

Appendix 5

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Australian Treaty Series 1985 No 4

DEPARTMENT OF FOREIGN AFFAIRS

CANBERRA

**Treaty between Australia and the Independent State of Papua New Guinea concerning
Sovereignty and Maritime Boundaries in the area between the two Countries, including
the area known as Torres Strait, and Related Matters**

(Sydney, 18 December 1978)

Entry into force: 15 February 1985

The maps annexed to this Treaty as Annexes 2, 4, 6 and 7 are in the pocket inside the back cover of the printed text.

AUSTRALIAN TREATY SERIES

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**TREATY BETWEEN AUSTRALIA AND THE INDEPENDENT STATE OF
PAPUA NEW GUINEA CONCERNING SOVEREIGNTY AND MARITIME
BOUNDARIES IN THE AREA BETWEEN THE TWO COUNTRIES,
INCLUDING THE AREA KNOWN AS TORRES STRAIT, AND RELATED
MATTERS**

AUSTRALIA AND PAPUA NEW GUINEA,

DESIRING to set down their agreed position as to their respective sovereignty over certain islands, to establish maritime boundaries and to provide for certain other related matters, in the area between the two countries including the area known as Torres Strait;

RECOGNISING the importance of protecting the traditional way of life and livelihood of Australians who are Torres Strait Islanders and of Papua New Guineans who live in the coastal area of Papua New Guinea in and adjacent to the Torres Strait;

RECOGNISING ALSO the importance of protecting the marine environment and ensuring freedom of navigation and overflight for each other's vessels and aircraft in the Torres Strait area;

DESIRING ALSO to cooperate with one another in that area in the conservation, management and sharing of fisheries resources and in regulating the exploration and exploitation of seabed mineral resources;

AS good neighbours and in a spirit of cooperation, friendship and goodwill;

HAVE AGREED as follows:

PART 1

DEFINITIONS

Article 1

Definitions

1. In this Treaty-

- (a) "adjacent coastal area" means, in relation to Papua New Guinea, the coastal area of the Papua New Guinea mainland, and the Papua New Guinea islands, near the Protected Zone; and, in relation to Australia, the coastal area of the Australian mainland, and the Australian islands, near the Protected Zone;
- (b) "fisheries jurisdiction" means sovereign rights for the purpose of exploring and exploiting, conserving and managing fisheries resources other than sedentary species;
- (c) "fisheries resources" means all living natural resources of the sea and seabed, including all swimming and sedentary species;
- (d) "free movement" means movement by the traditional inhabitants for or in the course of traditional activities;
- (e) "indigenous fauna and flora" includes migratory fauna;
- (f) "mile" means an international nautical mile being 1,852 metres in length;
- (g) "Protected Zone" means the zone established under Article 10;
- (h) "Protected Zone commercial fisheries" means the fisheries resources of present or potential commercial significance within the Protected Zone and, where a stock of such resources belongs substantially to the Protected Zone but extends into an area outside but near it, the part of that stock found in that area within such limits as are agreed from time to time by the responsible authorities of the Parties;

(i) "seabed jurisdiction" means sovereign rights over the continental shelf in accordance with international law, and includes jurisdiction over low-tide elevations, and the right to exercise such jurisdiction in respect of those elevations, in accordance with international law;

(j) "sedentary species" means living 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;

(k) "traditional activities" means activities performed by the traditional inhabitants in accordance with local tradition, and includes, when so performed-

(i) activities on land, including gardening, collection of food and hunting;

(ii) activities on water, including traditional fishing;

(iii) religious and secular ceremonies or gatherings for social purposes, for example, marriage celebrations and settlement of disputes; and

(iv) barter and market trade.

In the application of this definition, except in relation to activities of a commercial nature, "traditional" shall be interpreted liberally and in the light of prevailing custom;

(l) "traditional fishing" means the taking, by traditional inhabitants for their own or their dependants' consumption or for use in the course of other traditional activities, of the living natural resources of the sea, seabed, estuaries and coastal tidal areas, including dugong and turtle;

(m) "traditional inhabitants" means, in relation to Australia, persons who-

(i) are Torres Strait Islanders who live in the Protected Zone or the adjacent coastal area of Australia,

(ii) are citizens of Australia, and

(iii) maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities; and

in relation to Papua New Guinea, persons who-

(i) live in the Protected Zone or the adjacent coastal area of Papua New Guinea,

(ii) are citizens of Papua New Guinea, and

(iii) maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities.

2. 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 $100/29825$ 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 Latitude $25^{\circ}56'54.5515''$ South and at Longitude $133^{\circ}12'30.0771''$ East and to have a ground level of 571.2 metres above the spheroid referred to above.

3. In this Treaty, the expression "in and in the vicinity of the Protected Zone" describes an area the outer limits of which might vary according to the context in which the expression is used.

PART 2

SOVEREIGNTY AND JURISDICTION

Article 2

Sovereignty over islands

1. Papua New Guinea recognises the sovereignty of Australia over-

(a) the islands known as Anchor Cay, Aubusi Island, Black Rocks, Boigu Island, Bramble Cay, Dauan Island, Deliverance Island, East Cay, Kaumag Island, Kerr Islet, Moimi Island, Pearce Cay, Saibai Island, Turnagain Island and Turu Cay; and

(b) all islands that lie between the mainlands of the two countries and south of the line referred to in paragraph 1 of Article 4 of this Treaty.

2. No island over which Australia has sovereignty, other than those specified in sub-paragraph 1(a) of this Article, lies north of the line referred to in paragraph 1 of Article 4 of this Treaty.

3. Australia recognises the sovereignty of Papua Guinea over-

(a) the islands known as Kawa Island, Mata Kawa Island and Kussa Island; and

(b) all the other islands that lie between the mainlands of the two countries and north of the line referred to in paragraph 1 of Article 4 of this Treaty, other than the islands specified in sub-paragraph 1(a) of this Article.

4. In this Treaty, sovereignty over an island shall include sovereignty over-

(a) its territorial sea;

(b) the airspace above the island and its territorial sea;

(c) the seabed beneath its territorial sea and the subsoil thereof; and

(d) any island, rock or low-tide elevation that may lie within its territorial sea.

Article 3

Territorial seas

1. The territorial sea boundaries between the islands of Aubusi, Boigu and Moimi and Papua New Guinea and the islands of Dauan, Kaumag and Saibai and Papua New Guinea shall be the lines described in Annex 1 to this Treaty, which are shown on the map annexed to this Treaty as Annex 2, together with such other portion of the outer limit of the territorial sea of Saibai described in Annex 3 to this Treaty that may abut the territorial sea of Papua New Guinea.

2. The territorial seas of the islands specified in sub-paragraph 1(a) of Article 2 of this Treaty shall not extend beyond three miles from the baselines from which the breadth of the territorial sea around each island is measured. Those territorial seas shall not be enlarged or reduced, even if there were to be any change in the configuration of a coastline or a different result from any further survey.

3. The provisions of paragraph 2 of this Article shall not apply to that part of the territorial sea of Pearce Cay which lies south of the line referred to in paragraph 1 of Article 4 of this Treaty.

4. The outer limits of the territorial seas of the islands specified in sub-paragraph 1(a) of Article 2 of this Treaty, except in respect of that part of the territorial sea of Pearce Cay which lies south of the line referred to in paragraph 1 of Article 4 of this Treaty, shall be as described in Annex 3 to this Treaty. The limits so described are shown on the maps annexed to this Treaty as Annexes 2 and 4.

5. Australia shall not extend its territorial sea northwards across the line referred to in paragraph 1 of Article 4 of this Treaty.

6. Papua New Guinea shall not-

(a) extend its territorial sea off its southern coastline between the meridians of Longitude 142°03'30" East and of Longitude 142°51'00" East, beyond three miles from the baselines from which the breadth of the territorial sea is measured;

(b) extend its territorial sea or archipelagic waters into the area bounded by that portion of the line referred to in paragraph 2 of Article 4 of this Treaty running from the point of Latitude 9°45'24" South, Longitude 142°03'30" East to the point of Latitude 9°40'30" South, Longitude 142°51'00" East and that portion of the line referred to in paragraph 1 of Article 4 of this Treaty which runs between those two points;

(c) establish an archipelagic baseline running in or through the area referred to in sub-paragraph (b) of this paragraph; or

(d) extend its territorial sea southwards across the line referred to in paragraph 1 of Article 4 of this Treaty.

Article 4

Maritime jurisdiction

1. Subject to the provisions of Article 2 of this Treaty, the boundary between the area of seabed and subsoil that is adjacent to and appertains to Australia and the area of seabed and subsoil that is adjacent to and appertains to Papua New Guinea, and over which Australia and Papua New Guinea respectively shall have seabed jurisdiction, shall be the line described in Annex 5 to this Treaty. The line so described is shown on the map annexed to this Treaty as Annex 6 and, in part, on the map annexed to this Treaty as Annex 7.

2. Subject to the provisions of Article 2 of this Treaty, the boundary between the area of sea that is adjacent to and appertains to Australia and the area of sea that is adjacent to and appertains to Papua New Guinea, and in which Australia and Papua New Guinea respectively shall have fisheries jurisdiction, shall be the line described in Annex 8 to this Treaty. The line so described is shown on the map annexed to this Treaty as Annex 6 and, in part, on the maps annexed to this Treaty as Annexes 2 and 7.

3. In relation to the area bounded by the portion of the line referred to in paragraph 2 of this Article running from the point of Latitude 9°45'24" South, Longitude 142°03'30" East to the point of Latitude 9°40'30" South, Longitude 142°51'00" East and that portion of the line referred to in paragraph 1 of this Article which runs between those two points, exclusive of the territorial seas of the islands of Aubusi, Boigu, Dauan, Kaumag, Moimi, Saibai and Turnagain-

(a) neither Party shall exercise residual jurisdiction without the concurrence of the other Party; and

(b) the Parties shall consult with a view to reaching agreement on the most effective method of application of measures involving the exercise of residual jurisdiction.

4. In paragraph 3 of this Article, "residual jurisdiction" means-

(a) jurisdiction over the area other than seabed jurisdiction or fisheries jurisdiction, including jurisdiction other than seabed jurisdiction or fisheries jurisdiction insofar as it relates to *inter alia*:

(i) the preservation of the marine environment;

(ii) marine scientific research; and

(iii) the production of energy from the water, currents and winds; and

(b) seabed and fisheries jurisdiction to the extent that the exercise of such jurisdiction is not directly related to the exploration or exploitation of resources or to the prohibition of, or refusal to authorise, activities subject to that jurisdiction.

PART 3

SOVEREIGNTY AND JURISDICTION - RELATED MATTERS

Article 5

Existing petroleum permit

1. Where prior to 16 September 1975 Australia has granted an exploration permit for petroleum under Australian law in respect of a part of the seabed over which it ceases by virtue of this Treaty to exercise sovereign rights, and a permittee retains rights in respect of that permit immediately prior to the entry into force of this Treaty, Papua New Guinea, upon application by that permittee, shall offer to that permittee a petroleum prospecting licence or licences under Papua New Guinea law in respect of the same part of the seabed on terms that are not less favourable than those provided under Papua New Guinea law to any other holder of a seabed petroleum prospecting licence.

2. An application for a licence under paragraph 1 of this Article shall be made-

(a) in respect of a part of the seabed lying outside the Protected Zone, within six months after the date of entry into force of this Treaty;

(b) in respect of a part of the seabed lying within the Protected Zone, during the period referred to in Article 15 and any extension of that period to which the Parties may agree.

Article 6

Exploitation of certain seabed deposits

If any single accumulation of liquid hydrocarbons or natural gas, or if any other mineral deposit beneath the seabed, extends across any line defining the limits of seabed jurisdiction of the Parties, and if the part of such accumulation or deposit that is situated on one side of such a line is recoverable in fluid form wholly or in part from the other side, the Parties shall consult with a view to reaching agreement on the manner in which the accumulation or deposit may be most effectively exploited and on the equitable sharing of the benefits from such exploitation.

Article 7

Freedom of navigation and overflight

1. On and over the waters of the Protected Zone that lie-

(a) north of the line referred to in paragraph 1 of Article 4 of this Treaty and seaward of the low water lines of the land territory of either Party, and

(b) south of that line and beyond the outer limits of the territorial sea,

each Party shall accord to the vessels and aircraft of the other Party, subject to paragraphs 2 and 3 of this Article, the freedoms of navigation and overflight associated with the operation of vessels and aircraft on or over the high seas.

2. Each Party shall take all necessary measures to ensure that, in the exercise of the freedoms of navigation and overflight accorded to its vessels and aircraft under paragraph 1 of this Article-

(a) those vessels observe generally accepted international regulations, procedures and practices for safety at sea and for the prevention, reduction and control of pollution from ships;

(b) those civil aircraft observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft, and State aircraft normally comply with such of those rules as relate to safety and at all times operate with due regard for the safety of navigation;

(c) those vessels and aircraft north of the line referred to in paragraph 1 of Article 4 of this Treaty do not engage in the embarking or disembarking of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the other Party, provided that the relevant laws and regulations of that Party do not have the practical effect of denying, hampering or impairing the freedoms of navigation and overflight accorded under paragraph 1 of this Article; and

(d) those vessels and aircraft, north of the line referred to in paragraph 1 of Article 4 of this Treaty, do not act in a manner prejudicial to the peace, good order or security of the other Party.

3. Vessels of a Party engaged in the exploration or exploitation of resources in an area of jurisdiction of the other Party shall remain subject to the laws and regulations of the other Party made in the exercise of its resources jurisdiction consistently with this Treaty and with international law, including the provisions of those laws and regulations concerning the boarding, inspection and apprehension of vessels.

4. In those areas of the Protected Zone north of the line referred to in paragraph 1 of Article 4 of this Treaty to which paragraph 1 of this Article does not apply, civil aircraft of a Party engaged in scheduled or non-scheduled air services shall have the right of overflight, and the right to make stops for non-traffic purposes, without the need to obtain prior permission from the other Party, subject to compliance with any applicable laws or regulations made for the safety of air navigation.

5. In areas of the Protected Zone to which paragraph 1 of this Article does not apply, the vessels of a Party shall enjoy the right of innocent passage. There shall be no suspension of that right, and neither Party shall adopt laws or regulations applying to those areas that might impede or hamper the normal passage of vessels between two points both of which are in the territory of one Party.

6. In cases where the provisions of neither paragraph 1 nor paragraph 5 of this Article apply, a regime of passage over routes used for international navigation in the area between the two countries, including the area known as Torres Strait, shall apply in respect of vessels that is no more restrictive of passage than the regime of transit passage through straits used for international navigation described in Articles 34 to 44 inclusive of Document A/Conf. 62/WP.10 of the Third United Nations Conference on the Law of the Sea, provided that, before a Party adopts a law or regulation that might impede or hamper the passage over those

routes of vessels proceeding to or from the territory of the other Party, it shall consult with the other Party. If the provisions of those Articles are revised, are not included in any Law of the Sea Convention or fail to become generally accepted principles of international law, the Parties shall consult with a view to agreeing upon another regime of passage that is in accordance with international practice to replace the regime of passage applying under this paragraph.

7. The rights of navigation and overflight provided for in this Article are in addition to, and not in derogation of, rights of navigation and overflight in the area concerned under other treaties or general principles of international law.

Article 8

Navigational aids

With a view to maintaining and improving the safety of navigation through the waters in the area between the two countries, the Parties shall cooperate and, with due regard to the technical and other means available to each of them, shall, where appropriate and as may be agreed between them, provide mutual assistance in the provision and maintenance of navigational aids and in the preparation of charts and maps.

Article 9

Wrecks

1. Wrecks of vessels and aircraft which lie on, in or under the seabed in an area of seabed jurisdiction of a Party shall be subject to the jurisdiction of that Party.

2. If a wreck of historical or special significance to a Party is located or found in an area between the two countries under the jurisdiction of the other Party, the Parties shall consult with a view to reaching agreement on the action, if any, to be taken with respect to that wreck.

3. The provisions of this Article shall be without prejudice to the competence of the courts of a Party, for the purposes of the laws of that Party, in relation to maritime causes of action in respect of wrecks coming within the provisions of this Article.

4. This Article shall not apply to any military vessel or aircraft of either Party wrecked after the date of entry into force of this Treaty.

PART 4

THE PROTECTED ZONE

Article 10

Establishment and purposes of the Protected Zone

1. A Protected Zone in the Torres Strait is hereby established comprising all the land, sea, airspace, seabed and subsoil within the area bounded by the line described in Annex 9 to this

Treaty. The line so described is shown on the maps annexed to this Treaty as Annexes 6 and 7 and, in part, on the map annexed to this Treaty as Annex 2.

2. The Parties shall adopt and apply measures in relation to the Protected Zone in accordance with the provisions of this Treaty.

3. The principal purpose of the Parties in establishing the Protected Zone, and in determining its northern, southern, eastern and western boundaries, is to acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants including their traditional fishing and free movement.

4. A further purpose of the Parties in establishing the Protected Zone is to protect and preserve the marine environment and indigenous fauna and flora in and in the vicinity of the Protected Zone.

Article 11

Free movement and traditional activities including traditional fishing

1. Subject to the other provisions of this Treaty, each Party shall continue to permit free movement and the performance of lawful traditional activities in and in the vicinity of the Protected Zone by the traditional inhabitants of the other Party.

2. Paragraph 1 of this Article shall not be interpreted as sanctioning the expansion of traditional fishing by the traditional inhabitants of one Party into areas outside the Protected Zone under the jurisdiction of the other Party not traditionally fished by them prior to the date of entry into force of this Treaty.

3. The provisions of this Article and the other provisions of this Treaty concerning traditional fishing are subject to Article 14 and paragraph 2 of Article 20 of this Treaty.

Article 12

Traditional customary rights

Where the traditional inhabitants of one Party enjoy traditional customary rights of access to and usage of areas of land, seabed, seas, estuaries and coastal tidal areas that are in or in the vicinity of the Protected Zone and that are under the jurisdiction of the other Party, and those rights are acknowledged by the traditional inhabitants living in or in proximity to those areas to be in accordance with local tradition, the other Party shall permit the continued exercise of those rights on conditions not less favourable than those applying to like rights of its own traditional inhabitants.

Article 13

Protection of the marine environment

1. Each Party shall take legislative and other measures necessary to protect and preserve the marine environment in and in the vicinity of the Protected Zone. In formulating those measures each Party shall take into account internationally agreed rules, standards and

recommended practices which have been adopted by diplomatic conferences or by relevant international organisations.

2. The measures that each Party shall take in accordance with paragraph 1 of this Article shall include measures for the prevention and control of pollution or other damage to the marine environment from all sources and activities under its jurisdiction or control and shall include, in particular, measures to minimise to the fullest practicable extent-

(a) the release of toxic, harmful or noxious substances from land-based sources, from rivers, from or through the atmosphere, or by dumping at sea;

(b) pollution or other damage from vessels; and

(c) pollution or other damage from installations and devices used in the exploration and exploitation of the natural resources of the seabed and subsoil thereof.

3. The measures taken by each Party in accordance with paragraph 1 of this Article shall be consistent with its obligations under international law, including obligations not to prejudice the rights of foreign ships and aircraft, and shall be subject to the provisions of Article 7 of this Treaty.

4. The Parties shall consult, at the request of either, for the purpose of

(a) harmonising their policies with respect to the measures that each shall take pursuant to this Article; and

(b) ensuring the effective and coordinated implementation of those measures.

5. If either Party has reasonable grounds for believing that any planned activity under its jurisdiction or control may cause pollution or other damage to the marine environment in or in the vicinity of the Protected Zone, that Party shall, after due investigation, communicate to the other Party its assessment of the potential impact of that activity on the marine environment.

6. If either Party has reasonable grounds for believing that any existing or planned activity under the jurisdiction or control of the other Party is causing or may cause pollution or other damage to the marine environment in or in the vicinity of the Protected Zone, it may request consultations with the other Party, and the Parties shall then consult as soon as possible with a view to adopting measures to prevent or control any pollution or other damage to that environment from that activity.

Article 14

Protection of fauna and flora

1. Each Party shall, in and in the vicinity of the Protected Zone, use its best endeavours to-

(a) identify and protect species of indigenous fauna and flora that are or may become threatened with extinction;

(b) prevent the introduction of species of fauna and flora that may be harmful to indigenous fauna and flora; and

(c) control noxious species of fauna and flora.

2. Notwithstanding any other provision of this Treaty except paragraph 4 of this Article, a Party may implement within its area of jurisdiction measures to protect species of indigenous fauna and flora which are or may become threatened with extinction or which either Party has an obligation to protect under international law.

3. The Parties shall as appropriate and necessary exchange information concerning species of indigenous fauna and flora that are or may become threatened with extinction and shall consult, at the request of either of them, for the purpose of-

(a) harmonising their policies with respect to the measures that each may take to give effect to paragraphs 1 and 2 of this Article; and

(b) ensuring the effective and coordinated implementation of those measures.

4. In giving effect to the provisions of this Article, each Party shall use its best endeavours to minimise any restrictive effects on the traditional activities of the traditional inhabitants.

Article 15

Prohibition of mining and drilling of the seabed

Neither Party shall undertake or permit within the Protected Zone mining or drilling of the seabed or the subsoil thereof for the purpose of exploration for or exploitation of liquid hydrocarbons, natural gas or other mineral resources during a period of ten years from the date of entry into force of this Treaty. The Parties may agree to extend that period.

Article 16

Immigration, customs, quarantine and health

1. Except as otherwise provided in this Treaty, each Party shall apply immigration, customs, quarantine and health procedures in such a way as not to prevent or hinder free movement or the performance of traditional activities in and in the vicinity of the Protected Zone by the traditional inhabitants of the other Party.

2. Each Party, in administering its laws and policies relating to the entry and departure of persons and the importation and exportation of goods into and from areas under its jurisdiction in and in the vicinity of the Protected Zone, shall act in a spirit of mutual friendship and good neighbourliness, bearing in mind relevant principles of international law and established international practices and the importance of discouraging the occurrence, under the guise of free movement or performance of traditional activities, of illegal entry, evasion of justice and practices prejudicial to effective immigration, customs, health and quarantine protection and control.

3. Notwithstanding the provisions of paragraph 1 of this Article-

(a) traditional inhabitants of one Party who wish to enter the other country, except for temporary stay for the performance of traditional activities, shall be subject to the same immigration, customs, health and quarantine requirements and procedures as citizens of that Party who are not traditional inhabitants;

(b) each Party reserves its right to limit free movement to the extent necessary to control abuses involving illegal entry or evasion of justice; and

(c) each Party reserves its right to apply such immigration, customs, health and quarantine measures, temporary or otherwise, as it considers necessary to meet problems which may arise. In particular each Party may apply measures to limit or prevent free movement, or the carriage of goods, plants or animals in the course thereof, in the case of an outbreak or spread of an epidemic, epizootic or epiphytotic in or in the vicinity of the Protected Zone.

Article 17

Implementation and coordination

In order to facilitate the implementation of the provisions of this Treaty relating to the Protected Zone, the authorities of each Party shall, at the request of the authorities of the other Party, as may be appropriate and necessary-

(a) make available to the authorities of the other Party information on the relevant provisions of its laws, regulations and procedures relating to immigration, citizenship, customs, health, quarantine, fisheries, the protection of the environment and other matters; and

(b) consult with the authorities of the other Party with a view to making appropriate administrative or other arrangements to resolve any problems arising in the implementation of those provisions.

Article 18

Liaison arrangements

1. Each Party shall designate a representative who shall facilitate the implementation at the local level of the provisions of this Treaty.

2. The two designated representatives shall-

(a) exchange information on relevant developments in and in the vicinity of the Protected Zone;

(b) consult together and take such action as is appropriate to their respective functions to facilitate the practical operation at the local level of the provisions of this Treaty and to resolve any problems arising therefrom;

(c) keep under review free movement by the traditional inhabitants of one Party into areas under the jurisdiction of the other Party and the local arrangements applying in respect of such free movement; and

(d) draw to the attention of their Governments, and make recommendations as appropriate on, any matters affecting the implementation of the provisions of this Treaty or arising therefrom which are not capable of resolution at the local level or which may otherwise require consideration by both Parties.

3. In the exercise of his functions, each representative shall-

(a) consult closely with representatives of the traditional inhabitants of his country, particularly in relation to any problems which may arise in respect of free movement, traditional activities and the exercise of traditional customary rights as provided for in this Treaty, and convey their views to his Government; and

(b) maintain close liaison with national, State, Provincial and local authorities of his country on all matters falling within their respective responsibilities.

4. Unless a different location is required by the circumstances, the representative of Australia shall be based at Thursday Island and the representative of Papua New Guinea shall be based at Daru.

Article 19

Torres Strait Joint Advisory Council

1. The Parties shall jointly establish and maintain an advisory and consultative body which shall be known as the Torres Strait Joint Advisory Council (called in this Article "the Advisory Council").

2. The functions of the Advisory Council shall be-

(a) to seek solutions to problems arising at the local level and not resolved pursuant to Article 18 of this Treaty;

(b) to consider and to make recommendations to the Parties on any developments or proposals which might affect the protection of the traditional way of life and livelihood of the traditional inhabitants, their free movement, performance of traditional activities and exercise of traditional customary rights as provided for in this Treaty; and

(c) to review from time to time as necessary, and to report and to make recommendations to the Parties on, any matters relevant to the effective implementation of this Treaty, including the provisions relating to the protection and preservation of the marine environment, and fauna and flora, in and in the vicinity of the Protected Zone.

3. The Advisory Council shall not have or assume responsibilities for management or administration. These responsibilities shall, within the respective areas of jurisdiction of each Party, continue to lie with the relevant national, State, Provincial and local authorities.

4. In the exercise of its functions, the Advisory Council shall ensure that the traditional inhabitants are consulted, that they are given full and timely opportunity to comment on matters of concern to them and that their views are conveyed to the Parties in any reports and recommendations made by the Advisory Council to the Parties.

5. The Advisory Council shall transmit its reports and recommendations to the Foreign Ministers of the Parties. After consideration by appropriate authorities of the Parties, consultations may be arranged with a view to the resolution of matters to which the Advisory Council has invited attention.

6. Unless otherwise agreed by the Parties, the Advisory Council shall consist of eighteen members, that is nine members from each Party who shall include-

(a) at least two national representatives;

(b) at least one member representing the Government of Queensland in the case of Australia and one representing the Fly River Provincial Government in the case of Papua New Guinea; and

(c) at least three members representing the traditional inhabitants,

with each Party being free to decide from time to time from which of the aforementioned categories any other of its members will be drawn.

7. The Advisory Council shall meet when necessary at the request of either Party. Consecutive meetings of the Advisory Council shall be chaired alternately by a representative of Australia and a representative of Papua New Guinea. Meetings shall be held alternately in Australia and Papua New Guinea or as may from time to time be otherwise arranged.

PART 5

PROTECTED ZONE COMMERCIAL FISHERIES

Article 20

Priority of traditional fishing and application of measures to traditional fishing

1. The provisions of this Part shall be administered so as not to prejudice the achievement of the purposes of Part 4 of this Treaty in regard to traditional fishing.

2. A Party may adopt a conservation measure consistent with the provisions of this Part which, if necessary for the conservation of a species, may be applied to traditional fishing, provided that that Party shall use its best endeavours to minimise any restrictive effects of that measure on traditional fishing.

Article 21

Conservation, management and optimum utilisation

The Parties shall cooperate in the conservation, management and optimum utilisation of Protected Zone commercial fisheries. To this end, the Parties shall consult at the request of either and shall enter into arrangements for the effective implementation of the provisions of this Part.

Article 22

Conservation and management of individual fisheries

1. The Parties shall, where appropriate, negotiate subsidiary conservation and management arrangements in respect of any individual Protected Zone commercial fishery.
2. If either party notifies the other in writing that it regards one of the Protected Zone commercial fisheries as one to which common conservation and management arrangements should apply, the Parties shall within ninety days from the date of the notification enter into consultations with a view to concluding arrangements specifying the measures to be applied by them with respect to that fishery.
3. The Parties shall, where appropriate, also negotiate supplementary conservation and management arrangements in respect of resources directly related to a fishery referred to in paragraph 1 of this Article, including resources involving stocks occurring in the Protected Zone where such stocks are not otherwise subject to the provisions of this Treaty.

Article 23

Sharing of the catch of the Protected Zone commercial fisheries

1. The Parties shall share the allowable catch of the Protected Zone commercial fisheries in accordance with the provisions of this Article and of Articles 24 and 25 of this Treaty.
2. The allowable catch, that is to say the optimum sustainable yield, of a Protected Zone commercial fishery shall be determined jointly by the Parties as part of the subsidiary conservation and management arrangements referred to in paragraph 1 of Article 22 of this Treaty.
3. If either Party has reasonable grounds for believing that the commercial exploitation of a species of Protected Zone commercial fisheries would, or has the potential to, cause serious damage to the marine environment, or might endanger another species, that Party may request consultations with the other Party and the Parties shall then consult as soon as possible with a view to reaching agreement on whether such commercial exploitation could be undertaken in a manner which would not result in such damage or endanger another species.
4. In respect of any relevant period where the full allowable catch of a particular Protected Zone commercial fishery might be taken, each Party shall be entitled to a share of the allowable catch apportioned, subject to paragraphs 5, 6 and 8 of this Article and to Articles 24 and 25 of this Treaty, as follows:
 - (a) in areas under Australian jurisdiction, except as provided in (b) below:

Australia - 75%

Papua New Guinea - 25%
 - (b) within the territorial seas of Anchor Cay, Black Rocks, Bramble Cay, Deliverance Island, East Cay, Kerr Islet, Pearce Cay and Turu Cay:

Australia - 50%

Papua New Guinea - 50%

(c) in areas under Papua New Guinea jurisdiction:

Australia - 25%

Papua New Guinea - 75%

5. Papua New Guinea shall have the sole entitlement to the allowable catch of the commercial barramundi fishery near the Papua New Guinea coast, except within the territorial seas of the islands of Aubusi, Boigu, Dauan, Kaumag, Moimi and Saibai where, in respect of that fishery, the provisions of paragraph 4(a) of this Article shall not apply.

6. In apportioning the allowable catch in relation to an individual fishery, the Parties shall normally consider the allowable catch expressed in terms of weight or volume. In calculating the apportionment of the total allowable catch of the Protected Zone commercial fisheries, the Parties shall have regard to the relative value of individual fisheries and shall, for this purpose, agree on a common value for production from each individual fishery for the period in question, such value being based on the value of the raw product at the processing facility or such other point as may be agreed, but prior to any enhancement of value through processing, including processing at a pearl culture farm, or further transportation or marketing.

7. The Parties may agree to vary the apportionment of the allowable catch determined for individual fisheries as part of the subsidiary conservation and management arrangements referred to in paragraph 1 of Article 22 of this Treaty but so as to maintain in respect of the total allowable catch of the Protected Zone commercial fisheries the apportionment specified in paragraph 4 of this Article for each Party.

8. In calculating the total allowable catch of the Protected Zone commercial fisheries, the allowable catch of the commercial barramundi fishery referred to in paragraph 5 of this Article shall be disregarded.

Article 24

Transitional entitlement

1. As part of the subsidiary conservation and management arrangements referred to in paragraph 1 of Article 22 of this Treaty, the level of the catch of each Protected Zone commercial fishery to which each Party is entitled, provided it remains within the allowable catch-

(a) shall not, during the period of five years immediately after the entry into force of this Treaty, be reduced below the level of catch of that Party before the entry into force of this Treaty; but

(b) may, during the second period of five years after the entry into force of this Treaty, be adjusted progressively so that at the end of that second five-year period it reaches the level of catch apportioned in each case in Article 23 of this Treaty.

2. The entitlement of a Party under this Article shall, where the limitation of the allowable catch makes it necessary, take priority over the entitlement of the other Party under Article 23 of this Treaty, but shall be taken into account in calculating the entitlement of the first Party.

Article 25

Preferential entitlement

If, in any relevant period, a Party does not itself propose to take all the allowable catch of a Protected Zone commercial fishery to which it is entitled, either in its own area of jurisdiction or that of the other Party, the other Party shall have a preferential entitlement to any of the allowable catch of that fishery not taken by the first Party.

Article 26

Licensing arrangements

1. In the negotiation and implementation of the conservation and management arrangements referred to in paragraph 1 of Article 22 of this Treaty-

(a) the Parties shall consult and cooperate in the issue and endorsement of licences to permit commercial fishing in Protected Zone commercial fisheries;

(b) the responsible authorities of the Parties may issue licences to fish in any Protected Zone commercial fishery; and

(c) persons or vessels which are licensed by the responsible authorities of one Party to fish in any relevant period in a Protected Zone commercial fishery shall, if nominated by the responsible authorities of that Party, be authorised by the responsible authorities of the other Party, wherever necessary, by the endorsement of licences or otherwise, to fish in those areas under the jurisdiction of the other Party in which the fishery concerned is located.

2. The persons or vessels licensed by one Party which have been authorised, or are to be authorised, under the provisions of paragraph 1 of this Article to fish in waters under the jurisdiction of the other Party shall comply with the relevant fisheries laws and regulations of the other Party except that they shall be exempt from licensing fees, levies and other charges imposed by the other Party in respect of such fishing activities.

3. In issuing licences in accordance with paragraph 1 of this Article, the responsible authorities of both Parties shall have regard to the desirability of promoting economic development in the Torres Strait area and employment opportunities for the traditional inhabitants.

4. The responsible authorities of both Parties shall ensure that the traditional inhabitants are consulted from time to time on the licensing arrangements in respect of Protected Zone commercial fisheries.

Article 27

Third State fishing in Protected Zone commercial fisheries

1. The responsible authorities of the Parties shall inform one another and shall consult, at the request of either of them, concerning the proposed exploitation of the Protected Zone commercial fisheries-

(a) by a joint venture in which there is third-State equity participation; or

(b) by a vessel of third-State registration or with a crew substantially of the nationality of a third State.

2. Vessels the operations of which are under the control of nationals of a third State shall not be licensed to exploit the Protected Zone commercial fisheries without the concurrence of the responsible authorities of both Parties in a particular case or class of cases.

Article 28

Inspection and enforcement

1. The Parties shall cooperate, including by exchange of personnel, in inspection and enforcement to prevent violations of the Protected Zone commercial fisheries arrangements and in taking appropriate enforcement measures in the event of such violations.

2. The Parties shall consult from time to time, as necessary, so as to ensure that legislation and regulations adopted by each Party pursuant to paragraph 1 of this Article are, as far as practicable, consistent with the legislation and regulations of the other Party.

3. Each Party shall make it an offence under its fisheries laws or regulations for a person to use a vessel of its nationality to fish in Protected Zone commercial fisheries for species of fisheries resources in areas over which the other Party has jurisdiction in respect of those species-

(a) without being duly licensed or authorised by that other Party; or

(b) in the case of a licensed or authorised vessel, in breach of the fisheries laws or regulations of the other Party applying within those areas.

4. Each Party will, in relation to species of fisheries resources in areas where it has jurisdiction in respect of those species-

(a) investigate suspected offences against its fisheries laws and regulations; and

(b) except as provided in or under this Article, take corrective action when necessary against offenders against those laws or regulations.

5. In this Article, "corrective action" means the action normally taken in respect of a suspected offence, after due investigation, and includes, where appropriate, the apprehension

of a suspected offender, the prosecution of an alleged offender, or the execution of a penalty imposed by a court or the cancellation or suspension of the licence of an offender.

6. In accordance with the provisions of this Article, and in other appropriate cases as may be agreed between the Parties, corrective action in respect of offences or suspected offences against the fisheries laws or regulations of the Parties shall be taken by the authorities of the Party whose nationality is borne by the vessel or person concerned (called in this Article "the first Party") and not by the Party in whose area of jurisdiction the offence or suspected offence occurs (called in this Article "the second Party").

7. The Parties acknowledge that the principle stated in paragraph 6 of this Article should not be applied so as to frustrate the enforcement of fisheries laws or regulations or to enable offenders against those laws or regulations to go unpunished.

8. Where, in the case of a suspected offence alleged to have been committed in or in the vicinity of the Protected Zone, it appears that the offence was, or might reasonably be considered to have been, committed in the course of traditional fishing, corrective action or other measures shall be taken by the authorities of the first Party and not by the authorities of the second Party and, if being detained by the authorities of the second Party, the alleged offenders and their vessel shall be either released or handed over to the authorities of the first Party, in accordance with arrangements that will avoid undue expense or inconvenience to the authorities of the second Party.

9. Where paragraph 8 of this Article applies, the authorities of the second Party may require assurance in a particular case that corrective action or other measures will be taken by the authorities of the first Party that will adequately ensure that the activity complained of will not be repeated.

10. Where the provisions of paragraph 8 of this Article do not apply, and the person or vessel alleged to have been involved or used in the commission of a suspected offence in the Protected Zone is licensed to fish in the Protected Zone by the authorities of the first Party, corrective action shall be taken by the authorities of the first Party and not by the authorities of the second Party and, if being detained by the authorities of the second Party, the alleged offenders and their vessel shall be either released or handed over to the authorities of the first Party, in accordance with arrangements that will avoid undue expense or inconvenience to the authorities of the second Party, and the provisions of paragraphs 13 and 14 of this Article shall apply.

11. The provisions of paragraph 10 of this Article shall also apply in respect of a suspected offence by a person or vessel of the first Party in an area of jurisdiction of the second Party outside the Protected Zone where-

(a) that person or vessel was authorised by the authorities of the second Party to fish in the area where the suspected offence was committed under the arrangements referred to in paragraph 1 of Article 22 of this Treaty; and

(b) the suspected offence was committed in relation to the fishery the subject of that authorisation and did not involve the taking of other species or potential injury to another fishery.

12. Persons or vessels of the first Party detained by the authorities of the second Party in the circumstances described in paragraphs 8 and 10 of this Article may be detained for as long as necessary to enable those authorities to conduct an expeditious investigation into the offence and to obtain evidence. Thereafter, they shall not be detained other than for the purpose of the handing over of the persons or vessels in accordance with the provisions of those paragraphs unless they are lawfully detained on some other ground.

13. If an alleged offender referred to in paragraph 10 of this Article is, in respect of conduct in waters under the jurisdiction of the second Party-

(a) convicted of an offence against the fisheries laws or regulations of the first Party; or

(b) found by the authorities of the first Party, on the basis of sufficient available evidence, to have contravened or failed to comply with a condition of his licence or authorisation or that of his vessel;

the authorities of the first Party shall, where appropriate and having regard to paragraph 7 of this Article, cancel or suspend the licence or authorisation of the person or his vessel so far as it relates to the Protected Zone commercial fisheries.

14. Where a person or vessel involved or used in the commission of the alleged offence referred to in paragraph 10 of this Article is also currently licensed or authorised to fish in the area of the Protected Zone by the second Party, the authorities of the second Party may, after receiving a report and representations, if any, from the authorities of the first Party, cancel or suspend that licence or authorisation in accordance with its laws for such period as is warranted by the circumstances of the case.

15. Each Party shall provide the other Party with any evidence obtained during investigations carried out in accordance with this Article into a suspected offence involving a person or vessel of the other Party. Each Party shall take appropriate measures to facilitate the admission of such evidence in proceedings taken in respect of the suspected offence.

16. In this Article references to persons and vessels of, or of the nationality of, a Party include references to persons or vessels licensed by that Party under sub-paragraph 1(b) of Article 26 of this Treaty, and the crews of vessels so licensed, except where such persons or vessels have a prior current licence from the other Party under that sub-paragraph.

PART 6

FINAL ARTICLES

Article 29

Settlement of disputes

Any dispute between the Parties arising out of the interpretation or implementation of this Treaty shall be settled by consultation or negotiation.

Article 30

Consultations

The Parties shall consult, at the request of either, on any matters relating to this Treaty.

Article 31

Annexes

The Annexes to this Treaty shall have force and effect as integral parts of this Treaty.

Article 32

Ratification

This Treaty shall be subject to ratification and shall enter into force on the exchange of the instruments of ratification.[\[1\]](#)

IN WITNESS WHEREOF the undersigned being duly authorised have signed the present Treaty and have affixed thereto their seals.

DONE in duplicate at Sydney on this eighteenth day of December, One thousand nine hundred and seventy-eight.

FOR AUSTRALIA: FOR PAPUA NEW GUINEA:

[Signed:] [Signed:]

MALCOLM FRASER MICHAEL SOMARE

Prime Minister Prime Minister

[Signed:] [Signed:]

ANDREW PEACOCK N. EBIA OLEWALE

Minister for Foreign Affairs Deputy Prime Minister and

Minister for Foreign Affairs and Trade