

## **Agreement Relating to the Unitisation of the Sunrise and Troubadour Fields**

### **Introduction**

- 4.1 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*, provides a comprehensive framework for the joint development of the Sunrise and Troubadour Fields, together known as the Greater Sunrise Field, lying in a defined Unit Area.

### **Background**

- 4.2 The resource potential of the Timor Sea was initially the subject of the 1989 Timor Gap Treaty between Australia and Indonesia. Following the separation of East Timor from Indonesia on 25 October 1999, Australia entered into an Agreement with the United Nations Transitional Administration in East Timor (UNTAET) (the February 2000 Agreement) to allow Australia and East Timor to benefit from the continuation of exploration and exploitation activities in the Timor Sea.
- 4.3 Recognising that the February 2000 Agreement would end upon East Timor's independence, Australia and UNTAET/East Timor began negotiations to develop a framework for the joint development of

Timor Sea resources. Subsequently, the Timor Sea Treaty was signed in Dili on 20 May 2002, the date of East Timor's independence. Legislation to enact Australia's obligations under that treaty received Royal Assent on 2 April 2003, upon which day Australia and East Timor exchanged notes stating that their requirements for it to enter into force had been met.<sup>1</sup>

- 4.4 Article 9 of the Timor Sea Treaty provides for any reservoir of petroleum that extends across the boundary of the Joint Petroleum Development Area (JPDA) to be treated as a single entity for management and development purposes. The Greater Sunrise field is one such reservoir of petroleum which straddles the eastern boundary of the JPDA.
- 4.5 The Treaty contemplates that Australia and East Timor will reach a separate agreement on the manner in which the deposit will be exploited, and on the sharing of such a deposit. Article 9 thus envisages the negotiation of an international unitisation agreement (IUA) covering the Greater Sunrise field.<sup>2</sup>

## **International Unitisation Agreement**

- 4.6 The proposed IUA covers matters such as administration of the Unit Area, taxation, process for approval of a development plan, abandonment provisions, point of sale and valuation of petroleum recovered from the field, employment and training, safety, health, environmental protection, customs, security and dispute resolution mechanisms.<sup>3</sup>
- 4.7 According to the NIA, Greater Sunrise contains around 8.4 trillion cubic feet of natural gas and 295 million barrels of condensate, with a value estimated to be over \$A20 billion after allowing for production costs. The gas and oil fields 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.<sup>4</sup>

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1 National Interest Analysis (NIA), paras. 10-11.

2 NIA, para. 11.

3 NIA, para. 8.

4 Joint Standing Committee on Treaties (JSCOT), *Report 49: The Timor Sea Treaty*, p. 13.

4.8 In his submission to the review of the IUA, Mr Pat Brazil pointed out that unitisation agreements are:

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 ...<sup>5</sup>

4.9 The Committee was advised early in its Inquiry into the Timor Sea Treaty<sup>6</sup> that the conclusion of a separate IUA was a matter of high priority as it was a prerequisite for the development of the Greater Sunrise field. A Memorandum of Understanding was signed on 20 May 2002, in conjunction with the signing of the Timor Sea Treaty, in which:

Australia and East Timor expressed their commitment to work expeditiously and in good faith to conclude that IUA by the end of this year.<sup>7</sup>

4.10 The IUA was signed by East Timor and Australia on 6 March 2003.

## Maritime boundaries

4.11 As with the review of the Timor Sea Treaty the Committee received submissions which expressed concern about the boundaries, in particular that the maritime boundaries should be settled to give East Timor greater access to the Greater Sunrise field.<sup>8</sup>

4.12 The Committee was advised, however, that the IUA is:

substantively without prejudice to either country's maritime boundary claims.<sup>9</sup>

4.13 This claim is supported by Pat Brazil:

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5 Pat Brazil, *Submission 1*, p. 1.

6 The JSCOT reviewed the Timor Sea Treaty and recommended that binding treaty action be taken. See JSCOT, *Report 49: The Timor Sea Treaty*. In the course of that inquiry evidence relating specifically to the IUA was taken. That evidence has been taken into account in the preparation of this report.

7 Dr Geoffrey Raby, *Transcript of Evidence*, 12 July 2002, p. 23.

8 Margaret Pollock, *Submission 3*; Oxfam, *Submission 6*; La'o Hamutuk: The East Timor Institute for Reconstruction Monitoring and Analysis, *Submission 7*; East Timor Information Centre for the Timor Sea, *Submission 8*.

9 John Hartwell, *Transcript of Evidence*, 23 June 2003, p. 72.

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...<sup>10</sup>

- 4.14 Conversely, in the event of permanent delimitation of the seabed, there is provision within the IUA for Australia and Timor Leste to reconsider the terms of the Agreement. Mr Brazil emphasised that the Agreement specifies that any new agreement shall ensure that petroleum activities entered into under the terms of this Agreement shall continue under equivalent terms:

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...<sup>11</sup>

- 4.15 According to Woodside, the IUA will provide:

a basis on which title, fiscal and regulatory certainty and stability are maintained in circumstances where, following a final delimitation of the borders, the Timor Sea Treaty ceases to have effect.<sup>12</sup>

- 4.16 The Northern Territory Government acknowledged that, given the need to negotiate permanent boundaries in the future, the IUA, as presently negotiated, offers the best opportunity for the investors to proceed and bring the project to fruition:

The delays caused by negotiations for permanent maritime boundaries will lead to unacceptable delays for both nations, whereas the Sunrise International Unitisation Agreement does present an opportunity to proceed now.<sup>13</sup>

## Benefits of the proposed treaty action

- 4.17 The IUA is essentially the framework which will allow commercial development of the Greater Sunrise field to proceed.<sup>14</sup> According to Mr Maxwell, the IUA provides:

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10 Pat Brazil, *Submission 1*, p. 2.

11 Pat Brazil, *Submission 1*, p. 3.

12 David Maxwell, *Transcript of Evidence*, 14 October 2002, p. 260.

13 Clare Martin, Chief Minister, NT Government, *Submission 15*, p. 1.

14 Dr Geoffrey Raby, *Transcript of Evidence*, 12 July 2002, p. 27.

a common understanding of all the key provisions of the treaty. In our view, the IUA is the obvious vehicle through which this can be achieved for the development of Greater Sunrise.<sup>15</sup>

- 4.18 In its submission to the Committee the Northern Territory Government put the view that it is the best interests of both nations to ratify the IUA without any delay in order to allow the project investors to proceed.<sup>16</sup>
- 4.19 The Queensland Government commented that the unitisation reflects the needs of those involved in the commercial development of the resources. The Queensland Government projected that if the Greater Sunrise gas projects prove to be commercially viable and it is elected that gas will be brought onshore for southern markets including Queensland, the projects would be expected to provide further significant upstream competition and broader development benefits to the Queensland gas market.<sup>17</sup>

## Settlement of Disputes under the Agreement

- 4.20 The Committee notes the very detailed dispute resolution procedure set out in Annex IV to the Treaty. Essentially disputes are to be settled by consultation and negotiation. Failing resolution by these means or by any other agreed procedure, the dispute may be submitted (subject to certain conditions) at the request of either Government to an Arbitral Tribunal constituted in accordance with Annex IV. Mr Pat Brazil expressed the view to the Committee that the provisions appear to be appropriate and satisfactory.<sup>18</sup>

## The Sunrise Commission

- 4.21 Article 9 establishes a Sunrise Commission for the purpose of facilitating the implementation of the Agreement. Of the

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15 David Maxwell, *Transcript of Evidence*, 14 October 2002, p. 260.

16 Clare Martin, Chief Minister, NT Government, *Submission 15*, p. 1.

17 Terry Mackenroth, Acting Premier and Minister for Trade, *Submission 16*, pp. 1-2.

18 Pat Brazil, *Submission 1*, p. 2.

Commission's three members, two are nominated by Australia and one by Timor-Leste.

- 4.22 The Committee received two submissions which expressed concern that the Sunrise Commission is to be dominated by Australia. Mr Bryan Havenhand expressed the view that, based on the crucial importance of the oil revenue to the future of Timor-Leste, it is crucial that the Government of Timor-Leste has an appropriate input to the management of the Sunrise Commission.<sup>19</sup>
- 4.23 Mr Robert Peters, in his submission, shared this view:
- Given the disproportionate importance which the revenues from Greater Sunrise represent to Australia and the Democratic Republic of East Timor, I fail to see the need for Australia to want to dominate the Sunrise Commission by nominating two out of its three commissioners. The Sunrise Commission will not only have to monitor the implementation of the Treaty, but consult and make recommendations to both countries' Regulatory Authorities about best practices.<sup>20</sup>
- 4.24 Mr Peters suggested that the Sunrise Commission be made up of six persons, with each country nominating three representatives. He stipulates that the representatives from each side should have expertise and qualifications in the production of petroleum, contractual law and industrial relations.<sup>21</sup>
- 4.25 The Department indicated that it had not been made aware of this concern in the course of developing the Agreement.<sup>22</sup>

## Taxation

- 4.26 The Committee was advised by the Department of Industry, Tourism and Resources that for taxation purposes the field is apportioned under different laws. Therefore, two different tax jurisdictions will apply to the Greater Sunrise field, one involving the JPDA and the other applying to the Australian area:

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19 Bryan Havenhand, *Submission 5*, p. 1.

20 Robert Peters, *Submission 14*, p. 1.

21 Robert Peters, *Submission 14*, p. 1.

22 John Hartwell, *Transcript of Evidence*, 23 June 2003, p. 74.

the international unitisation agreement has to deal with the actual ring fences as to exactly where these points of taxation are, what are the various allowable costs and ... the apportionment of these.<sup>23</sup>

4.27 The Department of the Treasury added that, given that the resource:

is divided virtually 80:20 between Australia and East Timor ... Twenty per cent of the resource which is in the JPDA area is taxed under the principles of the Timor Sea Treaty, which means that 90 per cent of the tax revenues go to East Timor and 10 per cent of those revenues go to Australia. The resource which is allocated to Australia is taxed under Australian principles, so the petroleum resource rent tax applies to that part of the resource and company tax applies to the income derived from that.<sup>24</sup>

4.28 The Committee notes that production from the field is not likely to occur before 2009, at the earliest.<sup>25</sup> The Committee also notes that the projected revenue from the field is estimated to provide Australia with about \$8.5 billion over the life of the field of around 30 years, if developed using floating gas-to-liquids technology, with exports potentially worth about \$A1.5 billion to Australia annually.<sup>26</sup>

## Security Arrangements

4.29 The Committee notes that 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.

## Costs

4.30 The Committee was advised that Australia will incur no additional costs directly through this treaty action.<sup>27</sup>

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23 Ian Walker, *Transcript of Evidence*, 12 July 2002, p. 27.

24 Michael Buckley, *Transcript of Evidence*, 23 June 2003, p. 76.

25 NIA, para. 15.

26 NIA, para. 14.

27 NIA, para. 32.

## Environment

- 4.31 The Committee was advised that there are safeguards in place to ensure that the resource is depleted in an environmentally responsible fashion. According to Mr John Hartwell of the Department of Industry, Tourism and Resources:

we and East Timor are both very conscious that any development that takes place within the unit area should have the highest environmental obligations ... We have agreed with the East Timorese that it would not be very sensible to have two different sets of environmental obligations on either side of that boundary. There will be a common approach to the environment.<sup>28</sup>

## Consultation

- 4.32 The Department of Industry, Tourism and Resources advised that the IUA was developed:

in close consultation with the Sunrise joint venture partners to ensure that it would provide the certainty needed for investment decisions. This involved, when appropriate, exposure to drafts of the text and continued detailed discussion on issues.<sup>29</sup>

- 4.33 The Sunrise joint venture partners were represented in the consultations by Woodside Energy Ltd.<sup>30</sup> In addition, the Northern Territory Government participated in the negotiations as an observer.<sup>31</sup>
- 4.34 The Committee sought submissions from parties which had previously demonstrated an interest in the review of the Timor Sea Treaty. None expressed dissatisfaction with the consultation process.

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28 John Hartwell, *Transcript of Evidence*, 23 June 2003, pp. 76-77.

29 John Hartwell, *Transcript of Evidence*, 23 June 2003, p. 73.

30 Woodside Energy Ltd was representing, in addition to itself: ConocoPhillips STL Pty Ltd; ConocoPhillips (95-19) Pty Ltd; ConocoPhillips (96-20); Shell Development (Australia) Pty Ltd; Shell Development (PSC 19) Pty Ltd; Shell Development (PSC 20) Pty Ltd; Osaka Gas Australia Pty Ltd; OG ZOCA (95-19) Pty Ltd; OG ZOCA (96-20) Pty Ltd; Woodside Petroleum (Timor Sea 19) Pty Ltd and Woodside Petroleum (Timor Sea 20) Pty Ltd.

31 NIA, Annex 1.



4.35 The Committee is satisfied that adequate consultation has occurred.

## Entry into force

4.36 Bringing the Agreement into force requires Australia to notify East Timor in writing that Australia's requirements for entry into force have been complied with, and for East Timor to notify Australia when East Timor's requirements have been met. Entry into force will occur on the later of the two notifications.<sup>32</sup>

## Implementation

4.37 The NIA states that it is likely that consequential amendments will be required to some legislation, such as that set out in Annex II to the Treaty, which is legislation applicable in the Unit Area in relation to safety, health and environmental protection. It is anticipated that if legislation is required, it will be introduced to Parliament in the Spring sitting period in 2003.<sup>33</sup>

## Conclusions and recommendation

4.38 The Committee believes that the proposed treaty action is consistent with Article 9 of the Timor Sea Treaty which provides for any reservoir of petroleum that extends across the boundary of the Joint Petroleum Development Area (JPDA) to be treated as a single entity for management and development purposes.

4.39 The Committee recognises that significant decisions are yet to be taken on the methods of exploitation of the gas and oil fields which may have implications for the finer detail of the Agreement. Nonetheless, in accordance with its recommendation in *Report 49: The Timor Sea Treaty* the Committee believes that the early ratification of the IUA will provide a sound basis which will allow the developers to proceed.

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32 NIA, para. 3.

33 NIA, para. 31.

- 4.40 In its 49<sup>th</sup> Report the Committee also emphasised the importance of the Australian Government ensuring that occupational health and safety and environmental standards that prevail in the JPDA are equivalent or superior to those applying in Australian jurisdiction. The Committee reiterates that these issues should be given prominence in the Unit Area to which the IUA applies.
- 4.41 The Committee is also mindful that in the current geopolitical climate security issues will be matters of considerable concern.

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**Recommendation 5**

**The Committee supports the International Unitisation Agreement and recommends that binding treaty action be taken.**