

Provisions of the treaty

Purpose of the treaty

- 2.1 The Treaty provides a legal and fiscal framework that allows for the continuation of exploration and exploitation of oil and gas resources in an area of the Timor Sea that is currently subject to overlapping claims by Australia and East Timor.
- 2.2 The Treaty serves the interests of Australia in three ways. First, it provides for the receipt of direct revenue from petroleum resources in the JPDA (Article 4). Second, Australians will benefit through employment opportunities that arise as the result of the processing in Australia of resources from the JPDA.¹ Third, it promotes the future economic viability of one of Australia's nearest neighbours.²

Boundary delimitation, resource and revenue sharing

- 2.3 The Treaty will enter into force without prejudicing the territorial claims of Australia or East Timor to areas of the Timor Sea seabed that lie between the two countries (Article 2(b)). The Treaty is in accord with Article 83(3) of the United Nations Convention on the Law of the Sea (UNCLOS). Article 83(3) requires States with opposite or adjacent coasts, that cannot reach agreement on a maritime boundary delimitation to make

1 National Interest Analysis, para. 8.

2 Geoffrey Raby, *Transcript of Evidence*, 12 July 2002, p. 22.

every effort to enter into provisional arrangements of a practical nature pending a final agreement.

- 2.4 Annex A of the Treaty establishes the JPDA along the same boundary delimitations as ZOCA set out in the Timor Gap Treaty between Australia and Indonesia. Within the JPDA, Australia and East Timor will jointly control, manage and facilitate the exploration, development and exploitation of petroleum resources.
- 2.5 The Treaty designates ownership of the petroleum resources of the JPDA at a proportion of 90 percent to East Timor and 10 percent to Australia (Article 4(a)).
- 2.6 The Treaty makes provision for the taxation of petroleum activities conducted within the JPDA. Annex G of the Treaty sets out a taxation code for the avoidance of double taxation and the prevention of fiscal evasion.

Regulatory and administrative bodies

- 2.7 The Treaty provides for a three-tiered joint administrative structure consisting of a Designated Authority, a Joint Commission and a Ministerial Council (Article 6).

The Designated Authority

- 2.8 For the first three years after the Treaty's entry into force a Designated Authority will carry out the day-to-day administration of the JPDA. After the three-year period the Designated Authority will be the East Timor Government Ministry responsible for petroleum activities or, if decided by the Ministry, an East Timor statutory authority.
- 2.9 Petroleum related activities will require a contract between the Designated Authority and a limited liability corporation. Other administrative responsibilities of the Designated Authority include:
- the preparation of estimated annual income and expenditure of the Designated Authority;
 - the preparation of Annual Reports;
 - requesting assistance from appropriate authorities in Australia and East Timor for search and rescue operations, security threats and air traffic services and pollution prevention measures;
 - establishment of safety zones and restricted zones for the safety of navigation and petroleum operations;

- controlling movements of vessels, aircraft, structures and personnel involved in petroleum exploration and exploitation activities; and
 - health, safety, environmental protection and assessments and work practices (Annex C).
- 2.10 The Designated Authority will be financed from fees attached to petroleum activities within the JPDA. In the event that fees are inadequate to cover the cost of the Designated Authority, 90 percent of the expense will be borne by East Timor and 10 percent by Australia.
- 2.11 The Designated Authority is responsible to the Joint Commission.

The Joint Commission

- 2.12 The Joint Commission will consist of commissioners appointed by East Timor and Australia. There will be one more commissioner appointed by East Timor than by Australia. The Joint Commission will meet annually or as required and will be chaired by a member nominated by Australia and East Timor on an alternate basis.
- 2.13 The Joint Commission will establish policies and regulations relating to petroleum activities in the JPDA and oversee the work of the Designated Authority. More specifically, the powers of the Joint Commission include:
- directing the Designated Authority in the discharge of its responsibilities;
 - conferring additional responsibilities upon the Designated Authority as required;
 - if necessary, adopting an interim Petroleum Mining Code;
 - approving the financial estimates of expenditure and income made by the Designated Authority;
 - designating the Designated Authority for the first three years;
 - auditing and inspecting the Designated Authority's books at the request of a Joint Commissioner;
 - auditing and inspecting contractor's books and accounts;
 - considering and adopting the Designated Authority's annual report; and
 - amending the Petroleum Mining Code as required (Annex D).

- 2.14 Any Commissioner may refer a matter of disagreement to the Ministerial Council for resolution.³

The Ministerial Council

- 2.15 The Ministerial Council will consist of an equal number of Ministers from Australia and East Timor. The Council will meet at the request of Australia or East Timor or the Joint Commission. Meetings will be chaired by a representative of Australia and East Timor on an alternate basis.
- 2.16 The Ministerial Council will consider for resolution any matter that may be referred to it by Australia or East Timor or by Commissioners of Australia or East Timor.

Dispute resolution

- 2.17 In the event that a dispute cannot be resolved within the Ministerial Council, Annex B of the Treaty provides for the appointment of an arbitral tribunal that will consist of one arbitrator appointed by Australia and one by East Timor.
- 2.18 The arbitrators shall, within a period of 60 days, appoint an arbitrator from a third country that has diplomatic relations with both Australia and East Timor. If no agreement on the third arbitrator can be reached within the required timeframe Australia or East Timor may request the President of the International Court of Justice to make the appointment. If the President is an Australian or East Timorese national then the Vice-President may be invited to act in this capacity.
- 2.19 The resolution will be reached by majority vote.

Petroleum Mining Code

- 2.20 Article 7 of the Treaty provides for Australia and East Timor to negotiate an agreed Petroleum Mining Code which shall govern petroleum related activities within the JPDA. If the parties cannot agree on a Code the Joint Commission shall at its inaugural meeting adopt an interim code.

3 William Campbell, *Transcript of Evidence*, 12 July 2002, p. 37.

International Unitisation Agreement

- 2.21 An IUA treats a resource that straddles an international boundary as a single unit. It defines the scope of the resource and provides the terms for the administrative and regulatory regimes that will apply to the development and exploitation of the resource and the sharing of revenue deriving from the resource (Article 9).
- 2.22 The Timor Sea Treaty provides for an IUA to be negotiated for the development and exploitation of any reservoir that extends across the boundary of the JPDA (Article 9). The Greater Sunrise gas and oil fields are known to straddle the boundary of the JPDA and will be treated on the basis that 20.1 percent of it lies within the JPDA and 79.9 percent lies within Australian jurisdiction (Annex E). This means that East Timor will receive approximately 18 percent and Australia approximately 82 percent of the revenue from the Greater Sunrise development.

Implementing legislation

- 2.23 The *Timor (Joint Petroleum Development Area) Bill 2002* will provide for petroleum activities in the JPDA. The Bill describes the administrative arrangements and applicable law for the JPDA. There will also be consequential minor amendments to other legislation including the *Crimes at Sea Act 1979*, the *Customs Act 1901*, the *Income Tax Assessment Acts 1936 and 1997* and the *Petroleum (Submerged Lands) Act 1967*.