exchanging information on likely threats to security.

Article 24. Measuring Systems

(1) Before production of Petroleum is scheduled to commence under the Development Plan, the Regulatory Authorities shall require the Unit Operator to submit to them for approval proposals for the design, installation and operation of systems for measuring accurately the quantities of gas and liquids comprising, or deemed by subsequent calculation to comprise, Unit Petroleum, which are used in the operation of the

field, re-injected, flared, vented, or exported from Unit Property.

(2) The Regulatory Authorities shall facilitate:

(a) access to any equipment for Unit Petroleum measurement; and

(b) the production of information, including design and operational details of all systems, relevant to the measurement of Unit Petroleum; to enable inspectors to satisfy themselves that the fundamental interests of Australia and Timor-Leste in regard to measurement of Unit Petroleum are met.

Article 25. Provision of Information

(1) There shall be a free flow of information between Australia and Timor-Leste concerning the exploration and exploitation of petroleum in the Unit Reservoirs. Confidential information supplied by either Australia or Timor-Leste to the other shall not be further disclosed, without the consent of the supplying Government.

(2) The Regulatory Authorities shall require the Unit Operator to provide them with

(a) monthly reports recording details of the progress of the construction or decommissioning of Unit Property and project expenditure and contractual commitments entered into;

(b) monthly reports of quantities of gas and liquids comprising, or deemed by subsequent calculation to comprise, Unit Petroleum, which are used in the operation of the field, re-injected, flared, vented, or exported from Unit Property, and;

(c) annual reports setting out:

(i) projected annual production profiles for the life of the field (and referring to the basis for those production profiles)

(ii) the most recent geological, geophysical and engineering information relating to the field, including, without limitation, any information that may be relevant to a redetermination of the Apportionment Ratio; and

(iii) estimates of costs relating to the exploitation of the Unit Reservoirs.

Article 26. Settlement of Disputes

(1) Any disputes about the interpretation or application of this Agreement shall be, as far as possible, settled by consultation or negotiation.

(2) Subject to paragraph (3), if a dispute cannot be resolved in the manner

specified in paragraph (1) or by any other agreed procedure, the dispute shall be submitted, at the request of either Government, to an Arbitral Tribunal set out in Annex IV.

(3) If a dispute arises concerning a proposal for a redetermined Apportionment Ratio pursuant to Article 8(1) or concerning the measurement, pursuant to Article 24, of quantities of gas and liquids, an expert shall be appointed by Australia and Timor-Leste to determine the matter in question. The two Governments shall, within 60 days of notification by either of them of such a dispute, try to reach agreement on the appointment of such an expert. If, within this period, no agreement has been reached, the procedures specified in Annex V shall be followed. The expert appointed shall act in accordance with the terms of Annex V. The expert's decision shall be final and binding on both Governments and on the Sunrise Joint Venturers, save in the event of fraud or manifest error.

Article 27. Entry into Force, Amendment and Duration

(1) This Agreement shall enter into force upon the day on which Australia and Timor-Leste have notified each other in writing that their respective requirements for entry into force of this Agreement have been complied with.

(2) This Agreement may be amended or terminated at any time by written agreement between Australia and Timor-Leste.

(3) In the event of permanent delimitation of the seabed, Australia and Timor-Leste shall reconsider the terms of this Agreement. Any new agreement shall ensure that petroleum activities entered into under the terms of this Agreement shall continue under terms equivalent to those in place under this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereunto by their respective Governments, have signed this Agreement.

DONE at Dili, on this sixth day of March, two thousand and three in two originals in the English language.

For the Government of Australia
Alexander Downer
Minister for Foreign Affairs

For the Government of the Democratic Republic of Timor-Leste
Ana Pessoa
Minister of State for the Presidency of the Council of Ministers

Annex I: Delineation of Unit Area and Unit Reservoirs

The Unit Area is the area (depicted for illustrative purposes only on the map at Attachment 1) bounded by a line commencing at 9° 50' 00" S, 127° 55' 00" E and running:

(a) successively along the rhumb line to each of the following points in the sequence in which they appear below:

9° 50' 00" S, 128° 20' 00" E
9° 40' 00" S, 128° 20' 00" E
9° 40' 00" S, 128° 25' 00" E
9° 30' 00" S, 128° 25' 00" E
9° 30' 00" S, 128° 20' 00" E
9° 25' 00" S, 128° 20' 00" E
9° 25' 00" S, 128° 00' 00" E
9° 30' 00" S, 127° 53' 20" E
9° 30' 00" S, 127° 52' 30" E
9° 35' 00" S, 127° 52' 30" E
9° 35' 00" S, 127° 50' 00" E
9° 37' 30" S, 127° 50' 00" E
9° 37' 30" S, 127° 45' 00" E
9° 45' 00" S, 127° 45' 00" E
9° 45' 00" S, 127° 50' 00" E
9° 47' 30" S, 127° 50' 00" E
9° 47' 30" S, 127° 55' 00" E;

(b) thence along the rhumb line to the point of commencement.

The Unit Reservoirs (illustratively depicted by the darker-shaded area in Attachment 1) are that part of the rock formation known as the Plover Formation (Upper and Lower) that underlies the Unit Area and contains the Sunrise and Troubadour deposits of Petroleum, together with any extension of those deposits that is in direct hydrocarbon fluid communication with either deposit. For purposes of illustration, in the case of the Sunset-1 well this formation is shown by that portion of the Gamma Ray, Neutron/Density, Resistivity and Sonic Logs between the depths of 2128m and 2390m (TVDSS) in Attachment 2.

Where for the purposes of this Annex it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the Australian Geodetic Datum, that is to say, by reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6 378 160 metres and a flattening of 1/298.25 and by reference to the position of the Johnston Geodetic Station in the Northern Territory of Australia. That station shall be taken to be situated at Latitude 25o 56' 54.5515" South and at Longitude 133o 12'

30.0771" East and to have a ground level of 571.2 metres above the spheroid referred to above.

Annex II: Legislation Applicable in the Unit Area as Referred to in Articles 19, 20 and 21

Article 19. Safety

Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations

Limitation of Liability for Maritime Claims Act 1989

Navigation Act 1912

Radiocommunications Act 1992

Seafarers Rehabilitation and Compensation Act 1992

Article 20. Health

Petroleum (Submerged Lands) (Occupational Health and Safety) Regulations

Occupational Health and Safety (Maritime Industry) Act 1993

Navigation Act 1912

Seafarers Rehabilitation and Compensation Act 1992

Article 21. Environmental Protection

Petroleum (Submerged Lands) (Management of Environment) Regulations 1999

Protection of the Sea (Civil Liability) Act 1981

Protection of the Sea (Oil Pollution Compensation Fund) Act 1993

Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund - Customs) Act 1993

Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund - Excise) Act 1993

Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund - General) Act 1993

Protection of the Sea (Powers of Intervention) Act 1981

Protection of the Sea (Prevention of Pollution from Ships) Act 1983

Protection of the Sea (Shipping Levy) Act 1981

Annex III: Petroleum Valuation Principles

1. This Annex sets out the principles to be applied in determining the value of petroleum in non-arm's length transactions under Article 16, for the purposes of cost recovery and production sharing of that part of Unit Petroleum apportioned to the Joint Petroleum Development Area in accordance with the Apportionment Ratio.

2. An arm's length transaction is one where the parties to the transaction are dealing at arm's length with each other in relation to the transaction. Whether the parties are dealing at arm's length is determined not only by the relationship between the parties but also by the nature of

the dealings between those parties, even if they are otherwise independent of each other.

3. In determining whether an arm's length transaction has taken place, the Regulatory Authorities shall, amongst other things, have due regard to the functions performed, assets used and risks assumed. In assessing the allocation of risk, and the associated return to those risks, regard shall be had to the outcomes expected of parties acting at arm's length.

4. Where there is no arm's length sale, the petroleum shall be valued with reference to a comparable uncontrolled price (CUP) at the Valuation Point.

5. If no CUP exists petroleum shall be valued by the application of the pricing methodology set out in paragraph 6. In this methodology:

   Calculation Period means the period beginning with the year five years before production of petroleum from Greater Sunrise is scheduled under the Development Plan to commence (t = 0), and ending with the year when production is scheduled under the Development Plan to cease (t = T).

   Downstream Facilities means any petroleum processing facilities after the Valuation Point and before the earlier of the first point of arm's length sale and the first available CUP.

6. The petroleum valuation (PV) shall be:

   (a) calculated at (and all estimates required therefor shall be calculated as at) the date of commencement of production; and

   (b) calculated in United States dollars per unit of undifferentiated hydrocarbons with respect to the following formula:

   NCFt = VDPt - ECCt - OCt - CDCt - PVt x QHt

   by substituting and solving for PV the equation

$$\sum_{t=0}^{T} \frac{NCF_t}{(1+r)^t} = 0$$

   where:

   r = 14% for floating gas-to-liquids technology and 10.5% for an export pipeline;

   NCF is net cash flow before tax;

   VDP is the total market value of the downstream product, at the first point of arm's length sale, or the first available CUP, in that year;

   ECC is expenditures made for items which normally have a useful life of more than one (1) year incurred by the owners of the Downstream Facilities

in the year for which NCF is being calculated (including, but not limited to, feasibility and engineering costs and other costs incurred for the purposes of designing and constructing the Downstream Facilities (and in the first year, those costs incurred prior to the start of the Calculation Period)), but only to the extent such are incurred in respect of the Downstream Facilities before the date of commencement of production;

OC is an amount equal to the operating costs (including taxes other than taxes on income, profit or gain and further including expenditures to maintain, repair and replace equipment necessary for the operation of the Downstream Facilities) incurred by the owners of the Downstream Facilities in that year, but only to the extent such are incurred on and from the date of commencement of production in respect of the Downstream Facilities, but does not include:

(a) any cost or provision against the eventual costs of decommissioning the Downstream Facilities;

(b) depreciation of capital costs; and

(c) the cost of natural gas used in the production process;

CDC in the last year of production is the estimated costs of decommissioning the Downstream Facilities, and otherwise is zero;

QH is the quantity of undifferentiated hydrocarbons that, in that year, passed the Valuation Point.

7. Where that part of the undifferentiated hydrocarbon stream which is processed as condensate or LPG is processed under a fixed processing fee arrangement, with those revenues being passed upstream, then the following adjustments shall be taken into account in the calculation in paragraph 6:

   (a) VDP shall exclude the value of the condensate or LPG but include the amount of tolling fees paid in that year in respect of the processing services supplied to a Sunrise Joint Venturer in respect of production of that condensate or LPG; and

   (b) QH shall exclude the quantity of undifferentiated hydrocarbons which results in production of that condensate or LPG for which tolling fees were paid.

8. All costs and estimates of costs used for the purposes of the calculation in paragraph 6, including any tolling fees charged under paragraph 7, shall be not more than those

which would be directly and necessarily incurred by a reasonable and prudent operator in an arm's length transaction.

9. Where the average realised price for downstream product over the previous two years differs by more than 10% from the average price over that period as included in the calculations under paragraph 6, then either Australia or Timor-Leste may initiate a review of these calculations by the Regulatory Authorities, in accordance with the following:

   (a) Any review shall occur not within two years of any prior review, and the first review shall not occur earlier than five years following the commencement of production from Greater Sunrise.

   (b) The calculations under paragraph 6 shall be re-undertaken from the beginning of the Calculation Period, taking into account actual realised downstream product prices to date, and any new estimates of downstream product prices.

   (c) Where a new petroleum valuation is determined under this review process, this new valuation shall apply prospectively from the date of recalculation.

Annex IV: Dispute Resolution Procedure

(a) An arbitral tribunal to which a dispute is submitted pursuant to Article 26 (2) shall consist of three persons appointed as follows:

   i. Australia and Timor-Leste shall each appoint one arbitrator;

   ii. the arbitrators appointed by Australia and Timor-Leste shall, within sixty (60) days of the appointment of the second of them, by agreement, select a third arbitrator who shall be a citizen, or permanent resident of a third country which has diplomatic relations with both Australia and Timor-Leste;

   iii Australia and Timor-Leste shall, within sixty (60) days of the selection of the third arbitrator, approve the selection of that arbitrator who shall act as Chairman of the Tribunal.

(b) Arbitration proceedings shall be instituted upon notice being given through the diplomatic channel by the country instituting such proceedings to the other country. Such notice shall contain a statement setting forth in summary form the grounds of the claim, the nature of the relief sought, and the name of the arbitrator appointed by the country instituting such proceedings. Within sixty (60) days after the giving of such notice the respondent country shall notify the country

instituting proceedings of the name of the arbitrator appointed by the respondent country.

(c) If, within the time limits provided for in sub-paragraphs (a) (ii) and (iii) and paragraph (b) of this Annex, the required appointment has not been made or the required approval has not been given, Australia or Timor-Leste may request the President of the International Court of Justice to make the necessary appointment. If the President is a citizen or permanent resident of Australia or Timor-Leste or is otherwise unable to act, the Vice-President shall be invited to make the appointment. If the Vice-President is a citizen or permanent resident of Australia or Timor-Leste or is otherwise unable to act, the Member of the International Court of Justice next in seniority who is not a citizen or permanent resident of Australia or Timor-Leste shall be invited to make the appointment.

(d) In case any arbitrator appointed as provided for in this Annex shall resign or become unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

(e) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Chairman of the Tribunal. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(f) The Arbitral Tribunal shall decide all questions relating to its competence and shall, subject to any agreement between Australia and Timor-Leste, determine its own procedure.

(g) Before the Arbitral Tribunal makes a decision, it may at any stage of the proceedings propose to Australia and Timor-Leste that the dispute be settled amicably. The Arbitral Tribunal shall reach its award by majority vote taking into account the provisions of this Agreement and relevant international law.

(h) Australia and Timor-Leste shall each bear the costs of its appointed arbitrator and its own costs in preparing and presenting cases. The cost of the Chairman of the Tribunal and the expenses associated with the conduct of the arbitration shall be borne in equal parts by Australia and Timor-Leste.

(i) The Arbitral Tribunal shall afford to Australia and Timor-Leste a fair hearing. It may render an award on the default of either Australia or Timor-Leste. In any case, the Arbitral Tribunal shall render its award within 6 months from the date it is convened by the Chairman of the Tribunal. Any award shall be

rendered in writing and shall state its legal basis. A signed counterpart of the award shall be transmitted to Australia and Timor-Leste.

(j) An award shall be final and binding on Australia and Timor-Leste.

Annex V: Expert Determination Procedure

1. If no agreement is reached on the appointment of an expert within the period specified in Article 26, each Government shall forthwith exchange with the other a list of not more than three independent experts, putting them in order of preference. In each list, the first shall have three points, the second two points and the third one point. The expert having the greatest number of points from the two lists shall be appointed.

2. If two or more of the experts named on the lists exchanged by the Governments share the greatest number of points, the Governments shall, within 30 days of exchange, by agreement or, failing that, by lot, select which of the experts shall be appointed to decide the matter in question.

3. If the expert to be appointed is unable or unwilling to act, or fails, in the opinion of both Governments, to act within a reasonable period of time to decide the matter in question, then the expert with the greatest number of points among the experts remaining shall be the expert to decide the matter in question. If two or more such experts share the greatest number of points, both Governments shall, by unanimous agreement or by lot, select which expert shall be appointed as the expert to decide the matter in question.

4. If a Government fails to respond to any request or notice within the time specified under this Annex, the Government shall be deemed to have waived its rights in respect of the subject of the request or notice but nevertheless shall be bound by the actions of the other Government in selecting an expert and by the decision of the expert.

5. The task of the expert is to reach an independent determination of whatever matters are in question. Where the matter in dispute is in relation to technical redetermination of the Apportionment Ratio pursuant to Article 8, the expert's decision must be made in accordance with any technical procedures and calculation formula pertaining to redetermination as set out in the relevant Joint Venturers' Agreement.

6. The expert may engage independent contractors to undertake work which is necessary to enable the expert to reach a decision, provided

that any contractor nominated by the expert for that purpose is approved by the Governments and gives an undertaking that neither it nor any of its personnel has a conflict of interest which would prevent it from undertaking the work.

7. The fees and costs of the expert shall be paid initially by the Government which first:

   (a) initiated the redetermination of the Apportionment Ratio; or

   (b) disagreed with the measurement, pursuant to Article 24, of quantities of gas and liquids; and shall be recoverable from the Unit Operator. The latter shall be required to use best efforts to reimburse the initial payer within 12 months of the payment of those fees and costs.

8. Except as set out in this Agreement, the expert shall establish its own procedures. The expert shall only meet with a Government jointly with the other Government. All communications between the Governments and the expert outside those meetings shall be conducted in writing and a person making any such communication shall at the same time send a copy of it to the other Government.

9. The expert shall use only commercially available software in a redetermination of the Apportionment Ratio. Only data that was available to both Governments as at the date that the redetermination was requested shall be utilised by the expert and all data and analyses relevant to the expert's preliminary and final decisions for the redetermined Apportionment Ratio shall be provided to both Governments with those decisions.

10. Forthwith upon the appointment of the expert, the Unit Operator shall supply the expert with its data and analyses. Within 30 days of that appointment, each Government will make an initial submission and provide a copy to the other Government. Within 20 days of receiving a copy of that submission, the Government concerned may make a supplementary submission (again providing a copy to the other Government).

11. The expert shall issue a preliminary decision within a period of 90 days, or such other period as the Governments may decide, commencing from the date the expert was appointed. The preliminary decision shall be accompanied by such supporting documentation as is necessary for the Governments to make a reasoned assessment of that decision. Each Government has the right, within 90 days of receipt of the expert's preliminary decision, to seek clarification of that decision

and the supporting documentation, to request the expert to review its preliminary decision and to make submissions to the expert for its consideration. If such a request is made, the other Government shall, within a period of 15 days after receipt of a copy of those submissions, have the right to make further submissions. The expert shall issue its final decision on the matter in question no later than 140 days from the date of issue of the preliminary decision. The expert's final decision shall be in writing and the expert shall give detailed reasons for that decision.

12. The Sunrise Joint Venturers shall cooperate fully in supplying information required by the expert and otherwise in facilitating the expert to reach its decision.

13. The Governments shall require the expert and any independent contractor engaged by the expert to give an undertaking to safeguard the confidentiality of any information supplied to the expert.

D. 2006 Treaty between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea

Adopted on 12 January 2006 in Sydney, Australia

Entered into force on 23 February 2007

THE GOVERNMENT OF AUSTRALIA

and

THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE
(hereinafter each referred to as "Party" or both as "Parties")

CONSCIOUS of their geographic proximity, friendship and developing economic relationship;

NOTING that the Parties have not yet delimited their maritime boundaries;

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;

FURTHER TAKING INTO ACCOUNT, in the absence of delimitation, the obligation for States to make every effort in a spirit of understanding and cooperation to enter into provisional arrangements of a practical nature which are without prejudice to the final determination;

RECOGNISING the benefits that will flow to both Australia and Timor-Leste by providing a long-term basis for petroleum activities in the area of seabed between Australia and Timor-Leste;

EMPHASISING 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 Australia and Timor-Leste;

CONVINCED that the long-term development of the resources, in accordance with this Treaty, the Timor Sea Treaty and the Sunrise IUA will provide a firm foundation for continuing and strengthening the friendly relations between Australia and Timor-Leste;

FULLY COMMITTED to maintaining, renewing and further strengthening the mutual respect, friendship and cooperation between Australia and Timor-Leste;

MINDFUL of the interests which Australia and Timor-Leste share as immediate neighbours and in a spirit of cooperation, friendship and goodwill; and

CONVINCED that this Treaty will contribute to the strengthening of relations between the two countries;

AGREE as follows:

Article 1. Definitions

For the purposes of this Treaty:

1. 'AUD' means the Australian Dollar;
2. 'JPDA' means the Joint Petroleum Development Area established by Article 3 of the Timor Sea Treaty;
3. 'LIBOR' means the British Bankers' Association fixing of the one (1) month London Interbank Offer Rate for USD;
4. 'period of this Treaty' means the period of the duration of this Treaty referred to in Article 12;
5. 'petroleum' means:
   (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state;
   (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
   (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, as well as other substances produced in association with such hydrocarbons;

   including any petroleum as defined by sub-paragraphs (a), (b) or (c) of this paragraph that has been returned to a natural reservoir;
6. 'petroleum activities' means all activities undertaken to produce petroleum;
7. 'quarter' means the three months ending March, June, September and December;
8. 'Sunrise IUA' 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, done at Dili on 6 March 2003;
9. 'the 1982 Convention' means the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982;
10. 'Timor Sea Treaty' means the Timor Sea Treaty between the Government of East Timor and the Government of Australia, done at Dili on 20 May 2002;
11. 'Unit Area' means the area described in Annex I of the Sunrise IUA;
12. 'Upstream' means the petroleum activities and facilities prior to the "valuation point" as defined in the Sunrise IUA;
13. 'USD' means the United States Dollar; and

14. Unless the context otherwise requires, terms which are not defined in this Treaty, but that are defined in the Timor Sea Treaty or the Sunrise IUA, shall have the same meaning in this Treaty as in the Timor Sea Treaty or the Sunrise IUA .

Article 2. Without Prejudice

1. Nothing contained in this Treaty shall be interpreted as:

   (a) prejudicing or affecting Timor-Leste's or Australia's legal position on, or legal rights relating to, the delimitation of their respective maritime boundaries;

   (b) a renunciation of any right or claim relating to the whole or any part of the Timor Sea; or

   (c) recognition or affirmation of any right or claim of the other Party to the whole or any part of the Timor Sea.

2. No act or activities taking place as a result of, and no law entering into force by virtue of, this Treaty or the operation thereof, may be relied upon as a basis for asserting, supporting, denying or furthering the legal position of either Party with respect to maritime boundary claims, jurisdiction or rights concerning the whole or any part of the Timor Sea.

Article 3. Duration of the Timor Sea Treaty

The text of Article 22 of the Timor Sea Treaty relating to the duration of that Treaty is replaced by the following:

"This Treaty shall be in force for the duration of the Treaty between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea. This Treaty may be renewed by agreement between Australia and East Timor. Petroleum activities of limited liability corporations or other limited liability entities entered into under the terms of the Treaty shall continue even if the Treaty is no longer in force under conditions equivalent to those in place under the Treaty."

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.

Article 5. Division of Revenues from the Unit Area

1. The Parties shall share equally revenue derived directly from the production of that petroleum lying within the Unit Area in so far as the revenue relates to the upstream exploitation of that petroleum.

2. The value of petroleum upstream shall be determined on the basis of arm's length principles.

3. The Australian revenue component means taxation revenue collected from:

   (a) the petroleum resource rent tax;

   (b) company tax (including capital gains tax); and

   (c) first tranche petroleum and profit petroleum pursuant to the Timor Sea Treaty; or subsequent taxes of a similar nature.

4. The Australian revenue component shall be determined as follows:

   (a) Revenue relating to the petroleum resource rent tax is the actual revenue collected each quarter adjusted:

(i) to include expenditures related to the petroleum activities undertaken within the Unit Area transferred out of this project and to exclude expenditures not related to the petroleum activities undertaken within the Unit Area transferred into this project; and

(ii) in the anticipated last 5 years of the project's life, to include estimated closing down costs (subject to reconciliation against actual closing down costs once the project has closed down).

(b) Revenue relating to company tax is the actual revenue collected each quarter adjusted to determine the company tax position of the entity's upstream operations relating to the petroleum activities undertaken within the Unit Area.

(c) The adjustment referred to in sub-paragraph (b) of this paragraph is based on:

(i) allocating direct revenues and direct deductible non-interest expenses between the upstream operations in the Unit Area and other operations of the entity;

(ii) allocating indirect revenues and indirect deductible non-interest expenses between the upstream operations in the Unit Area and the other operations of the entity in the same proportions as direct revenues and direct deductible expenses respectively; and

(iii) allocating deductible interest expenses between the upstream operations in the Unit Area and the other operations of the entity in the same proportion as the final allocation of deductible non-interest expenses.

(d) Revenue relating to first tranche petroleum and profit petroleum is the actual revenue collected each quarter.

5. The Timor-Leste revenue component means taxation revenue collected from first tranche petroleum, profit petroleum and all profit-based income taxes calculated and levied by annual assessment pursuant to the Timor Sea Treaty, or subsequent taxes of a similar nature, but excludes Value Added Tax or income tax withheld monthly or similar taxes, or subsequent taxes of a similar nature.

6. The Timor-Leste revenue component shall be determined based on actual revenue collected each quarter.

7. Each Party shall notify the other Party of the revenue amount (in domestic currency terms) relating to the quarter on the first working day in both Australia and Timor-Leste on or after 90 days following the end of that quarter.

8. Australia's revenue amount in USD terms shall be:

   (a) determined on the first business day in both Sydney and Dili on or after 20 days following the notification referred to in paragraph 7 of this Article; and

   (b) based on the simple average of the USD/AUD exchange rate published by the Reserve Bank of Australia at 4.00 pm (Australian Eastern Standard Time) on that day, the two preceding days, and the two subsequent days.

9. Australia shall make a payment in USD to Timor-Leste equivalent to half the aggregate of the Australian revenue component (in USD terms) and the Timor-Leste revenue component, less the Timor-Leste revenue component (in USD terms), on the first business day in both Sydney and Dili on or after 30 days following notification referred to in paragraph 7 of this Article.

10. In the event that Timor-Leste's revenue component exceeds Australia's revenue component in USD terms in a particular quarter, Timor-Leste shall not make a payment to Australia, and subsequent quarterly payments by Australia to Timor-Leste shall be adjusted to take account of the earlier payment not made by Timor-Leste.

11. Australia and Timor-Leste shall inform each other expeditiously of changes in their respective taxation policies and laws that may impact on the revenue derived directly from the production of petroleum in the Unit Area. Where one Party notifies the other that it considers that a change in the taxation laws of the other Party is likely to have a serious impact on the revenue to be received by the first Party:

    (a) the Parties shall, as a matter of urgency, consult with a view to resolving the matter; and

    (b) where the Parties are unable to resolve the matter pursuant to sub-paragraph (a) of this paragraph within a reasonable period, the matter shall be referred immediately to the Maritime Commission established in Article 9.

12. The Parties agree that during the period of this Treaty, the totality of financial payments from one Party to another concerning or relating to the exploration and exploitation of maritime areas between Australia and Timor-Leste are defined by the

treaties and agreements referred to in paragraph 1 of Article 7 and such agreed associated documentation relating to those treaties and agreements that exists at the time of the entry into force of this Treaty, and neither Party shall seek additional payments.

13. The Parties shall establish procedures for the implementation of paragraphs 1 to 10 of this Article.

Article 6. Assessor

1. Either Party may request the appointment of an assessor to review adjustments used to calculate any one or more of the revenues referred to in paragraphs 3 and 5 of Article 5.

2. The Parties shall, within 30 days of a request being made to appoint an assessor, seek to reach agreement on the appointment of such an assessor. If, within this period, no agreement has been reached, the procedures for appointment specified in Annex I shall be followed.

3. The assessor shall act in accordance with the terms of Annex I.

4. The assessor's conclusions shall be implemented by the Parties unless the Parties agree otherwise.

5. Where adjustments are made to previous payments as the result of a review by an assessor, interest will be added, calculated as follows:

D/360 x LIBOR x A

where:

A is the amount of the adjustment;

D is the difference in the number of days between the payment date referred to in paragraph 9 of Article 5 and the payment of A; and

LIBOR is determined on the payment date referred to in paragraph 9 of Article 5.

Article 7. Petroleum Resources

1. The applicable obligations and rights as between Australia and Timor-Leste governing the exploration and exploitation of petroleum resources during the period of this Treaty are those contained in:

   (a) this Treaty;

   (b) the Timor Sea Treaty;

   (c) the Sunrise IUA; and

   (d) any future agreement between Australia and Timor-Leste as referred to in Article 9 of the Timor Sea Treaty.

2. Except as otherwise provided for in this Treaty, nothing contained in this Treaty, and no actions taken pursuant to it, shall be interpreted as amending or revoking any terms of the Timor Sea Treaty or the Sunrise IUA.

Article 8. Water Column Jurisdiction

1. For the period of this Treaty:

   (a) Australia will continue to exercise jurisdiction in relation to the water column, and sovereign rights over the resources of the water column, south of the line described in Annex II;

   (b) Timor-Leste will continue to exercise jurisdiction in relation to the water column, and sovereign rights over the resources of the water column, north of the line described in Annex II; and

   (c) the jurisdiction referred to in sub-paragraph (b) of this paragraph shall be exercised in a manner that does not unduly inhibit petroleum activities within the JPDA.

2. Where the same stock or stocks of associated species straddle the line described in Annex II, Timor-Leste and Australia shall seek, either directly or through appropriate subregional or regional fisheries management organisations, to agree upon the measures necessary to co-ordinate and ensure the conservation and development of such stocks.

3. Timor-Leste and Australia shall make every effort to pursue cooperation in relation to highly migratory fish stocks, as defined in Annex I to the 1982 Convention, either directly or through appropriate subregional or regional fisheries management organisations, to ensure effective conservation and management of such stocks.

Article 9. Timor-Leste/Australia Maritime Commission

1. There is hereby established a Timor-Leste/Australia Maritime Commission ("Commission"), which shall constitute a focal point for bilateral consultations with regard to maritime matters of interest to the Parties.

2. The Commission shall comprise one Minister each appointed by the Parties, or such other representative of the Governments of Australia and Timor-Leste as appointed respectively by the Parties.

3. The Commission shall:

   (a) review the status of maritime boundary arrangements;

   (b) consult on maritime security, including the security of petroleum facilities and infrastructures;

   (c) consult on issues relating to the marine environment and its protection;

   (d) consult on the management of natural resources (renewable and non-renewable), and pro-

mote sustainable management strategies; and

(e) consult on other maritime matters as appropriate as agreed by the Parties.

4. The Commission shall meet at least annually.

5. The proceedings in the Commission shall be without prejudice to the contents of this Treaty, and of any legislation, acts and activities thereunder.

Article 10. Re-Apportionment of Unit Petroleum Under the Sunrise IUA

Notwithstanding Article 8 of the Sunrise IUA, the Parties agree that there shall be no re-determination of the apportionment ratio referred to in that article during the period of this Treaty.

Article 11. Dispute Settlement

Any disputes about the interpretation or application of this Treaty shall be settled by consultation or negotiation.

Article 12. Period of This Treaty

1. Subject to paragraphs 2, 3 and 4 of this Article, this Treaty shall remain in force until the date 50 years after its entry into force, or until the date five years after the exploitation of the Unit Area ceases, whichever occurs earlier.

2. If:

(a) a development plan for the Unit Area has not been approved in accordance with paragraph 1 of Article 12 of the Sunrise IUA within six years after the date of entry into force of this Treaty; or

(b) production of petroleum from the Unit Area has not commenced within ten years after the date of entry into force of this Treaty;

either Party may notify the other Party in writing that it wishes to terminate this Treaty, in which case the Treaty shall cease to be in force three calendar months after such notice is given.

3. Should petroleum production take place in the Unit Area subsequent to the termination of this Treaty pursuant to paragraph 2 of this Article, all the terms of this Treaty shall come back into force and operate from the date of commencement of production.

4. The following provisions of this Treaty shall survive termination of this Treaty, and the Parties shall continue to be bound by them after termination:

(a) Article 2;

(b) the second sentence of paragraph 5 of Article 4;

(c) paragraph 3 of this Article; and

(d) this paragraph.

5. The period of this Treaty referred to in paragraph 1 of this Article may be extended by agreement in writing between the Parties.

Article 13. Entry into Force

This Treaty shall enter into force on the day on which the Government of Australia and the Government of the Democratic Republic of Timor-Leste have notified each other, in writing, that their respective requirements for the entry into force of this Treaty have been complied with.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

DONE at Sydney, on this twelfth day of January, Two thousand and six.

For the Government of Australia
Hon. Alexander Downer
Minister for Foreign Affairs

For the Government of the Democratic Republic of Timor-Leste
José Ramos-Horta
Senior Minister and Minister for Foreign Affairs and Cooperation

Annex I: Assessment Procedure

1. If no agreement is reached on the appointment of an assessor within the period specified in Article 6, either Party may request the Secretary-General of the International Centre for the Settlement of Investment Disputes to appoint the assessor.

2. The assessor shall have qualifications relevant to the matter to be assessed.

3. The assessor's conclusions shall:

   (a) be provided to the Parties within a period of three months from the date of appointment;

   (b) be in writing and accompanied by reasons;

   (c) be confidential to the Parties; and

   (d) not be disclosed by a Party to any third party or publicly without the written authorisation of the other Party.

4. The assessor shall establish his or her procedures, although:

   (a) the assessor shall only meet with a Party jointly with the other Party; and

   (b) all communications between a Party and the assessor outside meetings shall be conducted in writing and shall be copied to the other Party.

5. Subject to national laws and policies, the Parties shall provide all relevant information to enable the assessor to carry out his or her assessment.

6. The fees and costs of the assessor shall be shared equally between the Parties.

7. Each Party shall bear its own costs of the assessment procedure.

8. The Parties shall require the assessor and any staff engaged by the assessor to provide a formal undertaking to safeguard the confidentiality of the assessment, including any information supplied to the assessor or any staff engaged by the assessor.

Annex II: Line Referred to in Article 8

Where for the purposes of this Treaty it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the World Geodetic System 84 (WGS 84), a spheroid which has its centre at the centre of the Earth and a major (equatorial) radius of 6378137 metres and a flattening of 100/29825.7223563.

The line referred to in Article 8 of this Treaty is a line:

(a) commencing at the point of Latitude 11° 20' 02.9" South, Longitude 126° 31' 58.4" East;

(b) running thence north-easterly along the geodesic to the point of Latitude 11° 19' 40.9" South, Longitude 126° 47' 08.4" East;

(c) thence north-easterly along the geodesic to the point of Latitude 11° 17' 30.9" South, Longitude 126° 57' 11.4" East;

(d) thence north-easterly along the geodesic to the point of Latitude 11° 17' 24.9" South, Longitude 126° 58' 17.4" East;

(e) thence north-easterly along the geodesic to the point of Latitude 11° 14' 18.9" South, Longitude 127° 31' 37.4" East;

(f) thence north-easterly along the geodesic to the point of Latitude 10° 55' 20.8" South, Longitude 127° 47' 08.4" East;

(g) thence north-easterly along the geodesic to the point of Latitude 10° 53' 36.8" South, Longitude 127° 48' 49.4" East;

(h) thence north-easterly along the geodesic to the point of Latitude 10° 43' 37.8" South, Longitude 127° 59' 20.4" East;

(i) thence north-easterly along the geodesic to the point of Latitude 10° 29' 11.8" South, Longitude 128° 12' 28.4" East, where it terminates.

Exchange of Side Letters Concerning Article 4.2

[DOWNER LETTERHEAD]

Jose Ramos-Horta
Senior Minister of State for Foreign Affairs and Cooperation
[Address]

Dear Minister

I am writing to you concerning the application of paragraph 2 of Article 4 of the *Treaty between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea* to the area of seabed outside the Joint Petroleum Development Area established under the Timor Sea Treaty and south of the line established by 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*.

As at 19 May 2002, Australian legislation applying to the area referred to in the preceding paragraph authorised the granting of permission for conducting activities in relation to petroleum or other resources of the seabed and subsoil. That legislation included the *Petroleum (Submerged Lands)* Act 1967 and the *Offshore Minerals Act 1994*. Accordingly, Australia will continue activities (including the regulation and authorisation of existing and new activities) in that area.

I seek your confirmation that, as at 19 May 2002, Timor-Leste had no legislation applying to that area giving rise to the application of paragraph 2 of Article 4.

Yours sincerely
Alexander Downer

[RAMOS-HORTA LETTERHEAD]

Hon Alexander Downer MP
Minister for Foreign Affairs
Parliament House
CANBERRA ACT 2600
Australia

Dear Minister

I refer to your letter concerning the application of paragraph 2 of Article 4 of the *Treaty between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea* to the area of seabed outside the Joint Petroleum Development Area established under the *Timor Sea Treaty* and south of the line established by 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*.

I note your advice concerning the application of Australian legislation to

the area referred to in the preceding paragraph that authorised the granting of permission for conducting activities in relation to petroleum or other resources of the seabed and subsoil.

I confirm that, as at 19 May 2002, the Democratic Republic of Timor-Leste had no legislation applying to that area giving rise to the application of paragraph 2 of Article 4.

Yours sincerely
Jose Ramos-Horta