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Submission No:1!.....

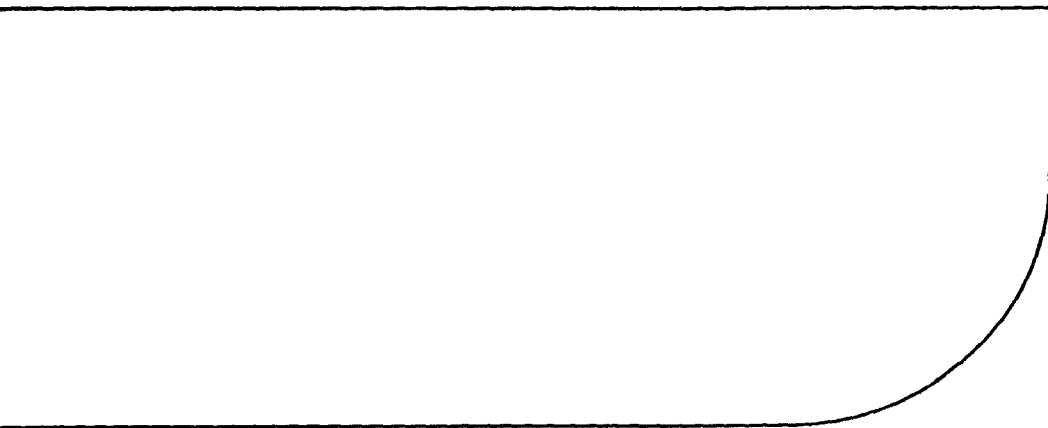
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**SUBMISSION TO THE JOINT STANDING COMMITTEE ON
TREATIES ON AGREEMENT BETWEEN THE
GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT
OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE
RELATING TO THE UNITISATION OF THE SUNRISE AND
TROUBADOUR FIELDS, DONE AT DILI ON 06 MARCH
2003**



This Submission responds to the invitation to me by the Joint Standing Committee for comments on the above Unitisation Agreement (the **Agreement**). The Timor Sea Treaty, pursuant to which the Agreement was made, is referred to as the **Treaty**.

1 Obligation of Both Parties to Seek Agreement on Such a Unitisation Agreement.

1.1 My Submission dated 31 July 2002 on the Treaty (Submission No. 22 referred to in Report 49 of the Joint Standing Committee) referred specifically to unitisation arrangements being a common and proper feature of seabed treaties dealing with a common deposit that straddles international boundaries or limits, including deposits that straddle a joint development area such as is the case here (paras 3.1 to 3.3 of Submission No. 22).

1.2 That remains my view. I confine my comments therefore to particular international legal aspects of the present Agreement, namely –

- Delineation of the Unit Area and Unit Reservoirs;
- Without Prejudice to Maritime Boundaries or Rights or Claims;
- Settlement of Disputes under the Agreement;
- Amendment and Termination of the Agreement and Effect of Permanent Delimitation of the Seabed
- Withdrawal or Denunciation of the “Treaty”;
- Other Comments

2 Delineation of the Unit Area and Unit Reservoirs

2.1 The Unit Area and Unit Reservoirs are adequately and properly described in Annex 1 of the Agreement. Unit Reservoirs are depicted for illustrative purposes by the darker-shaded areas in Attachment 1 to Annex 1.

2.2 What are depicted are the Sunrise and Troubadour Deposits of petroleum, which are properly defined to include any extension of those deposits “that is in direct hydrocarbon fluid communication with either deposit”.

3 Without Prejudice to Maritime Boundaries or Rights or Claims

3.1 The Agreement makes it abundantly clear that no prejudice is to be suffered by either party by reason of the Agreement in this regard. This is done by Article 2 which provides:

- (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.

3.2 Article 4 (Application of Laws) referred to in Article 2(2) provides that, for the purposes of the Agreement but not otherwise and unless otherwise provided in this Agreement:

- (a) the 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 petroleum activities attributed to Australia pursuant to Apportionment Ratio.

4 Settlement of Disputes under the Agreement

4.1 Article 26(1) and (2) of the Agreement apply to any disputes about the interpretation or application of the Agreement. These are to be settled by consultation or negotiation, or failing that to an Arbitral Tribunal set out in Annex IV of the Agreement.

4.2 However Article 26(3) provides that a dispute 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, is to be submitted by Australia and Timor-Leste to an expert acting in accordance with Annex V. The expert's decision is to be binding on both Governments and the Sunrise Joint Venturers (save in the event of fraud or manifest error).

4.3 These provisions appear to me to be appropriate and satisfactory.

5 Amendment and Termination of the Agreement and Effect of Permanent Delimitation of the Seabed

5.1 Article 27(2) and (3) of the Agreement provide as follows:

- (2) This Agreement may be amended to terminate 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.

(Emphasis added)

5.2 It seems to me to be clear that the requirement of the continuity of equivalent terms is an undertaking that is enforceable by either party to the Agreement, including if necessary under the settlement of disputes provisions in Article 26 of this Agreement. The requirement is also contained in slightly different wording in paragraph (d) of Annex E under Article 9(b) of the Treaty.

5.3 It could also be argued that, even in a case where the Agreement were terminated without there being a permanent delimitation, there would be an obligation, including under the general international law, to reach agreement on a further unitisation Agreement under equivalent terms. Any dispute on this point could I think be raised for consideration under the settlement of dispute provisions in Article 23 of the Treaty, but this is arguable.

6 Withdrawal or Denunciation

6.1 Paragraph 32 of the National Interest Analysis (NIA) states that, while the "Treaty" does not contain express provisions dealing with withdrawal or denunciation, it would nevertheless be "possible to withdraw from the Treaty at any time by consent of both parties".

6.2 Presumably this reference in the NIA is to the Timor Sea Treaty. The Agreement, as indicated above in paragraph 5.1, provides expressly that the parties may terminate the Agreement at any time.

6.3 While it is generally true that the parties to any bilateral treaty (and the Treaty is a bilateral treaty) can agree to terminate the treaty, in this case the parties would be ignoring what I regard as an international legal requirement namely that they seek a unitisation agreement in the case of reservoirs of petroleum that cross an international boundary. For a combination of legal and practical reasons, the option of withdrawal or denunciation is not feasible unless the Agreement is immediately replaced by another similar Agreement.

7 Other Comments

- 7.1 It is fair comment to say that the Agreement itself addresses all the elements that need to be addressed. The NIA is, with respect, correct in acknowledging this, and in acknowledging the role of consultations with the Joint Venturers and the Northern Territory in this regard.

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