

**PCA Case N° 2016-10**

**IN THE MATTER OF THE MARITIME BOUNDARY BETWEEN TIMOR-LESTE AND  
AUSTRALIA (THE “TIMOR SEA CONCILIATION”)**

**- before -**

**A CONCILIATION COMMISSION CONSTITUTED UNDER ANNEX V TO THE  
1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

**- between -**

**THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE**

**- and -**

**THE COMMONWEALTH OF AUSTRALIA**

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**REPORT AND RECOMMENDATIONS  
OF THE COMPULSORY CONCILIATION COMMISSION  
BETWEEN TIMOR-LESTE AND AUSTRALIA ON THE TIMOR SEA**

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**CONCILIATION COMMISSION:**

**H.E. Ambassador Peter Taksøe-Jensen (Chairman)  
Dr. Rosalie Balkin  
Judge Abdul G. Koroma  
Professor Donald McRae  
Judge Rüdiger Wolfrum**

**REGISTRY:**

**Permanent Court of Arbitration**

**9 May 2018**

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**GLOSSARY OF DEFINED TERMS**

<b><u>Term</u></b>	<b><u>Definition</u></b>
<b>1958 Continental Shelf Convention</b>	Convention on the Continental Shelf, 29 April 1958, 499 U.N.T.S. 311
<b>1972 Seabed Treaty</b>	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, 9 October 1972, 974 U.N.T.S. 319
<b>30 August Agreement</b>	The Comprehensive Package Agreement reached between the Parties in Copenhagen on 30 August 2017
<b>ANPM</b>	Autoridade Nacional do Petróleo e Minerais: Timor-Leste's National Authority for Petroleum and Minerals
<b>Area A</b>	The area of the Timor Sea established by the Timor Gap Treaty in which Australia and Indonesia exercised joint control over petroleum operations through a joint authority
<b>Article 8(b) Arbitration</b>	The arbitration proceedings initiated by Timor-Leste with Australia pursuant to the Timor Sea Treaty on 15 September 2015
<b>Australia</b>	The Commonwealth of Australia
<b>CMATS</b>	Treaty between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea, 12 January 2006, 2438 U.N.T.S. 359
<b>Commission</b>	The Conciliation Commission constituted in the present matter, composed of H.E. Ambassador Peter Taksøe-Jensen (Chairman), Dr. Rosalie Balkin, Judge Abdul G. Koroma, Professor Donald McRae, and Judge Rüdiger Wolfrum
<b>Consolidated Draft Treaty</b>	The Parties' consolidated draft treaty, circulated on 25 September 2017
<b>Convention</b>	United Nations Convention on the Law of the Sea, 10 December 1982, 1833 U.N.T.S. 3
<b>Darwin LNG</b>	The concept of developing Greater Sunrise by way of a pipeline to the LNG plant located at Wickham Point in Darwin, Australia
<b>Final Draft Treaty</b>	The Parties' agreed draft treaty, initialled by the Agents of the Parties at the Peace Palace in The Hague, the Netherlands on 13 October 2017
<b>Greater Sunrise</b>	The Sunrise and Troubadour gas fields, located in the Timor Sea
<b>INTERFET</b>	International Force for East Timor

<b>Joint Venture</b>	The Greater Sunrise Joint Venture
<b>JPDA</b>	The Joint Petroleum Development Area established pursuant to the Timor Sea Treaty
<b>LNG</b>	Liquefied natural gas
<b>Parties</b>	Timor-Leste and Australia
<b>PCA</b>	The Permanent Court of Arbitration
<b>PCA Conciliation Rules</b>	The <i>Optional Conciliation Rules</i> adopted by the Permanent Court of Arbitration on 1 July 1996
<b>Perth Treaty</b>	Treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an Exclusive Economic Zone Boundary and Certain Seabed Boundaries, 14 March 1997, [1997] Australian Treaties (not in force) 4, <i>reproduced in</i> 36 I.L.M. 1053.
<b>Petroleum Fund</b>	The Petroleum Fund for Timor-Leste
<b>PSCs</b>	Production Sharing Contracts
<b>Third UN Conference</b>	Third United Nations Conference on the Law of the Sea
<b>Timor Gap Treaty</b>	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, 11 December 1989, 1654 U.N.T.S. 105
<b>Timor LNG</b>	The concept of developing Greater Sunrise by way of a pipeline to the south coast of Timor-Leste and the construction of a new LNG plant at Beaçõ
<b>Timor Sea Arrangement</b>	The “Memorandum of Understanding of Timor Sea Arrangement” concluded between Australia and UNTAET on 5 July 2001
<b>Timor Sea Treaty</b>	Timor Sea Treaty between the Government of East Timor and the Government of Australia, 20 May 2002, 2258 U.N.T.S. 3
<b>Timor Sea Treaty Arbitration</b>	The arbitration proceedings initiated by Timor-Leste with Australia pursuant to the Timor Sea Treaty on 23 April 2013
<b>Timor-Leste</b>	The Democratic Republic of Timor-Leste
<b>Treaty</b>	The Treaty Between the Democratic Republic of Timor-Leste and Australia establishing their Maritime Boundaries in the Timor Sea, signed on 6 March 2018
<b>UN Conciliation Rules</b>	United Nations Model Rules for the Conciliation of Disputes between States of 29 January 1996
<b>Unitisation Agreement</b>	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, 6 March 2003, 2483 U.N.T.S. 317
<b>UNTAET</b>	United Nations Transitional Administration in East Timor

## I. INTRODUCTION

1. This Report is issued in completion of the compulsory conciliation proceedings initiated by the Democratic Republic of Timor-Leste (“**Timor-Leste**”) with the Commonwealth of Australia (“**Australia**”) (together, the “**Parties**”) pursuant to Article 298(1)(a)(i) and Annex V of the United Nations Convention on the Law of the Sea (the “**Convention**”). These proceedings concern a dispute between the Parties regarding the delimitation of a permanent boundary between their respective maritime zones in the Timor Sea. This is the first occasion on which the compulsory conciliation provisions of the Convention have been invoked.
2. On 11 April 2016, Timor-Leste decided to invoke the compulsory conciliation provisions of the Convention with the objective of achieving a permanent maritime boundary, following several unsuccessful attempts by the Parties to reach agreement on a permanent maritime boundary through negotiations since Timor-Leste’s re-emergence as an independent State on 20 May 2002. Annex V of the Convention provides for the establishment of a five-member conciliation commission to “hear the parties, examine their claims and objections, and make proposals to the parties with a view to reaching an amicable settlement.” Such a conciliation commission is entitled to “determine its own procedure”, decide on any “disagreement as to whether a conciliation commission acting under [Section 2 of Annex V] has competence”, and “draw the attention of the parties to any measures which might facilitate an amicable settlement of the dispute.”
3. Between July 2016 and February 2018, the present conciliation commission (the “**Commission**”) met regularly with the Parties: initially to resolve the objection by Australia to the Commission’s competence and, thereafter, for extensive discussions regarding the delimitation of a maritime boundary and related matters. On 30 August 2017, on the basis of a proposal made by the Commission, the Parties reached agreement on a comprehensive package of measures (the “**30 August Agreement**”, see paragraphs 254 to 267 below), including (a) a maritime boundary; (b) a mechanism that would enable the possible adjustment of certain segments of that boundary, following the establishment by Timor-Leste and Indonesia of a boundary between their respective maritime zones; (c) a special regime for the joint development, exploitation, and management of the largest known resource, the Sunrise and Troubadour gas fields (collectively, “**Greater Sunrise**”), and the sharing of the resulting revenue; (d) a process to formalize the Parties’ agreement in the form of a treaty; and (e) a process of intensive engagement between the Parties and the Greater Sunrise Joint Venture, the private holder of the commercial licence to Greater Sunrise (the “**Joint Venture**”), with the objective of reaching agreement on the overall approach, or development concept, to be taken for the development of the resource.

4. In order to assist the Parties in reaching a complete settlement and in light of the progress made in the proceedings, the Parties agreed that the mandate of the Commission should be extended beyond the one-year period envisaged in Annex V. In October 2017, with the assistance of the Commission, the Parties reached agreement on the text of a draft treaty formalizing the 30 August Agreement. A copy of this draft treaty was initialled at the Peace Palace in The Hague by the Agent of each Party and deposited with the Permanent Court of Arbitration, which serves as the Registry to the Commission. Between September and December 2017, the Parties met regularly with the Joint Venture regarding the development of Greater Sunrise. In December 2017, the Commission noted the Parties' conclusion that the two governments had been unable, on the basis of the information before them, to take a decision on the development concept for Greater Sunrise by 15 December 2017. Accordingly, between December 2017 and February 2018, the Commission proceeded to engage directly with the Parties and with the Joint Venture to ensure that the necessary information to permit an appropriate comparison and evaluation of the competing development concepts would be available to the Parties and to assist the Parties in taking a decision.
5. Pursuant to Annex V to the Convention, at the close of conciliation proceedings, the Commission is mandated to prepare a report, deposited with the Secretary-General of the United Nations, to record any agreements reached between the Parties or, in the absence of agreement, to communicate the Commission's "conclusions on all questions of fact or law relevant to the matter in dispute and such recommendations as the commission may deem appropriate for an amicable settlement."
6. In the present matter, the Commission's Report comes at the conclusion of a conciliation process in which the Parties have already reached a comprehensive agreement regarding their maritime boundaries in the Timor Sea. Under these circumstances, the Commission considers that its mandate no longer requires that it provide the Parties with recommendations concerning the resolution of their dispute. The Parties have, themselves, achieved a resolution of that dispute. Rather, the Commission considers that the purpose of this Report is to provide background and context to the process through which the Parties' agreement was reached. While the Parties' Treaty stands on its own as the legal resolution of the dispute over their maritime boundaries, the Commission considers that both governments, as well as the peoples of Timor-Leste and Australia, will benefit from a neutral elaboration by the Commission of the manner in which this agreement was reached.
7. Accordingly, in the sections that follow, the Commission has set out the background to the dispute submitted to conciliation, the purpose of conciliation, the Commission's understanding of its

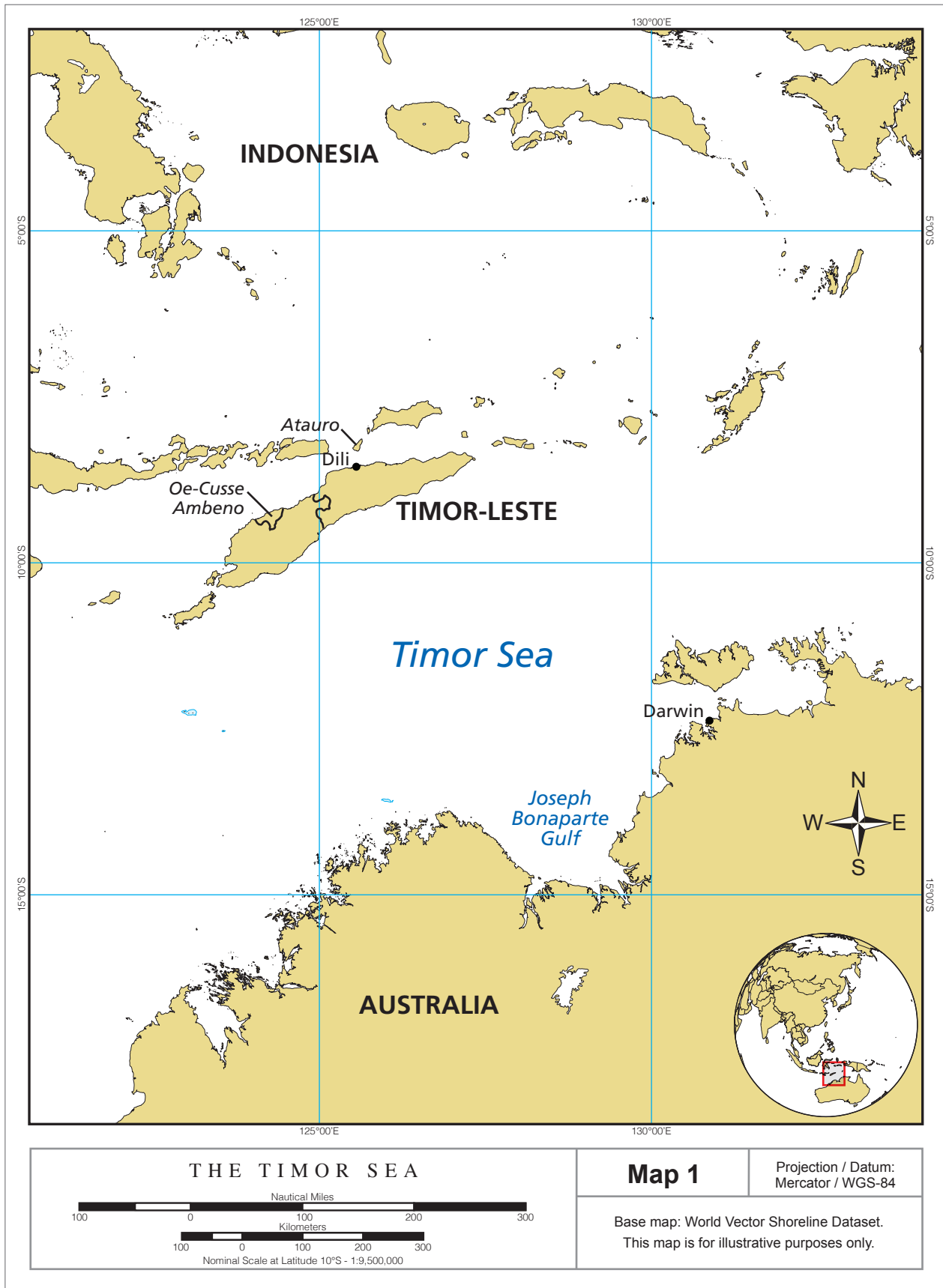
mandate, the steps taken in the course of these proceedings, the positions held by each Party at the outset, and the Commission's engagement with the Parties regarding their positions. In this context, the Commission has set out the Comprehensive Package Agreement reached in Copenhagen on 30 August 2017 and the details of the Parties' further engagement on the development of Greater Sunrise. Finally, and conscious that this is the first occasion on which the conciliation provisions of the Convention have been invoked, the Commission has set out what, in its view, constituted the key elements of its engagement with the Parties that made possible the achievement of an agreement on maritime boundaries.

\* \* \*

## II. GEOGRAPHY OF THE AREA TO BE DELIMITED

8. Timor-Leste and Australia are neighbouring States, separated from one another by the Timor Sea at the nearest distance of approximately 243 nautical miles.
9. Timor-Leste consists of the eastern portion of the island of Timor, as well as the island of Atauro, to the north of Timor, the island of Jaco less than 1km off the eastern tip of the main island of Timor, and the enclave of Oe-Cusse Ambeno in the western portion of the island of Timor. The island of Timor is one of the easternmost of the Sunda Islands and was formed from the collision of the Australian and Eurasian continental plates. The land territory of Timor-Leste covers an area of approximately 15 thousand square kilometres.
10. Australia consists principally of the continent of Australia and surrounding islands. The land territory of Australia covers an area of approximately 7.7 million square kilometres.
11. The western portion of the island of Timor is part of Indonesia, where it forms the province of East Nusa Tenggara. Other islands of the Indonesian archipelago lie to the north and east of Timor, with the islands of Leti, Moa, and Lakor lying immediately to the east of Timor-Leste.
12. The Timor Sea lies between the Arafura sea to the east and the Indian Ocean to the west, and covers a relevant area of approximately 250 thousand square kilometres. The Timor Sea is generally quite shallow, with the exception of the Timor Trough, a topographical depression in which the ocean floor descends abruptly to an average depth of 2,840 metres. The seabed of the Timor Sea is known to contain significant deposits of oil and gas.
13. The general geographic configuration of the two States and the region is set out in Map 1 on page 5 of this Report.

\* \* \*



### III. BACKGROUND TO THE PARTIES' DISPUTE CONCERNING MARITIME BOUNDARIES

14. In the following paragraphs, the Commission has set out the history of maritime boundaries in the Timor Sea and the background to the dispute at issue in these proceedings. In the Commission's view, an understanding of this background is essential to appreciating the Parties' dispute and the eventual agreement reached by the Parties. This is due both to the continuing relevance of existing treaties in the Timor Sea and to the prominence of history in the Parties' understanding of their dispute. Timor-Leste has made clear to the Commission that it considers the achievement of permanent maritime boundaries as part of the completion of its sovereignty as an independent State and essential to enable the resources of its territory to be developed for the benefit of the Timorese people.

\* \*

15. Although inhabited for thousands of years, the eastern half of the island of Timor entered the modern era as a colony of Portugal. During the colonial period, the remaining portion of Timor (*i.e.*, the western half of the island), as well as other neighbouring islands, formed part of the Dutch East Indies and, upon independence, became part of the Republic of Indonesia.<sup>1</sup>
16. As neighbours, the peoples of Timor-Leste and Australia have a long history of close relations, in particular with the Timorese fighting side-by-side with Australian and Dutch forces on the island of Timor during the Second World War. By the end of the war, over 40,000 Timorese lives were lost on home soil.
17. In the 1950s Australia and Portugal respectively asserted their rights over the continental shelf. On 11 September 1953, Australia issued a Proclamation, declaring its sovereign rights over the seabed and subsoil of the continental shelf contiguous to its coast.<sup>2</sup> On 21 March 1956, Portugal adopted legislation declaring the continental shelf adjacent to Portuguese territory to form part of the public domain of the State.<sup>3</sup>

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<sup>1</sup> See generally F.B. Durand, *History of Timor-Leste* (2016).

<sup>2</sup> Commonwealth of Australia Gazette, No. 56, 11 September 1953, reproduced in United Nations Legislative Series, Vol. 8, UN Doc. ST/LEG/SER.B/8 at p. 3 (1959).

<sup>3</sup> Act No. 2080 relating to the Continental Shelf, 21 March 1956, reproduced in United Nations Legislative Series, Vol. 8, UN Doc. ST/LEG/SER.B/8 at p. 16 (1959). Pursuant to Section V of the Act, "[t]his Act shall be applicable to the whole of Portuguese territory," which as defined by Article 1 of the Constitution of 1933, applicable in 1956, included the territory of Timor-Leste.



18. On 29 April 1958, the First United Nations Conference on the Law of the Sea concluded with the adoption of the 1958 Convention on the Continental Shelf (the “**1958 Continental Shelf Convention**”).<sup>4</sup>
19. Portugal ratified the 1958 Continental Shelf Convention on 8 January 1963; Australia on 14 May 1963.<sup>5</sup> This convention entered into force on 10 June 1964, in accordance with the terms of its Article 11.
20. On 9 October 1972, Australia and Indonesia concluded 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* (the “**1972 Seabed Treaty**”).<sup>6</sup> In broad terms, the 1972 Seabed Treaty delimited the seabed between Australia and Indonesia along a line generally following the southern edge of the Timor Trough. The Timor Trough is a topographical depression in the floor of the Timor Sea, in which the ocean floor descends abruptly from relatively shallow depths to an average depth of 2,840 metres. The 1972 Seabed Treaty did not purport to delimit the seabed adjacent to what is now Timor-Leste, but anticipated that this would be the subject of a future treaty between Australia and Portugal. Article 3 of the 1972 Seabed Treaty anticipates the possible need to adjust certain portions of the Indonesia-Australia seabed boundary to the east and west of (then) Portuguese Timor, following the conclusion of further delimitation agreements in respect of the area.
21. Although Australia and Portugal engaged in some communications in the early 1970s concerning the continental shelf in the Timor Sea, no formal treaty negotiations were ever commenced.
22. In April 1974, the “Carnation Revolution” in Portugal initiated a transition to democracy in Lisbon and movement towards independence throughout Portugal’s colonial territories.
23. In November 1975, the people of Timor-Leste declared their independence from Portugal. Promptly thereafter, Timor-Leste was occupied by the armed forces of Indonesia, which administered Timor-Leste as a province of Indonesia until 1999. The Indonesian occupation was strongly resisted by the Timorese people, and a long-running guerrilla conflict ensued.

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<sup>4</sup> Convention on the Continental Shelf, 29 April 1958, 499 U.N.T.S. 311.

<sup>5</sup> Instruments of Ratification or Accession, 499 U.N.T.S. 312 n. 1.

<sup>6</sup> 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, 9 October 1972, 974 U.N.T.S. 319.

Conservative estimates put the loss of Timorese lives, both military and civilian, at over 100,000 during this period.<sup>7</sup>

24. Although Australia initially did not recognise Indonesia's annexation of Timor-Leste, on 20 January 1978 Australia recognised Timor-Leste as *de facto* part of Indonesia, stating that "the Government has decided that although it remains critical of the means by which integration was brought about it would be unrealistic to continue to refuse to recognise *de facto* that East Timor is part of Indonesia."<sup>8</sup>
25. In March 1978, Australia and Indonesia announced that they would begin negotiations on the delimitation of a seabed boundary in the area adjacent to the coast of Timor-Leste.<sup>9</sup>
26. In December 1978, the Minister for Foreign Affairs of Australia announced that Australia would grant *de jure* recognition of Indonesia's sovereignty over Timor-Leste early the next year through the formal commencement of negotiations on a boundary, stating that "[t]he negotiations when they start, will signify *de jure* recognition by Australia of the Indonesian incorporation of East Timor."<sup>10</sup> Formal boundary negotiations between Indonesia and Australia regarding the seabed adjacent to Timor-Leste began in February 1979.<sup>11</sup>
27. Protracted negotiations continued throughout the 1980s, and on 11 December 1989 Australia and Indonesia concluded 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* (the "**Timor Gap Treaty**").<sup>12</sup> Rather than delimit a maritime boundary, the Timor Gap Treaty established a zone of cooperation and an area ("**Area A**") in which Australia and Indonesia would together exercise control over petroleum operations through a joint authority and share the

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<sup>7</sup> See Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR), *Chega! The Final Report of the Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR)*, p. 488 (31 October 2005). CAVR reached a minimum conservative estimate for the number of deaths between 1974 and 1999 of 102,800 persons (+/- 12,000). CAVR did not attempt to specify a maximum estimate, although it noted that deaths due to hunger and illness could have been as high as 183,000 persons. See *ibid.*, p. 1338.

<sup>8</sup> Statement by the Minister for Foreign Affairs of Australia, Comm. Rec. 1978, 25-6, reproduced in "Australian Practice in International Law 1978-1980," *Australian Yearbook of International Law*, Vol. 8, p. 279 (1983).

<sup>9</sup> See Parliament of the Commonwealth of Australia, *East Timor: Final Report of the Senate Foreign Affairs, Defence and Trade References Committee*, para. 7.18 (December 2000)

<sup>10</sup> "East Timor Takeover to be Recognized", *Canberra Times*, 16 December 1978, p. 1.

<sup>11</sup> See *Senate Hansard*, 8 March 1979, p. 720, reproduced in "Australian Practice in International Law 1978-1980," *The Australian Year Book of International Law*, Vol. 8, pp. 281-282.

<sup>12</sup> 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, 11 December 1989, 1654 U.N.T.S. 105.

resulting revenue equally. The Timor Gap Treaty also established two adjacent areas in which Australia and Indonesia, respectively, would exercise exclusive control over petroleum operations, but would nevertheless share ten percent of the resulting revenue with the other party.

28. On 10 December 1982, the Third United Nations Conference on the Law of the Sea concluded with the adoption of the Convention.<sup>13</sup>
29. On 16 November 1994, the Convention entered into force and thus became applicable as between Australia and Indonesia.<sup>14</sup>
30. On 14 March 1997, Australia and Indonesia concluded the *Treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an Exclusive Economic Zone Boundary and Certain Seabed Boundaries* (the “**Perth Treaty**”).<sup>15</sup> In broad terms, the Perth Treaty delimits the water column between Australia and Indonesia in the Timor Sea. The delimitation line generally follows the median line between the two States, at some distance from the 1972 Seabed Treaty boundary. The treaty includes certain provisions in relation to areas in which Australian rights to the seabed are overlapped by Indonesian rights to the water column. The Perth Treaty has never entered into force, but the Commission was informed by Australia that its provisions are observed in practice by the governments of Australia and Indonesia.
31. On 30 August 1999, in a referendum supervised by the United Nations, the people of Timor-Leste voted in favour of independence from Indonesia.
32. The results of the referendum were immediately met with widespread violence, over one thousand deaths, the destruction of most of Timor-Leste’s infrastructure, and the flight of the population from the capital of Dili. On 20 September 1999, international troops under the International Force for East Timor (“**INTERFET**”) were deployed in Timor-Leste to help prevent further violence. This deployment was organized and led by Australia, which also contributed the largest contingent of forces to the international effort. On 25 October 1999, the United Nations established the United Nations Transitional Administration in East Timor (“**UNTAET**”). UNTAET assumed command of international military operations on 28 February 2000 and temporarily administered Timor-Leste until it became an independent State on 20 May 2002.

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<sup>13</sup> United Nations Convention on the Law of the Sea, 10 December 1982, 1833 U.N.T.S. 3.

<sup>14</sup> Instruments of Ratification or Accession, 1833 U.N.T.S. 397-398.

<sup>15</sup> Treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an Exclusive Economic Zone Boundary and Certain Seabed Boundaries, 14 March 1997, [1997] Australian Treaties (not in force) 4, reproduced in 36 I.L.M. 1053.

33. On 10 February 2000, Australia and UNTAET concluded an exchange of notes to continue the terms of the Timor Gap Treaty as between Australia and UNTAET (acting on behalf of Timor-Leste),<sup>16</sup> since the treaty had ceased to apply as between Australia and Indonesia following Indonesia's renunciation on 19 October 1999 of its claim to the territory of Timor-Leste.
34. On 5 July 2001, Australia and UNTAET concluded a *Memorandum of Understanding of Timor Sea Arrangement* (the "**Timor Sea Arrangement**").<sup>17</sup> The Timor Sea Arrangement established a Joint Petroleum Development Area (the "**JPDA**") with boundaries that correspond to Area A of the Timor Gap Treaty (the area of joint control). However, whereas the Timor Gap Treaty divided petroleum revenue from within Area A equally between Australia and Indonesia, the Timor Sea Arrangement provided for a 90:10 division, in favour of Timor-Leste, within the JPDA. The area of the JPDA and the location of Indonesia's boundaries with Australia are set out in Map 2 on page 11 of this Report.
35. On 20 May 2002, the same day that Timor-Leste regained its independence, Timor-Leste and Australia concluded the *Timor Sea Treaty between the Government of East Timor and the Government of Australia* (the "**Timor Sea Treaty**").<sup>18</sup> In broad terms, the Timor Sea Treaty provided for the formal application as between Timor-Leste and Australia of the Timor-Sea Arrangement, including the continued division of petroleum revenue on a 90:10 basis, pending the delimitation of a permanent maritime boundary. Through an exchange of notes on 20 May 2002, Timor-Leste and Australia agreed to provisionally continue the Timor Sea Arrangement, pending ratification of the Timor Sea Treaty.<sup>19</sup> The Timor Sea Treaty was ratified by Timor-Leste on 17 December 2002 and by Australia on 2 April 2003, and entered into force with retroactive effect to the date of signature, *i.e.*, 20 May 2002.<sup>20</sup>

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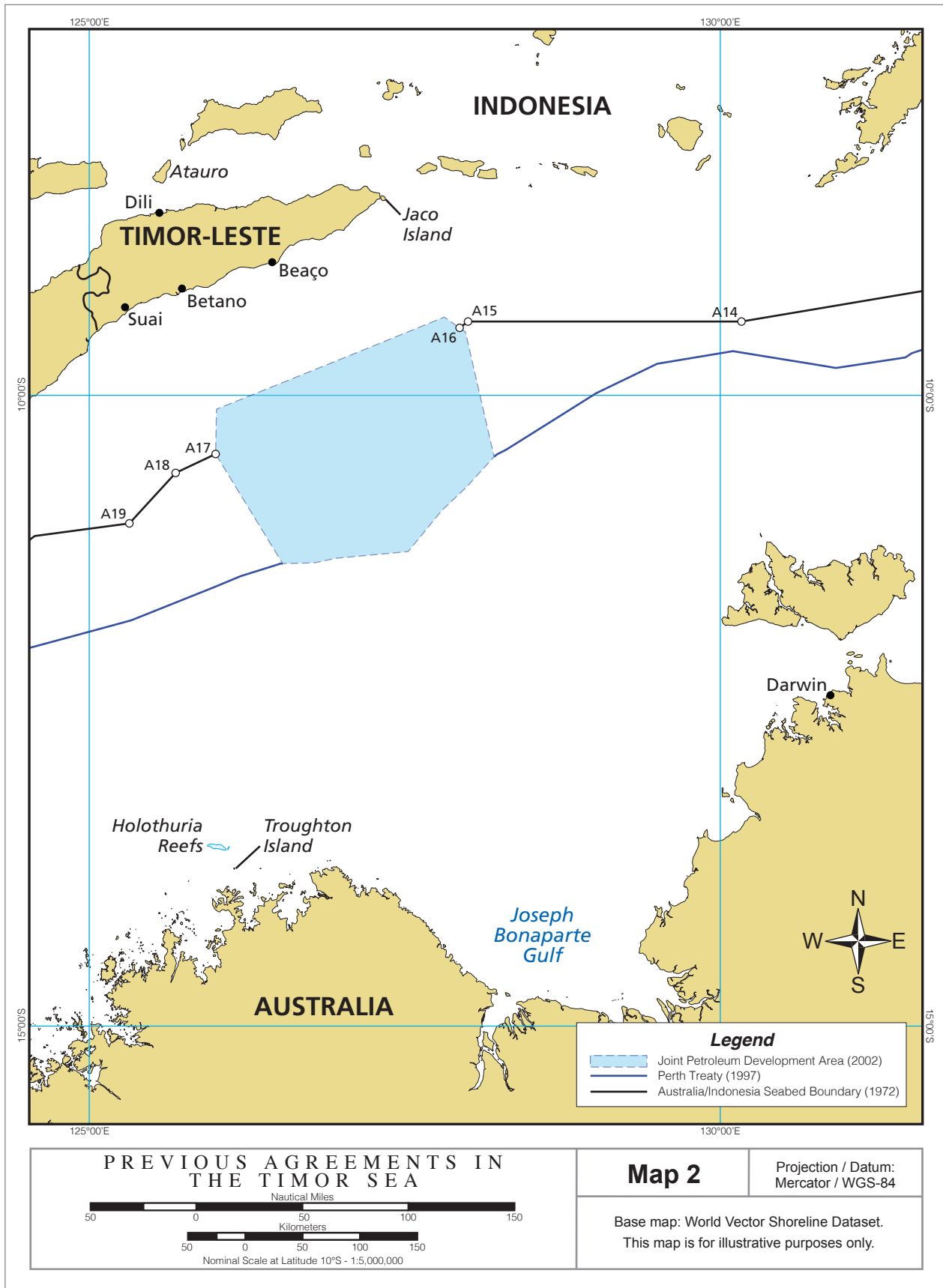
<sup>16</sup> Exchange of Notes constituting an Agreement between the Government of Australia and the United Nations Transitional Administration in East Timor (UNTAET) concerning the continued Operation of the Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia of 11 December 1989, 10 February 2000, [2000] A.T.S. 9.

<sup>17</sup> Memorandum of Understanding of Timor Sea Arrangement, 5 July 2001, *available at* <[www.austlii.edu.au/au/other/dfat/special/MOUTSA.html](http://www.austlii.edu.au/au/other/dfat/special/MOUTSA.html)>.

<sup>18</sup> Timor Sea Treaty, 20 May 2002, 2258 U.N.T.S. 3.

<sup>19</sup> Exchange of Notes Constituting an Agreement between the Government of Australia and the Government of the Democratic Republic of East Timor Concerning Arrangements for Exploration and Exploitation of Petroleum in an Area of the Timor Sea between Australia and East Timor, 20 May 2002, [2002] A.T.S. 11.

<sup>20</sup> Resolução No. 2/2003 de 1 de Abril Que Ratifica o Tratado do Mar de Timor entre o Governo de Timor-Leste e o Governo da Austrália, Assinado em 20 de Maio de 2002 (Aprovada em 17 de Dezembro de 2002); Petroleum (Timor Sea Treaty) Act 2003, No. 9, 2003 (Assented to 2 April 2003).



36. In Annex E of the Timor Sea Treaty, Timor-Leste and Australia agreed “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.” On this basis, on 6 March 2003, Timor-Leste and Australia signed an *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* (the “**Unitisation Agreement**”) with respect to Greater Sunrise.<sup>21</sup> Notwithstanding this division of Greater Sunrise, the Unitisation Agreement recorded 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” and further provided that nothing in the agreement could be interpreted as prejudicing the position of either Party with respect to maritime claims and boundaries.
37. Following the signature of the Unitisation Agreement and ratification of the Timor Sea Treaty, Timor-Leste and Australia began negotiations on the establishment of a permanent maritime boundary, with initial meetings in November 2003 and April 2004. The focus of these negotiations changed, however, leading to the signature on 12 January 2006 of the *Treaty between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea* (“**CMATS**”).<sup>22</sup> In broad terms, CMATS (a) extended the life of the Timor Sea Treaty until 50 years after the entry into force of CMATS; (b) provided for Timor-Leste to exercise jurisdiction over the water column within the JPDA; and (c) provided that revenues derived directly from the production of petroleum from Greater Sunrise would be shared equally between the two States (rather than according to the percentages set out in the Timor Sea Treaty and Unitisation Agreement). CMATS also included in Article 4 a moratorium on the settlement of permanent maritime boundaries.<sup>23</sup>

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<sup>21</sup> 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, 6 March 2003, 2483 U.N.T.S. 317.

<sup>22</sup> Treaty between Australia and the Democratic Republic of Timor-Leste on certain maritime arrangements in the Timor Sea, 12 January 2006, 2483 U.N.T.S. 359.

<sup>23</sup> The text of Article 4 of CMATS is reproduced and analyzed at paragraphs 59 and following of the Commission’s *Decision on Competence*, included at Annex 9 of this Report.

38. CMATS and the Unitisation Agreement were both ratified and entered into force on 23 February 2007.<sup>24</sup>

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39. Through the various agreements concluded between Australia and UNTAET and between Australia and Timor-Leste, Timor-Leste agreed to continue existing contracts and licences for petroleum operations issued to private actors pursuant to the Timor Gap Treaty on equivalent terms.
40. To date, the largest petroleum development within the JPDA has involved gas and condensate from the Bayu-Undan field. Discovered in 1995, Bayu-Undan commenced commercial production of condensate and liquid petroleum gas (LPG) in 2004. In 2006, the Bayu-Undan Joint Venture completed a 500 km pipeline to supply natural gas to the newly established plant for liquefied natural gas (“LNG”) at Wickham Point in Darwin, Australia. As of early 2017, Bayu-Undan had generated approximately US\$23.5 billion in upstream revenue for Timor-Leste and approximately US\$2.4 billion in upstream revenue for Australia. The precise quantification of downstream economic benefits, which have largely accrued to Australia, is the subject of some debate. Production from Bayu-Undan is expected to continue until 2022.
41. Other petroleum operations within the JPDA have been undertaken on a smaller scale at the Kitan, Kuda Tasi, Jahal, and Elang Kakatua-Kakatua North oil fields. Although CMATS and the Unitisation Agreement were intended to facilitate the development of Greater Sunrise, no agreement on the development concept for Greater Sunrise was reached prior to these proceedings and exploitation of the Sunrise and Troubadour fields has not yet commenced.
42. Timor-Leste has allocated all of the revenue derived from petroleum operations to the Petroleum Fund for Timor-Leste (the “**Petroleum Fund**”), intended to “contribute to a wise management of the petroleum resources for the benefit of both current and future generations.”<sup>25</sup> Pursuant to the relevant legislation, the Parliament of Timor-Leste may appropriate funds from the Petroleum

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<sup>24</sup> Resolução do Parlamento Nacional No. 4/2007 de 8 de Março Que Ratifica o Tratado entre o Governo da República Democrática de Timor-Leste e o Governo da Austrália sobre Determinados Ajustes Marítimos no Mar de Timor (Aprovada em 20 de Fevereiro de 2007), *published in* Jornal da República, Serie I, No. 4 at p. 1692; Resolução do Parlamento Nacional No. 5/2007 de 8 de Março Que Ratifica o Acordo Entre o Governo da Austrália e o Governo da República Democrática de Timor-Leste Relativo a Unitização dos Campos do Sol Nascente e do Travador (Aprovada em 20 de Fevereiro de 2007) *published in* Jornal da República, Serie I, No. 4 at p. 1699; Minister for Foreign Affairs of Australia, “Entry into Force of Greater Sunrise Treaties with East Timor,” Media Release, *available at* <[foreignminister.gov.au/releases/2007/fa019\\_07.html](http://foreignminister.gov.au/releases/2007/fa019_07.html)>.

<sup>25</sup> Petroleum Fund Law, Law No. 9/2005 of 3 August 2005, *as amended by* First amendment to Law no. 9-2005, of 3rd August, Petroleum Fund Law, Law No. 12/2011 of 19 September 2011.

Fund and has done so to supplement the government budget in recent years. Revenue from the Petroleum Fund constituted 82 percent of the government budget in 2016.

43. Over the same period, Australia authorized the development of the Corallina, Laminaria, and Buffalo fields located immediately to the west of the JPDA, as permitted under Article 4(2) of CMATS. The locations of known petroleum resources in the relevant portion of the Timor Sea are shown on Map 3 on page 15 of this Report.

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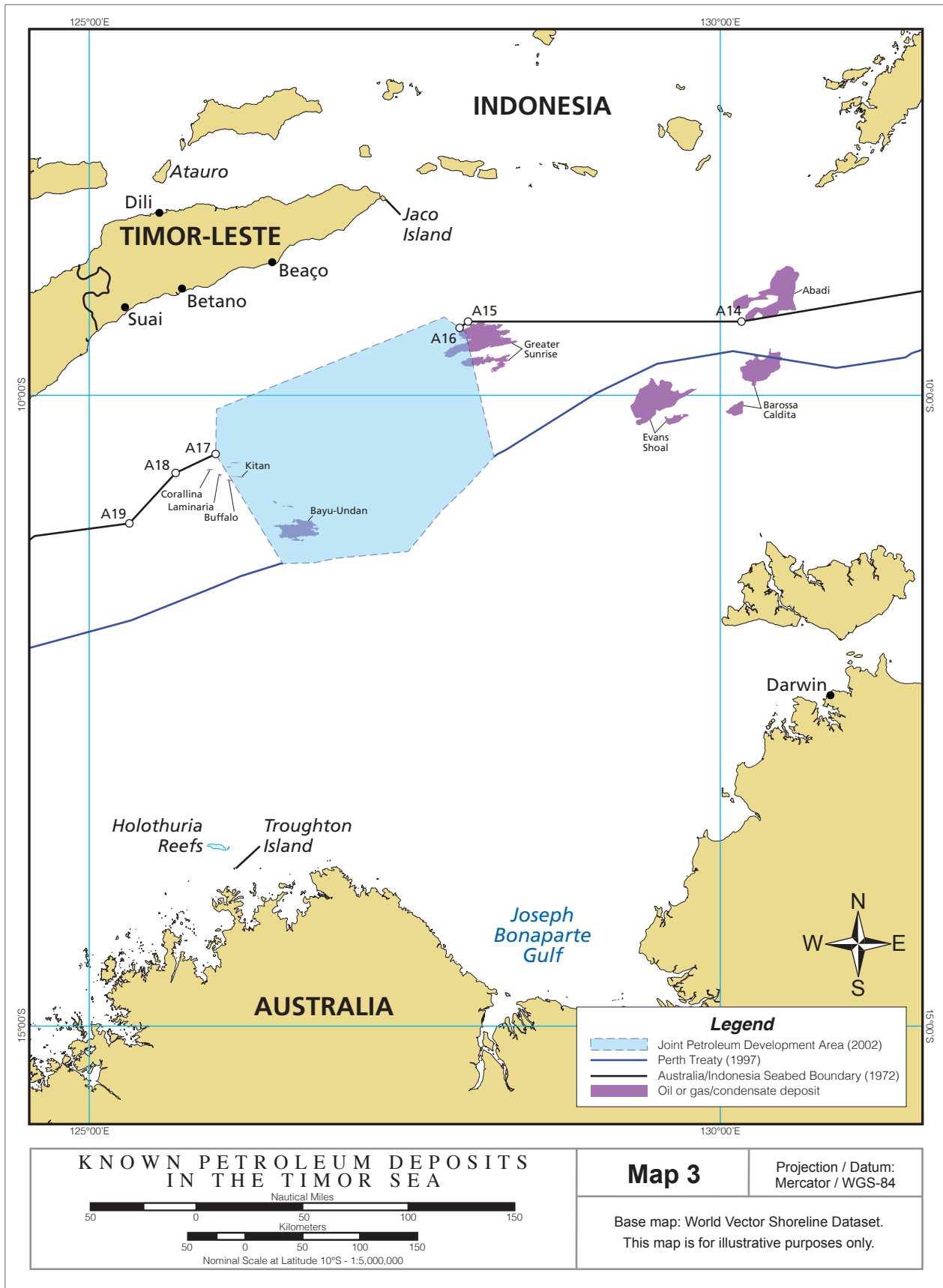
44. On 8 January 2013, Timor-Leste acceded to the Convention, with effect as from 7 February 2013.<sup>26</sup>
45. On 23 April 2013, Timor-Leste initiated arbitration proceedings against Australia pursuant to the dispute resolution provisions of the Timor Sea Treaty (the “*Timor Sea Treaty Arbitration*”).<sup>27</sup> The Commission was informed that the subject matter of the arbitration generally concerned the circumstances under which CMATS was concluded and, correspondingly, the validity of that treaty, including its extension of the life of the Timor Sea Treaty. The Commission was also informed that the arbitration proceedings were the subject of several suspensions while the Parties pursued the possibility of settlement, such that they remained pending at the commencement of these conciliation proceedings.
46. On 17 December 2013, Timor-Leste initiated proceedings against Australia before the International Court of Justice with regard to the seizure and subsequent detention of certain documents and data from the offices of one of Timor-Leste’s legal advisers in Canberra. According to Timor-Leste, the seized documents and data contained correspondence between the Government of Timor-Leste and its legal advisers relating to the Timor Sea Treaty Arbitration. On 3 March 2014, the Court indicated provisional measures, and on 25 March 2015, Australia indicated that it wished to return the documents and data in question. Timor-Leste thereafter discontinued the proceedings on 11 June 2015.

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<sup>26</sup> United Nations Convention on the Law of the Sea, Accession by Timor-Leste, 8 January 2013, U.N.T.S. 1833, I-31363, available at <[treaties.un.org/doc/Publication/UNTS/No%20Volume/31363/A-31363-Timor-Leste-080000028034a3ad.pdf](http://treaties.un.org/doc/Publication/UNTS/No%20Volume/31363/A-31363-Timor-Leste-080000028034a3ad.pdf)>; Repúblicação Resolução do Parlamento Nacional No. 17/2012 de 27 de Dezembro Ratifica, para Adesão, a Convenção das Nações Unidas sobre o Direito do Mar e o Acordo Relativo à Aplicação da Parte XI da mesma Convenção, adotado pela Assembleia Geral das Nações Unidas em 28 de Julho de 1994, published in *Jornal da República*, Serie I, No. 4 at p. 1.

<sup>27</sup> *Arbitration under the Timor Sea Treaty (Timor-Leste v. Australia)*, PCA Case No. 2013-16. Publicly available details concerning the arbitration may be found at <[pca-cpa.org/en/cases/37/](http://pca-cpa.org/en/cases/37/)>.





47. On 15 September 2015, Timor-Leste initiated arbitration proceedings against Australia pursuant to the dispute resolution provisions of the Timor Sea Treaty (the “*Article 8(b) Arbitration*”).<sup>28</sup> The Commission was informed that the subject matter of the arbitration generally concerned whether the provision of the Timor Sea Treaty giving Australia jurisdiction over any pipeline landing in Australia should be understood as conveying exclusive jurisdiction and precluding the exercise of jurisdiction by Timor-Leste over portions of the pipeline lying within the JPDA.
48. Both the *Timor Sea Treaty Arbitration* and *Article 8(b) Arbitration* were subsequently suspended and then terminated in the context of the present proceedings (see paragraphs 96 and 106 below).

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49. Timor-Leste has made substantial progress in developing the country and establishing a stable economic and political environment in the 15 years since it achieved independence. Despite these accomplishments, many challenges remain. Timor-Leste has emphasized to the Commission that it sees its petroleum resources, and in particular Greater Sunrise, as critical to its Strategic Development Plan 2011-2030 and its intention to build up a petroleum sector on the South Coast as part of the overall economic development of the country.
50. For its part, Australia has made clear to the Commission that it views the stability and prosperity of its regional neighbours as matters of high importance and very much in Australia’s interest. Australia is conscious that the dispute over maritime boundaries has negatively affected its broader relationship with Timor-Leste and inhibited the development of natural resources that would benefit both the Australian and Timorese peoples. Australia has come to see these proceedings as an opportunity to establish its partnership with Timor-Leste on a new footing. The achievement of agreement on maritime boundaries may provide a foundation for a strong and effective partnership for the future.

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<sup>28</sup> *Arbitration under the Timor Sea Treaty (Timor-Leste v. Australia)*, PCA Case No. 2015-42. Publicly available details concerning the arbitration may be found at <[pca-cpa.org/en/cases/141/](http://pca-cpa.org/en/cases/141/)>.

#### IV. THE COMMISSION'S MANDATE, ESTABLISHMENT, AND RULES OF PROCEDURE

##### A. THE PURPOSE OF CONCILIATION AND THE COMMISSION'S MANDATE

51. Compulsory conciliation proceedings are governed by Annex V to the Convention. In such proceedings, a neutral commission is established to hear the parties, examine their claims and objections, make proposals to the parties, and otherwise assist the parties in reaching an amicable settlement. Conciliation is not an adjudicatory proceeding, nor does a conciliation commission have the power to impose a legally binding solution on the parties; instead, a conciliation commission may make recommendations to the parties.<sup>29</sup>
52. Conciliation has a long tradition in international law and developed in the early twentieth century from both the fact-finding commissions of enquiry and good offices procedures envisaged under the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes.<sup>30</sup> Provisions for conciliation were included in many of the bilateral conventions for the settlement of disputes concluded during the 1920s and 1930s, and in 1945 conciliation was recognized in Article 33 of the Charter of the United Nations among the peaceful means for the settlement of international disputes.<sup>31</sup> Other multilateral treaties, including the Vienna Convention on the Law of Treaties and the UN Convention on the Law of the Sea, introduced the possibility of compulsory conciliation—conciliation in which participation in the process is mandatory but the results are nevertheless non-binding—as an alternative, for example, for issues considered too sensitive to submit to binding dispute settlement.<sup>32</sup> Procedurally, conciliation seeks to combine

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<sup>29</sup> Convention, Annex V, Art. 7(2).

<sup>30</sup> For a general overview of the history of conciliation, see S.M.G. Koopmans, *Diplomatic Dispute Settlement: The Use of Inter-State Conciliation* (2008); J.P. Cot, *La conciliation internationale* (1968).

<sup>31</sup> Charter of the United Nations, Art. 33.

<sup>32</sup> On the adoption of compulsory conciliation as a compromise procedure for the resolution of sea boundary disputes pursuant to the Convention, see generally S. Rosenne & L. Sohn (eds.), *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. V, pp. 12-15, 109-114 (M. Nordquist, gen. ed. 2012).

During the preparation of the Convention, extensive consideration was given to the categories of disputes that would be subject to procedures entailing a binding decision. Sea boundary disputes were identified early in the conference as a category of disputes for which agreement on third-party adjudication was unlikely to be broadly acceptable, and a proposal for an optional exemption for such disputes was proposed in 1974. See Australia, Belgium, Bolivia, Colombia, El Salvador, Luxembourg, Netherlands, Singapore and United States of America, “Working Paper on the Settlement of Law of the Sea Disputes,” UN Doc. A/CONF.62/L.7 (27 August 1974), *Official Records of the Third United Nations Conference on the Law of the Sea, Volume III (Documents of the Conference, First and Second Sessions)*, p. 85 at p. 92. Early versions of what became Article 298 permitted States to exclude disputes relating to sea boundary delimitation from the dispute resolution provisions of the Convention, but required States exercising this option to “indicate therein a regional or other third party procedure, entailing a binding decision which it accepts for the settlement of such disputes.” Revised Single Negotiating Text, Part IV, Art. 18, UN Doc. A/CONF.62/WP.9/Rev.2 (23 November 1976), *Official Records of the Third United Nations Conference*

the function of a mediator with the more active and objective role of a commission of inquiry.<sup>33</sup>

53. As an entity established pursuant to the Convention, the Commission looked first to that instrument to define the basis for its engagement with the Parties. In that respect, the Convention provides that the delimitation of a maritime boundary for the continental shelf and exclusive economic zone “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.”<sup>34</sup>

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*on the Law of the Sea, Volume VI (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fifth Session)*, p. 144 at p. 148.

This approach, however, met with objections both from States opposed to the compulsory submission of sea boundary disputes to any form of binding dispute settlement, as well as from States opposed to any exception of boundary disputes from the dispute resolution provisions otherwise applicable pursuant to the Convention. An informal note from the President of the Conference recorded that “[t]he main criticism of article 18 centered around paragraph 1(a) in relation to sea boundary delimitations. The opposing positions were on the one hand that the words ‘entailing a binding decision’ should be deleted, and on the other, that boundary delimitations be brought totally within the compass of section II of part IV.” *Informal Note from the President of the Third United Nations Conference on the Law of the Sea to All Delegations*, para. 3 (25 March 1977) reproduced in S. Rosenne & L. Sohn (eds.), *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. V, p. 112 (M. Nordquist, gen. ed. 2012).

A special Negotiating Group was thereafter created to give particular attention to the dispute resolution provisions applicable to the resolution of boundary disputes. In 1979, the Chairman of this Negotiating Group 7 noted his “understanding that only a proposal based upon the procedure of compulsory conciliation is consistent with a realistic view of the possibilities, if any, to reach a compromise on this controversial issue.” *Report of the Chairman of Negotiating Group 7*, UN Doc. NG7/45 (22 August 1979) in *Reports to the Plenary Conference*, UN Doc. A/CONF.62/91, *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XII (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Resumed Eighth Session)*, p. 71 at p. 107. Compulsory conciliation for sea boundary disputes was then incorporated into the negotiating text in 1980. *Informal Composite Negotiating Text, Revision 2*, Art. 298, UN Doc. A/CONF.62/WP.10/Rev.2 (11 April 1980).

<sup>33</sup> See J.P. Cot, *La conciliation internationale*, pp. 29-57 (1968). As a method for the pacific settlement of international disputes, conciliation emerged from the combination of elements of mediation and of international commissions of enquiry. Historically, international mediation was generally carried out by another sovereign power. Thus, while focused on the achievement of an amicable settlement, mediation was generally characterized by the independent political authority (and, potentially, interest in the dispute) of the mediating power. International commissions of enquiry, in contrast, largely replicated the arbitration procedures of the 1899 Hague Convention for the Pacific Settlement of International Disputes, but were focused solely on the determination of disputed facts. In contrast to mediation, the hallmark of a commission of enquiry was the absence of any independent political authority or interest in the dispute and the commission’s reliance instead on its expertise and judgment in considering the facts at hand. In practice, early commissions of enquiry, as in the *Dogger Bank Case*, were sometimes mandated to go beyond a strict presentation of facts and address the apportionment of responsibility between the parties, *de facto* engaging in conciliation. This combination of inquiry, combined with recommendations as to the amicable settlement of the dispute was then codified as conciliation in the many bilateral treaties on the resolution of international disputes concluded in the 1920s and 1930s.

<sup>34</sup> Convention, Arts. 74(1), 83(1).

54. Annex V to the Convention, in turn, defines a commission's objectives and establishes certain principles for the conduct of the proceedings. Articles 4 through 7 of Annex V provide as follows:

*Article 4  
Procedure*

The conciliation commission shall, unless the parties otherwise agree, determine its own procedure. The commission may, with the consent of the parties to the dispute, invite any State Party to submit to it its views orally or in writing. Decisions of the commission regarding procedural matters, the report and recommendations shall be made by a majority vote of its members.

*Article 5  
Amicable settlement*

The commission may draw the attention of the parties to any measures which might facilitate an amicable settlement of the dispute.

*Article 6  
Functions of the commission*

The commission shall hear the parties, examine their claims and objections, and make proposals to the parties with a view to reaching an amicable settlement.

*Article 7  
Report*

1. The commission shall report within 12 months of its constitution. Its report shall record any agreements reached and, failing agreement, its conclusions on all questions of fact or law relevant to the matter in dispute and such recommendations as the commission may deem appropriate for an amicable settlement. The report shall be deposited with the Secretary-General of the United Nations and shall immediately be transmitted by him to the parties to the dispute.
2. The report of the commission, including its conclusions or recommendations, shall not be binding upon the parties.

55. The full text of Annex V is attached as Annex 2 to this Report.
56. The Commission sought to elaborate on these principles in the preparation of its Rules of Procedure, which it adopted following consultations with the Parties in July 2016. The development of the Commission's Rules of Procedure was usefully informed by reference to the *Optional Conciliation Rules* adopted by the Permanent Court of Arbitration on 1 July 1996 (the "**PCA Conciliation Rules**") and to the *United Nations Model Rules for the Conciliation of Disputes between States* of 29 January 1996 (the "**UN Conciliation Rules**"). A copy of the Commission's Rules of Procedure is attached as Annex 8 to this Report.
57. In preparing the Rules of Procedure, the Commission and the Parties sought to maintain a flexible and informal approach to enable the Commission to follow the path that it considered most likely to lead to an amicable settlement. In particular, the Parties agreed that the Commission should not hesitate to meet with the Parties separately. In practice, most of the Commission's meetings with the Parties were held separately, and the Commission considers that its most important discussions with each Party would not have occurred in a joint setting.

58. The Parties further agreed that the Commission could authorize its Chairman or a delegation of the Commission to confer or meet with either Party and report to the full Commission. In the Commission's view, this flexibility was essential to the process in two respects: first, in enabling the Commission's engagement with the Parties to continue between meetings through regular, informal discussions by telephone and e-mail exchanges and, second, by facilitating discrete discussions with the political leadership of each Party that could not have occurred in a larger or more formal setting. The Commission also made extensive use of the Registry as a channel for informal communications with the Parties, both between and on the margins of the Commission's meetings with the Parties.
59. In order to enable an open discussion with each Party, the Commission sought to ensure that the Parties' legal positions would not be jeopardized by their participation in the proceedings and that the Parties would have complete control over the further disclosure, either to the other Party or to the public, of anything they revealed in the course of the conciliation. In order to preserve the Parties' legal positions, Article 25 of the Rules of Procedure prohibits the members of the Commission from any involvement—whether as arbitrator, counsel, representative, or witness—in any subsequent judicial or arbitral proceedings in respect of a dispute that is the subject of the conciliation proceedings.<sup>35</sup> Article 26 goes further and builds on corresponding provisions of the PCA Conciliation Rules to ensure that documents or materials introduced in the conciliation proceedings, or views expressed in the course of discussions with the Commission, may not be used in any such subsequent proceedings. The Rules of Procedure also adopt the provision of the UN Conciliation Rules that expressly provides that a Party may accept a settlement on the basis of the Commission's recommendations without being considered to have accepted the legal or factual premise of those recommendations.
60. With respect to confidentiality, the Commission's Rules of Procedure establish comprehensive procedures in Article 16 and in Article 18(6) to ensure that the Parties would retain control over the further disclosure of information and documents made available to the Commission. These provisions on transparency and confidentiality were extensively discussed during the Commission's July 2016 procedural meeting with the Parties. In crafting these provisions, the Commission sought to balance two competing considerations. On the one hand, the Commission considered that engagement with the Parties could not be effective if conducted in a public setting, in which the Parties' comments and positions would be intended as much for public or domestic consumption as for a frank discussion with the Commission. The Commission also anticipated

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<sup>35</sup> This prohibition would not, however, apply the procedure contemplated in Article 12 of the Treaty, which mirrors the functions of the Conciliation Commission itself and would not constitute a judicial or arbitral proceeding.

that each Party would be less forthcoming with the Commission if there were any significant risk that documents or information would be communicated to the other Party or made public without its consent. On the other hand, the Commission was acutely conscious that the delimitation of maritime boundaries has an impact on others than the Parties to the dispute.

61. The Commission sought to balance these competing interests by ensuring that the majority of the Commission's discussions with the Parties would take place in a confidential setting and that each Party would have complete control over information and documents submitted by it, including with respect to whether they were communicated to the other Party or made public. The Commission has observed that restriction, including with respect to this Report, which conveys the substance of the Parties' communications with the Commission only to the extent that the Parties have themselves agreed. At the same time, the Commission itself has sought to ensure that the public of both Timor-Leste and Australia, as well as other stakeholders with interests in the Timor Sea, have been kept informed of progress in the proceedings, including through the public opening session conducted in August 2016 that was webcast on the website of the Permanent Court of Arbitration (the "PCA")<sup>36</sup> and through the issuance of regular press releases by the Registry.<sup>37</sup> However, in adopting its Rules of Procedure, the Commission declined to decide at the outset whether this Report should be issued publicly, leaving this to be decided in consultation with the Parties in the course of the proceedings.<sup>38</sup> Indeed, the Rules of Procedure also contemplated the possibility of supplementing its official report with supplemental reports to be provided confidentially to each side.
62. The terms of the Convention and Timor-Leste's request for conciliation identified the Commission's initial mandate as being to "assist Timor-Leste and Australia in reaching an amicable settlement of their dispute relating to the delimitation of their permanent maritime boundaries in the Timor Sea."<sup>39</sup> Article 5 of Annex V to the Convention, however, empowers the Commission to recommend "any measures which might facilitate an amicable settlement of the

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<sup>36</sup> The Commission understands that the opening session was also broadcast live on television in Timor-Leste. Video of the opening session is available at <[files.pca-cpa.org/pcadocs/2016-08-28\\_pca.mp4](http://files.pca-cpa.org/pcadocs/2016-08-28_pca.mp4)>.

<sup>37</sup> Copies of the English version of these press releases are attached (in chronological order) as Annexes 4, 7, 11, and 13 to this Report. The same press releases were also regularly issued in French and Portuguese.

<sup>38</sup> The Commission consulted the Parties with respect to the form and content of the Report in October 2017 and provided the Parties with the opportunity to comment on a draft of this report in March 2018. In the course of the proceedings, both Parties made clear their expectation that the Report would be made public. In connection with their comments, the Commission invited the Parties to indicate whether any portion of the Report should be redacted. Having considered the Parties' comments, the Commission has finalized the present Report.

<sup>39</sup> Timor-Leste's Notice of Conciliation also anticipated the need to establish appropriate transitional arrangements.

dispute.” On its own terms, this provision is extremely broad and, for the Commission, emblematic of the flexible pragmatism that lies at the heart of conciliation: the Commission’s mandate is to take the steps necessary to assist the Parties in resolving their dispute. Over the course of these proceedings, the Commission’s engagement with the Parties progressed through a number of issues, from the Commission’s proposal of confidence-building measures in October 2016, to the location of the boundary, to the consideration of revenue-sharing and the resource governance mechanisms now forming part of the Greater Sunrise Special Regime. Rather than restrict itself to the most immediate or prominent elements of the Parties’ dispute identified at the outset of the proceedings, the Commission has sought to comprehensively engage with the Parties to address the issues necessary to achieve an amicable and durable settlement. The Commission’s mandate has also been prolonged through the Parties’ request, on the basis of the 30 August Agreement, for the Commission to remain involved with respect to the development of Greater Sunrise and to engage with the Parties and the Joint Venture with a view to facilitating agreement on the development concept.

63. The Commission also notes that conciliation proceedings may differ in the extent to which they seek to mediate an agreement between the parties or to leave the parties with a report containing the commission’s recommendations and conclusions. Historically, conciliation procedures have set out differing expectations regarding a commission’s role in the course of proceedings, and conciliation commissions have taken different approaches with respect to this aspect of their mandate.<sup>40</sup> In the Commission’s view, Annex V to the Convention anticipates both possibilities. Article 7 expressly anticipates that, in the absence of agreement, the Commission shall issue a report recording “its conclusions on all questions of fact and law relevant to the matter in dispute and such recommendations as the commission may deem appropriate for an amicable

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<sup>40</sup> For a summary of this aspect of historical conciliations, see J.P. Cot, *La conciliation internationale*, pp. 217-226 (1968). Based on the approach of commissions of enquiry, the earliest conciliation procedures anticipated that a commission would hear the parties’ positions and proceed to issue a report with its recommendations. In such an approach, the report itself would constitute the mechanism to bring the parties’ positions together. Subsequent conventions provided greater flexibility and anticipated that a commission might make proposals for settlement at an earlier stage of the proceedings and proceed with a report and recommendations only in the event that its proposals were not accepted. Other conciliation procedures, including the PCA Conciliation Rules, go further and focus entirely on achieving agreement between the parties, omitting even the possibility of a report and trending somewhat in the direction of mediation. See S.M.G. Koopmans, *Diplomatic Dispute Settlement: The Use of Inter-State Conciliation* pp. 112-114 (2008). In this respect, Annex V to the Convention strikes a middle ground, providing that a commission shall prepare a report that will be deposited with the UN Secretary-General, but may also “make proposals to the parties with a view to reaching an amicable settlement” throughout the proceedings. This flexibility leaves a commission with significant discretion as to the conduct of the procedure, and the most appropriate approach may well depend upon the identity of the parties, the nature of their dispute, and the likely receptiveness of the parties to proposals for a genuine settlement.



settlement.”<sup>41</sup> At the same time, the structure of Annex V makes clear that this possibility is secondary to the possibility of agreement and the Commission’s objective to assist the Parties in reaching an amicable settlement.

64. In the present proceedings, the Commission discussed with the Parties their expectations for the conciliation and whether the Parties wished the Commission to concentrate on recommendations or to seek to reach an agreement within the conciliation process. At the procedural meeting in July 2016, both Parties were in agreement that, in the words of Timor-Leste’s counsel “the primary goal and aim is to try to reach an agreement before any report is issued.” The Parties expressed the same view in October 2016, when the Commission revisited the question following its *Decision on Competence*. In the course of the proceedings, the Commission has sought to be guided by this objective. At the same time, the Commission considered it to be of great importance to the conciliation process that the possibility of a substantive report remain and that the Commission have the opportunity to offer conclusions and recommendations, whether in the course of discussions or in the report. Even where both parties are actively engaged, an agreement may prove elusive and the willingness to make the difficult decisions and compromises necessary to secure agreement may rise and fall over the course of the proceedings. The report is a necessary component of this conciliation process.
65. The fact that the Convention provides for compulsory conciliation raises further the question of how a commission should proceed in the event that its competence is called into question. The Commission addressed this in its Rules of Procedure and considered several aspects of its mandate in the context of its *Decision on Competence* of 19 September 2016. At the outset of the proceedings, Australia objected to the competence of the Commission and sought to have the question of competence determined as a preliminary matter. Timor-Leste opposed Australia’s objection, as well as its request for a preliminary decision on competence. The Commission’s Rules of Procedure provided that the Commission would decide “whether or not to rule on its competence as a preliminary question.” The Commission invited the Parties to address this point, as well as that of competence itself, during the hearing on competence and ultimately decided to address the issue of competence before proceeding with the conciliation.
66. Although the Commission does not exclude the hypothetical possibility of objections to competence that would need to be addressed in conjunction with the substance of a dispute, it does consider that the engagement required for effective conciliation would ordinarily require that

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<sup>41</sup> Convention, Annex V, Art. 7(1). Indeed, given that the Convention’s provisions for compulsory conciliation anticipate the possibility that a party may fail to participate and provide that this “shall not constitute a bar to the proceedings,” a commission must have the power to set out its recommendations and conclusions in a report in the event that party declines to participate.

doubts as to the competence of a commission be promptly resolved. Additionally, the Commission notes that considerations of due process were of particular importance to the proceedings on competence—where, in contrast to the remainder of the proceedings, the Commission’s decision had binding legal effect—and that distinct procedures were established in Article 17 for the proceedings on competence. In the present case, the Commission does not see that it could properly have conducted these proceedings in the flexible manner otherwise necessary for conciliation without first dealing with Australia’s objections. The Commission is also of the view that the agreement reached by the Parties would have been impossible had Australia’s objections to competence not been addressed as a preliminary matter. In this respect, the Commission considers the proceedings on competence to have been, not an ancillary matter, but essential to establishing trust for successful discussions with the Parties.

67. The Commission also recalls that, in its *Decision on Competence*, it was called on to interpret the interaction of the 12-month deadline in Article 7 of Annex V with the Commission’s duty, under Article 13 thereof, to decide on any disagreement regarding its competence. Reviewing the text and structure of Annex V, the Commission concluded as follows:

The deadline in Article 7 must therefore give way to the time needed to consider and decide objections to competence and is thus properly understood to run only after a Commission has addressed any objections that may be made. Any other approach would run the risk of a commission failing to give proper consideration to a justified objection to competence or, alternatively, of giving such objections appropriate attention only to find that too much time had elapsed for the parties to fairly evaluate whether the conciliation process was likely to prove effective and worthy of extension by agreement.

Accordingly, the Commission concludes that, in this compulsory conciliation process, the 12-month period in Article 7 of Annex will begin to run as of the date of this Decision.<sup>42</sup>

68. The Commission notes that the Parties have in fact extended these proceedings by agreement well beyond 19 September 2017. The Commission considers this to have been essential for the conclusion of the proceedings. In the Commission’s view, the Parties would not have been able to reach agreement had the Commission been constrained to issue its Report by 25 June 2017. Accordingly, the Commission considers that the 12-month period set out in Annex V should be understood not as the timeframe in which a successful conciliation can likely be concluded, but rather as a safeguard to ensure that an unproductive conciliation is not unduly prolonged. Therefore, notwithstanding the salutary effect of deadlines to focus parties’ consideration of acceptable outcomes, parties to a conciliation that appears to be making progress should anticipate that at least some extension by agreement beyond the 12-month period may likely be necessary.

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<sup>42</sup> *Decision on Competence* of 19 September 2016, paras. 109-110.

69. Finally, the Commission observes that there is a question regarding the extent to which a conciliation commission should engage with the parties concerning questions of international law. This was the subject of some discussion with the Parties in the course of the proceedings. It is also an issue on which conciliation commissions have historically taken varying approaches.<sup>43</sup> In the Commission's view, this question is answered for an Annex V commission by the Convention itself. The Convention provides for compulsory conciliation with respect to maritime boundaries, the delimitation of which, Articles 74 and 83 provide, "shall be effected by agreement on the basis of international law . . . in order to achieve an equitable solution." Article 7 of Annex V further requires a commission, in the absence of an agreement, to report on its "conclusions on all questions of . . . law relevant to the matter in dispute." For the Commission, it follows from these provisions that it cannot be inappropriate for a conciliation commission to engage with the parties' legal views regarding the delimitation of maritime boundaries.
70. At the same time, the Commission recognizes that Annex V anticipates the possibility of a commission setting out its conclusions on questions of law only where the parties are unable to reach agreement. The function of a commission is to assist the parties to reach an amicable settlement, not to pronounce for its own sake on questions of international law, and the Commission has frequently noted that it is not an arbitral tribunal with the power to make a binding ruling. It follows, for the Commission, that a conciliation commission need not as a matter of course engage with the parties on their legal positions, but may engage with these matters to the extent that so doing will likely facilitate the achievement of an amicable settlement. It also follows, for the Commission, that a conciliation commission should not encourage parties to reach an agreement that it considers to be inconsistent with the Convention or other provisions of international law. The Commission has sought to be guided by these principles in its discussions with the Parties, in particular in responding to the Parties' positions and in elaborating the Commission's options and ideas.

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<sup>43</sup> In the *Jan Mayen Conciliation*, for instance, the commission noted that:

In order to submit recommendations to the two governments, such recommendations must be unanimously agreed upon by the Conciliation Commission. It follows from the mandate that the Conciliation Commission shall not act as a court of law. Its function is to make recommendations to the two governments which in the unanimous opinion of the Commission will lead to acceptable and equitable solutions of the problems involved.

*Jan Mayen Conciliation (Iceland/Norway)*, Decision of June 1981, R.I.A.A. Vol. XXVII, p. 1.

The *Jan Mayen* commission went on to note that, although it had examined state practice and judicial decisions on maritime boundary delimitation, it considered it "inappropriate" to address them. Similarly, the UN Conciliation Rules provide in Article 20(1) that a conciliation commission shall refrain "from ruling formally on issues of law, unless the Parties have jointly asked it to do so."

71. In the paragraphs that follow, the Commission has set out the procedure followed in the course of these proceedings, before turning to the Parties' views on maritime boundaries and manner in which the 30 August Agreement was reached.

**B. ESTABLISHMENT OF THE COMMISSION AND RULES OF PROCEDURE**

72. On 11 April 2016, Timor-Leste commenced these conciliation proceedings by way of a *Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS*. In its Notification, Timor-Leste appointed Judge Abdul G. Koroma and Judge Rüdiger Wolfrum as Timor-Leste's party-appointed conciliators.

73. On 2 May 2016, Australia submitted a *Response to the Notice of Conciliation*. In its Response, Australia appointed Dr. Rosalie Balkin and Professor Donald McRae as Australia's party-appointed conciliators.

74. On 11 May 2016, the Parties wrote jointly to the PCA, requesting that it act as the Registry for these conciliation proceedings.

75. On 25 June 2016, after the party-appointed conciliators had consulted with the Parties, H.E. Ambassador Peter Taksøe-Jensen was appointed to serve as Chairman of the Conciliation Commission. The Commission was accordingly constituted with effect from 25 June 2016.

76. On 27 June 2016, Australia submitted an *Application for Bifurcation of the Proceedings*, briefly setting out Australia's challenge to the competence of the Commission and requesting the Commission to "bifurcate the conciliation to enable Australia's challenge to the competence of the Commission to be decided as a separate preliminary matter."

77. On 18 July 2016, Timor-Leste submitted its *Comments on Australia's Application for Bifurcation of the Proceedings*, requesting that the Commission "not accede to Australia's request for bifurcation."

78. On 28 July 2016, the Commission convened a procedural meeting with the Parties at the headquarters of the PCA at the Peace Palace in The Hague, the Netherlands.<sup>44</sup> At the procedural

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<sup>44</sup> The following persons participated in the procedural meeting:

For Timor-Leste: H.E. Minister Kay Rala Xanana Gusmão, H.E. Ambassador Joaquim da Fonseca, H.E. Ambassador Milena Pires, Ms. Elizabeth Exposto, Mr. Simon Fenby, Ms. Sadhie Abayasekara, Professor Vaughan Lowe QC, Mr. Eran Sthoeger, Ms. Janet Legrand QC (Hon), Mr. Stephen Webb, and Ms. Gitanjali Bajaj.

For Australia: Mr. John Reid PSM, H.E. Ambassador Brett Mason, Sir Daniel Bethlehem KCMG QC, Ms. Amelia Telec, Mr. Justin Whyatt, Ms. Indra McCormick, and Mr. Will Underwood.

meeting, the Commission and the Parties discussed the rules of procedure and the organization of the proceedings and agreed that, following written submissions on competence from the Parties, the Commission would convene a hearing on competence from 29 to 31 August 2016 at which the Parties would address both the question of the Commission's competence and whether the Commission should decide on its competence as a preliminary matter. The Parties also agreed that there would be a public opening session, prior to the hearing on competence, in which the Parties would address the background to the dispute.

79. During the course of the procedural meeting, the Commission and the Parties also concluded Terms of Appointment to confirm the appointment of the Commission and the basis for the conduct of the proceedings. The Terms of Appointment also confirmed the Parties' agreement that the PCA act as the Registry for the proceedings. Further to the Terms of Appointment, the Secretary-General of the PCA appointed Mr. Garth Schofield, Senior Legal Counsel of the PCA, to serve as Registrar to the Commission. Mr. Martin Doe, Senior Legal Counsel of the PCA, was also assigned to assist the Commission in these proceedings.
80. Over the course of August 2016, the Commission provided the Parties with draft Rules of Procedure, sought and responded to their comments in respect of this draft, and adopted final Rules of Procedure on 22 August 2016. A copy of the Commission's Rules of Procedure is included as Annex 8 to this Report.

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## V. THE CONCILIATION PROCEEDINGS

81. In the paragraphs that follow, the Commission has set out the steps taken in the course of these proceedings. Conscious of the potential relevance of these proceedings for future recourse to Annex V, the Commission has elected to set out its procedure in some detail. For coherence, these details are grouped roughly on a thematic basis.

### A. PROCEEDINGS ON COMPETENCE

82. On 29 July 2016, the Commission wrote to the Parties, fixing the schedule for the Parties' written submissions on competence and setting out the procedure for the hearing on competence and for an opening session that would be webcast on the website of the PCA. At the same time, and without prejudice to the Commission's decision on competence, the Commission invited the Parties to reserve dates in January 2017 for a potential meeting.<sup>45</sup>

83. On 12 August 2016, Australia submitted its *Objection to Competence*. On 25 August 2016, Timor-Leste submitted its *Written Submission in Response to Australia's Objection to Competence*.<sup>46</sup> From 29 to 31 August 2016, the Commission convened a hearing on the issue of competence with the Parties at the Peace Palace in The Hague, the Netherlands.<sup>47</sup> As agreed with the Parties, the hearing was preceded by an opening session on the background to the dispute, which was webcast live on the website of the PCA.<sup>48</sup> During the opening session and hearing on competence, H.E. Minister Kay Rala Xanana Gusmão; H.E. Minister Hermenegildo Pereira, Agent for Timor-Leste; Ms. Elizabeth Exposto, Deputy Agent for Timor-Leste; Professor

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<sup>45</sup> Following its *Decision on Competence*, the Commission in fact convened a meeting with the Parties in October 2016.

<sup>46</sup> The substance of Australia's objection and Timor-Leste's response are addressed in the Commission's *Decision on Competence*, included as Annex 9 to this Report.

<sup>47</sup> The following persons participated in the opening session and hearing on competence:

For Timor-Leste: H.E. Minister Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, H.E. Ambassador Joaquim da Fonseca, H.E. Ambassador Abel Guterres, H.E. Ambassador Milena Pires, Mr. Simon Fenby, Ms. Sadhie Abayasekara, , Professor Vaughan Lowe QC, Sir Michael Wood KCMG, Mr. Eran Sthoeger, Dr. Robin Cleverly, Ms. Janet Legrand QC (Hon), Mr. Stephen Webb, Ms. Gitanjali Bajaj, .

For Australia: Mr. John Reid PSM, Ms. Katrina Cooper, Solicitor-General Justin Gleeson SC, Sir Daniel Bethlehem KCMG QC, Mr. Bill Campbell QC PSM, Professor Chester Brown, Mr. Gary Quinlan AO, H.E. Ambassador Brett Mason, Ms. Amelia Telec, Mr. Benjamin Huntley, Ms. Anna Rangott, Mr. Justin Whyatt, Mr. Todd Quinn, Mr. Mark Alcock, Ms. Angela Robinson, Ms. Indra McCormick, and Ms. Christina Hey-Nguyen.

For the Registry: Mr. Garth Schofield, Mr. Martin Doe, and Ms. Pem Tschering.

A transcript of the opening session and hearing on competence was produced. This transcript and the Parties' presentation materials are available at <https://pca-cpa.org/en/cases/132/>.

<sup>48</sup> Video of the opening session is available at <files.pca-cpa.org/pcadocs/2016-08-28\_pca.mp4>.

Vaughan Lowe QC; and Sir Michael Wood KCMG made oral submissions for Timor-Leste. Mr. John Reid PSM, Agent for Australia; Mr. Justin Gleeson SC, Solicitor General of Australia; Sir Daniel Bethlehem KCMG QC; Mr. Bill Campbell QC PSM; Professor Chester Brown; and Mr. Gary Quinlan AO made oral submissions for Australia.

84. On 31 August and 9 September 2016, the Parties wrote to the Commission, providing supplemental written answers to questions posed by the Commission during the hearing. Additionally, on 13 September 2016, Australia provided a further supplemental answer to a question from the Commission concerning Article 9 of CMATS.
85. On 15 September 2016, the Commission informed the Parties that it would issue its *Decision on Competence* on 19 September 2016 and requested the Parties to keep the decision confidential until made public in accordance with the Rules of Procedure.
86. On 19 September 2016, the Commission issued to the Parties its *Decision on Competence* and concluded as follows:
  - A. The Commission is competent with respect to the compulsory conciliation of the matters set out in Timor-Leste's *Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS* of 11 April 2016.
  - B. There are no issues of admissibility or comity that preclude the Commission from continuing these proceedings.
  - C. The 12-month period in Article 7 of Annex V of the Convention shall run from the date of this Decision.
87. A copy of the Commission's *Decision on Competence* is included as Annex 9 to this Report.
88. Following the rendering of its *Decision on Competence*, the Commission provided the Parties with the opportunity to indicate whether they considered necessary the redaction of any potentially confidential information included in the decision. As neither Party indicated a wish for redactions, the Commission published its *Decision on Competence* on 26 September 2016 on the website of the PCA.

## **B. CONFIDENCE-BUILDING MEASURES**

89. After completing its *Decision on Competence*, the Commission gave consideration to the approach to be followed in the further conduct of the proceedings. The Commission identified the following four objectives:
  - (a) to map out and understand the Parties' objectives and interests, as well as their formal positions;

- (b) to manage the process for all stakeholders in the Timor Sea, including other governments and private actors with interests in the area;
  - (c) to provide for a suitable interim arrangement that would provide stability and permit the Parties to concentrate their energies on a comprehensive resolution of their dispute; and
  - (d) to advance a proposal capable of achieving agreement between the Parties on all elements of their dispute, including other matters closely related to the issue of boundaries.
90. On 21 September 2016, the Commission wrote to the Parties regarding the next steps to be taken in the proceedings. The Commission's letter stated as follows:

Dear Colleagues,

I write with respect to the next steps in this conciliation process.

By now the Parties will have received the Commission's Decision on Competence. My hope with this Decision is that we will now be able to turn to the question of how the Commission can best assist the Parties in finding an amicable resolution to the matters that separate them.

I have noted during both of our meetings that this is a conciliation process and not arbitration proceedings. I take the opportunity of this letter to do so again, and will continue to emphasize this point as we proceed. I believe that it is crucial to the success of the process that the Parties not be bound to litigation-style positions and statements and will do my utmost to encourage a flexible and open-minded way forward in which the Parties will feel free to explore possible avenues for engagement without fear that such flexibility will later be held against them. For its part, the Commission will be similarly flexible in organizing this process and will endeavor to accommodate the wishes and suggestions it may receive from the Parties.

The Commission looks forward to exploring with the Parties their ideas as to what the objectives of this process should be. At this point, however, I believe that it would be helpful to set out the Commission's initial view of four objectives that could guide our collective efforts:

First, to comprehensively inform the Commission regarding the issues in relation to boundaries in the Timor Sea, as well as the Parties' interests and objectives in this context.

Second, to manage this process with respect to all stakeholders, including nongovernmental entities and investors with interests in the Timor Sea, to ensure that these proceedings do not themselves become a cause of uncertainty or disruption.

Third, to develop with the Parties a mutually acceptable interim arrangement for the Timor Sea pending the final resolution of the Parties' differences.

Fourth, for the Commission to provide the Parties, at the close of this process, with an informed proposal for the final resolution of the Parties' differences that is in keeping with the principles underpinning the UN Convention on the Law of the Sea and sensitive to the interests and concerns expressed by the Parties in the course of this conciliation process.

As for concrete next steps, the Commission's first objective is to gain a better understanding of objectives and interests of the Parties. Although the Commission learned a great deal from the Parties' presentations during the opening session, there is still much that we do not know or may not understand. In keeping with the Commission's desire to avoid entrenching fixed positions, I do not wish, for the time being, to ask the Parties to inform the Commission through written memorials or formal submissions. Rather, the Commission would like to meet separately with each Party for an open-ended and informal exploration of the issues and of the Parties' interests and objectives.



In order not to lose the momentum developed during the proceedings on competence, the Commission wishes to meet with the Parties in Singapore during the **period of 10 to 13 October 2016**. I envisage that the Commission would spend at least one full day with the representatives of each Party, which could take place on 10 and 11 October, but would ask that the Parties' representatives remain in Singapore on 12 and 13 October for potential further discussions or a joint meeting with the Commission. Although the Commission does not wish to restrict the Parties' representation for these meetings, I would encourage the Parties to consider keeping their delegations small, in order to facilitate a free-flowing discussion with the Commission.

In addition to preparing themselves for discussions with the Commission, there are two steps that the Commission would like the Parties to take between now and the October meetings in Singapore:

First, I believe that the Commission's separate discussions with the Parties would benefit from an indication, prior to the October meetings, of the full range of issues that the Parties believe could usefully be considered by the Commission in relation to the issue of boundaries in the Timor Sea. Accordingly, I would ask each Party to prepare a list for the Commission of the issues that it considers relevant to the process. This should not be a lengthy document or a statement of the Parties' positions on the issues to be addressed, but rather a checklist for the Commission's interactions with the Parties, to ensure that important issues are not overlooked.

Second, in the interest of managing the process for all stakeholders, the Commission would invite the Parties to consider the possibility of issuing a joint public statement after the October meetings. If helpful, the Commission would be available to confer with the Parties regarding the formulation of such a statement.

Going forward, I note that it will be important for the conciliation process to have a stable point of departure on the basis of which discussions can meaningfully be held. Accordingly, the Commission would ask the Parties to refrain for the time being from any steps that would alter the status quo in the Timor Sea and intends to explore this issue with the Parties in the course of discussions in October.

Finally, the Commission notes that it will be of critical importance for the proceedings that the Parties feel able to speak freely, both with the Commission and with each other. In this respect, I recall that the Rules of Procedure include provisions for the Parties to designate information as confidential or to provide information to the Commission on the condition that it not be shared with the other Party. The Rules also provide that information relating to this conciliation process that has not been made public shall not be relied on in other arbitral or judicial proceedings. The Commission takes these commitments seriously, and I encourage the Parties to make use of them as necessary in order to communicate freely with the Commission. Although the recent decision on competence will soon be made public, in keeping with the Rules of Procedure, I anticipate that the next phases of these proceedings will be (largely) confidential as the Commission seeks to explore the issues with the Parties and establish a constructive basis for discussions.

I and my colleagues in the Commission look forward to the cooperation and assistance of the Parties in the conduct of the conciliation process ahead of us and to seeing the representatives of the Parties in person in Singapore in a few weeks.

Yours faithfully,

Peter Taksøe-Jensen  
Chairman

91. On 28 September 2016, the Commission wrote to the Parties regarding the organization of the October meetings in Singapore, noting that it intended to meet with the Parties separately. In order to encourage the Parties to speak freely, the Commission indicated that it would treat any statements made by either Party as confidential pursuant to Article 18(6) of the Rules of Procedure

unless otherwise indicated. The Commission also requested each Party to convey its respective issues list, as requested in the Chairman's letter of 21 September 2016, to the Commission only.

92. On 7 October 2016, each of the Parties wrote confidentially to the Commission, enclosing a list of issues for discussion, as requested in the Chairman's letter of 21 September 2016.
93. On 9 October 2016, Australia wrote confidentially to the Commission, supplementing its list of issues and outlining its objectives for the conciliation process.
94. Between 10 and 13 October 2016, the Commission met separately with the Parties in Singapore.<sup>49</sup> To encourage the Parties to speak freely in their discussions with the Commission and explore avenues for settlement without fear of commitment, no formal written record was kept of these or subsequent meetings.
95. During the October 2016 session, both Parties provided the Commission with additional documents and materials on a confidential basis. The Commission also discussed with the Parties various steps that could be taken to build confidence between them and lay the groundwork for a productive discussion on maritime boundaries. Following these discussions, the Commission on 13 October 2016 provided the Parties with the following *Commission Proposal on Confidence-Building Measures*:

The Commission has carefully considered how best to move forward with the Conciliation process and create the conditions most conducive to achieving an agreement on permanent maritime boundaries within the timeframe of the Conciliation process. In this respect, the Commission proposes to the Parties certain measures to be implemented with a view to removing obstacles to progress, establishing a stable starting point for negotiations, and building trust between the Parties. If these measures are implemented by the Parties, the Commission is optimistic about obtaining full engagement to begin substantive negotiations on both provisional and final solutions on maritime boundaries at the Commission's next meetings with the Parties in January of next year.

As a general matter, the Commission places great importance on maintaining stability in the relationship between the Parties during the course of this Conciliation. Accordingly, as alluded to in its letter of 21 September 2016, the Commission initially thought that it would be helpful to maintain all the current treaty arrangements during the pendency of the process. However, based on its discussions with the Parties, it appears that CMATS may remain an obstacle to moving forward that could be productively removed from the equation.

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<sup>49</sup> The following persons participated in the October 2016 session:

For Timor-Leste: H.E. Minister Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, H.E. Ambassador Abel Guterres, Ms. Elizabeth Exposto, Mr. Stephen Webb, Ms. Sadhie Abayasekara, Ms. Iriana Ximenes, Mr. Simon Fenby, Ms. Gitanjali Bajaj, .

For Australia: Sir Daniel Bethlehem KCMG QC, Mr. Bill Campbell QC PSM, Mr. Gary Quinlan AO, Mr. Bruce Wilson, Mr. Justin Whyatt, Ms. Angela Robinson, Mr. Mark Alcock, Ms. Esther Harvey, Mr. Benjamin Huntley, and Ms. Hailee Adams.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

Timor-Leste had previously indicated that it intends to proceed with the termination of CMATS in the near future. Australia does not dispute that Timor-Leste has the right to terminate CMATS. At the same time, both States share a common interest in maintaining regulatory stability and investor confidence by clarifying that the Timor Sea Treaty would continue to apply to activities undertaken in the Timor Sea following termination of CMATS and serve as part of the transitional arrangements until a final delimitation of maritime boundaries has come into effect.

With the above in mind, the Commission proposes that the Parties take the following steps as confidence-building measures:

**1. Steps to be taken with respect to CMATS:**

- Either:
  - **Both Parties** to agree by 8 December 2016 to terminate CMATS by mutual consent, with such termination taking place according to an agreed schedule, bearing in mind domestic legal processes; or
  - **Timor-Leste** to initiate termination of CMATS unilaterally by 15 January 2017 (*i.e.*, one day prior to the opening of the January session with the Commission) and **Australia** to take note of Timor-Leste's termination of CMATS;
- **Both Parties** to agree that, following the termination of CMATS, the Timor Sea Treaty will apply in its original form, prior to amendment by CMATS;
- **Both Parties** to agree that Articles 12(3) and 12(4) of CMATS would no longer apply;
- **Australia** to confirm that, following termination of CMATS, Article 4(5) of CMATS would not limit or exclude its obligation to negotiate an agreement with Timor-Leste on the basis of any report the Commission may produce in the course of these proceedings;

**2. The Parties' commitment to negotiate maritime boundaries:**

- **Australia** and **Timor-Leste** to commit to negotiate permanent maritime boundaries; such commitment to be formally confirmed in writing to the Commission by each government by 8 December 2016;

**3. Steps to be taken with respect to pending arbitrations:**

- **Both Parties** to write jointly, by 21 October 2016, to the respective tribunals in the *Timor Sea Treaty Arbitration* and the *Article 8(b) Arbitration*, suspending those proceedings by agreement until 20 January 2017 (*i.e.*, the final day of the January session with the Commission);
- **Timor-Leste** to write to the respective tribunals in the *Timor Sea Treaty Arbitration* and the *Article 8(b) Arbitration* by 20 January 2017 (*i.e.*, the final day of the January session with the Commission), withdrawing its claims and requesting termination of those proceedings;

**4. Steps to be taken with respect to petroleum exploration in the Timor Sea:**

- **Australia** to remove the area in the recent acreage release identified by Timor-Leste as covered by its claim; such removal to be confirmed to the Commission in writing by 8 December 2016;

**5. Steps to be taken with respect to the further work of the Commission:**

- **Both Parties** to set out their positions on maritime boundaries in the Timor Sea in written submissions not exceeding 30 pages (excluding annexes), to be received by 20 December 2016; such written submissions should include the Parties' respective positions on the delimitation of permanent maritime boundaries (including coordinates of the proposed delimitation line) and an explanation of the principles on which their delimitation is based;

- **Australia** to provide the necessary mandate for its delegation to negotiate permanent maritime boundaries in the Timor Sea and to confirm to the Commission in writing the possession of such mandate by 9 January 2017;
- **Both Parties** to take a forward-looking approach to the negotiations and to raise only issues that are directly relevant to reaching an agreement on maritime boundaries.

**6. Steps to be taken with respect to public communications:**

- **Both Parties** to approach public statements on the issue of maritime boundaries and their relationship with one another generally with a view to creating space for constructive engagement, rather than to generate pressure on the other Party or foreclose options; Accordingly, **both Parties** to generally express optimism about the Conciliation process;
- **Both Parties** to provide positive comments from senior members of their present delegations on the other Party's engagement in the Conciliation process for quotation in a press release to be issued by the PCA at the close of the present session with the Commission;
- **Both Parties** to issue a joint statement (the content of which will be developed in consultation with the Commission) concurrent with the termination of CMATS, outlining the effect of termination on the Timor Sea Treaty and operators in the Timor Sea;

96. On 21 October 2016, the Parties jointly wrote to the arbitral tribunals in the *Timor Sea Treaty Arbitration* and the *Article 8(b) Arbitration*, requesting the suspension of those proceedings until 20 January 2017, as anticipated in the Commission's confidence-building measures.
97. On 8 November 2016, Timor-Leste wrote confidentially to the Commission, providing copies of a number of background documents referred to during the October meetings.
98. On 6 December 2016, Timor-Leste wrote to the Commission, conveying a letter from the Prime Minister of Timor-Leste, H.E. Dr. Rui Maria de Araújo, formally confirming Timor-Leste's commitment to negotiate permanent maritime boundaries with Australia.
99. On 8 December 2016, Australia wrote to the Commission confirming (a) its commitment to negotiate permanent maritime boundaries with Timor-Leste; (b) that its delegation had been provided with the necessary mandate to negotiate permanent maritime boundaries in the Timor Sea; and (c) that the area identified by Timor-Leste as being covered by its claim would be removed from the 2016 Offshore Petroleum Exploration Acreage Release area W16-2.
100. In its letter of 8 December 2016, Australia further indicated that it had decided not to jointly terminate the CMATS Treaty. Australia confirmed, however, that following the termination of CMATS by Timor-Leste, "the Timor Sea Treaty will apply in its original form, prior to amendment by CMATS," that "Articles 12(3) and 12(4) of CMATS would no longer apply," and that "Article 4(5) of CMATS would not limit or exclude its obligation to negotiate an agreement with Timor-Leste on the basis of any report the Commission may produce in the course of these proceedings."

101. On 14 December 2016, Australia wrote confidentially to the Commission regarding the modalities of the joint statement anticipated by the Commission's Proposal on Confidence-Building Measures to be issued concurrently with the termination of CMATS.
102. Throughout December 2016, the Commission communicated informally with both Parties regarding the content of the joint statement to be issued concurrently with the termination of CMATS.
103. On 9 January 2017, the Commission and the Foreign Ministers of Timor-Leste and Australia simultaneously issued a Trilateral Joint Statement concerning the termination of CMATS and the Parties' shared understanding of the legal effects of such termination, as follows:

*Joint Statement by the Governments of Timor-Leste and Australia and the Conciliation  
Commission Constituted Pursuant to Annex V of the United Nations Convention on the Law  
of the Sea*

Australia and Timor-Leste are engaged in the ongoing Conciliation under the United Nations Convention on the Law of the Sea. The purpose of this process is to resolve the differences between the two States over maritime boundaries in the Timor Sea.

From 10 to 13 October 2016, the governments of Timor-Leste and Australia participated in a series of meetings convened by the Conciliation Commission constituted in this matter. In the course of those meetings the governments of Timor-Leste and Australia agreed to an integrated package of measures intended to facilitate the conciliation process and create the conditions conducive to the achievement of an agreement on permanent maritime boundaries in the Timor Sea.

As part of this package of measures, the Government of Timor-Leste has decided to deliver to the Government of Australia a written notification of its wish to terminate the 2006 Treaty on Certain Maritime Arrangements in the Timor Sea pursuant to Article 12(2) of that treaty. The Government of Australia has taken note of this wish and recognises that Timor-Leste has the right to initiate the termination of the treaty. Accordingly, the Treaty on Certain Maritime Arrangements in the Timor Sea will cease to be in force as of three months from the date of that notification.

The Commission and the Parties recognise the importance of providing stability and certainty for petroleum companies with interests in the Timor Sea and of continuing to provide a stable framework for petroleum operations and the development of resources in the Timor Sea. In the interest of avoiding uncertainty, the governments of Timor-Leste and Australia wish to record their shared understanding of the legal effects of the termination of the Treaty on Certain Maritime Arrangements in the Timor Sea as follows:

- The governments of Timor-Leste and Australia agree that, following the termination of the Treaty on Certain Maritime Arrangements in the Timor Sea, the Timor Sea Treaty between the Government of East Timor and the Government of Australia of 20 May 2002 and its supporting regulatory framework shall remain in force between them in its original form, that is, prior to its amendment by the Treaty on Certain Maritime Arrangements in the Timor Sea.
- The governments of Timor-Leste and Australia agree that the termination of the Treaty on Certain Maritime Arrangements in the Timor Sea shall include the termination of the provisions listed in Article 12(4) of that treaty and thus no provision of the Treaty will survive termination. All provisions of the treaty will cease to have effect three months after the delivery of Timor-Leste's notification.

For the further conduct of the conciliation process, the governments of Timor-Leste and Australia have each confirmed to the other their commitment to negotiate permanent

maritime boundaries under the auspices of the Commission as part of the integrated package of measures agreed by both countries. The governments of Timor-Leste and Australia look forward to continuing to engage with the Conciliation Commission and to the eventual conclusion of an agreement on maritime boundaries in the Timor Sea. The Commission will hold a number of meetings over the course of the year, which will largely be conducted in a confidential setting.

The governments of Australia and Timor-Leste remain committed to their close relationship and continue to work together on shared economic, development and regional interests.<sup>50</sup>

104. On 10 January 2017, Timor-Leste's Minister for Foreign Affairs and Cooperation, H.E. Hernâni Coelho da Silva, wrote to the Minister for Foreign Affairs of Australia, The Honourable Julie Bishop MP, conveying notice of Timor-Leste's wish to terminate CMATS in accordance with Article 12(2) of the treaty and restating the Parties' shared understanding regarding the legal effect of such termination.
105. On 12 January 2017, Australia wrote to the Commission to report on the steps taken by Australia to fulfil its undertakings in relation to the Australian Government's 2016 Offshore Petroleum Acreage Release W16-2.
106. On 20 January 2017, Timor-Leste wrote to the arbitral tribunals in the *Timor Sea Treaty Arbitration* and the *Article 8(b) Arbitration*, requesting the termination of those proceedings, as anticipated in the Commission's confidence-building measures.
107. On 9 March 2017, Australia wrote to the Commission, providing an update on steps taken with respect to its domestic constitutional processes for the termination of CMATS and discussions between the Parties on a formal exchange of diplomatic notes, coincident with the termination of the treaty.
108. On 7 April 2017, the Parties exchanged diplomatic notes concerning the termination of CMATS.
109. On 10 April 2017, Australia wrote to the Commission, advising it of the Parties' exchange of diplomatic notes and confirming that, as of 10 April 2017, CMATS had ceased to be in force in its entirety, thereby completing the Commission's confidence-building measures.

### C. ORGANIZATION OF THE PROCEEDINGS

110. In connection with the *Commission Proposal on Confidence-Building Measures*, the Commission adopted a schedule for the remainder of the conciliation proceedings, leading up to the 19 September 2017 deadline established by Annex V to the Convention.<sup>51</sup> The Commission

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<sup>50</sup> A copy of this Trilateral Joint Statement is enclosed as Annex 16 to this Report.

<sup>51</sup> As discussed below (see paragraphs 146 & 164), the Parties subsequently decided to extend this deadline by agreement, as permitted by Annex V.

determined to convene a series of week-long sessions and reserved dates with the Parties in January, March, June, July, August, and September 2017.

111. During these sessions, the Commission met at various times with each Party, generally alternating between the Parties for short, separate meetings on discrete topics.

**D. EXPLORATION OF THE PARTIES' POSITIONS ON MARITIME BOUNDARIES**

112. On 20 December 2016, each of the Parties provided the Commission with a *Written Submission on the Delimitation of Maritime Boundaries*. As agreed during the October meeting, each Party's Written Submission was also shared with the other Party.
113. On 9 January 2017, the Commission wrote to the Parties regarding the organization of the upcoming meetings in Singapore.
114. Between 16 and 20 January 2017, the Commission met separately with the Parties in Singapore.<sup>52</sup> In keeping with the Commission's practice, no formal written record was kept of the session.
115. At the close of January 2017 session, the Commission convened a short joint meeting with both Parties and invited the Parties' delegations to an informal social gathering. The Commission also provided the Parties with the following *Commission Proposal on Next Steps*:

The Commission has now had the opportunity to confer with the Parties in two rounds of face-to-face discussions regarding the position papers submitted in December 2016. In the course of so doing, the Commission has gained a significantly better understanding of the Parties' legal positions and also of the Parties' motivations and interests.

From the vantage point of having consulted with both Parties, the Commission is of the view that it is time to consider in more detail factors relevant to delimitation, as well as options and ideas that might bring the Parties closer together, all of which will require further work and careful consideration. The Commission believes that the next step, as set out below, is to move from having the Parties explain their positions to the Commission to having the Commission indicate more precisely the issues to be taken into consideration in maritime boundary delimitation between the Parties, as well as the specific issues where further options and ideas might be explored.

In their communications with the Commission regarding its responses, guidance and proposals, the Parties are invited to bear in mind the principle that nothing is agreed until

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<sup>52</sup> The following persons participated in the January 2017 session:

For Timor-Leste: H.E. Minister Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, H.E. Ambassador Abel Guterres, Sir Michael Wood KCMG, Mr. Eran Sthoeger, Dr. Robin Cleverly, Mr. Simon Fenby, Ms. Sadhie Abayasekara, Ms. Adelsia Coelho da Silva, Ms. Janet Legrand QC (Hon), Mr. Stephen Webb, and Ms. Gitanjali Bajaj.

For Australia: Sir Daniel Bethlehem KCMG QC, Mr. Bill Campbell QC PSM, Mr. Gary Quinlan AO, Ms. Katrina Cooper, Mr. John Reid PSM, Mr. Bruce Wilson, Ms. Lisa Schofield, Mr. Justin Whyatt, Ms. Angela Robinson, Mr. Mark Alcock, Ms. Amelia Telec, Dr. Thomas Bernecker, Mr. Todd Quinn, Mr. Benjamin Huntley, Ms. Esther Harvey, Ms. Natalie Taffs, and Mr. Ben O'Sullivan.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

everything is agreed. The Parties are encouraged to take advantage of their ability to communicate with the Commission in confidence to provide the Commission with frank responses or to propose possible alternative approaches in the knowledge that such communications will not be treated as concessions.

With the above in mind, the Commission proposes the following steps leading up to the next session of meetings in March 2017:

**1. Steps with respect to guidance on Parties' positions:**

- Commission to provide each Party separately by **1 February 2017** with a confidential non-paper setting out what the Commission considers at this stage to be the issues and concerns that are relevant for that Party that should be taken into consideration in maritime boundary delimitation between the Parties.
- Each Party to provide the Commission with a confidential written response to the Commission's non-paper by **22 February 2017**.
- Commission to provide the Parties by **3 March 2017** with a non-paper setting out what the Commission considers at this stage to be the issues and concerns relevant for both Parties that should be taken into consideration in maritime boundary delimitation between the Parties.

**2. Continuing education of the Commission:**

- Parties to provide the Commission in confidence with working papers on topics arising out of the January meetings or any other submission they wish to make by **22 February 2017**.

**3. Steps with respect to March meetings:**

- Commission to provide each Party with an annotated agenda for the March meetings by **10 March 2017**, which includes a general indication of the elements of the dispute on which the Commission intends to advance options and ideas during the March meetings.
- Parties to meet with the Commission during the week of **27 March to 1 April 2017**.

116. Following the January 2017 session, the Commission and the Parties issued a Trilateral Joint Statement concerning the completion by the Parties of the Commission's confidence-building measures and the Parties' commitment to maintaining a stable framework for existing petroleum operations in the Timor Sea, as follows:

*Joint Statement by the Governments of Timor-Leste and Australia and the Conciliation Commission Constituted Pursuant to Annex V of the United Nations Convention on the Law of the Sea*

Delegations from both Timor-Leste and Australia participated in a series of confidential meetings with the Conciliation Commission in Singapore from 16 to 20 January 2017. These meetings are part of an ongoing, structured dialogue in the context of the conciliation between the Democratic Republic of Timor-Leste and the Commonwealth of Australia being conducted pursuant to the UN Convention on the Law of the Sea and under the auspices of the Permanent Court of Arbitration. These meetings will continue over the course of the year in an effort to resolve the differences between the two States over maritime boundaries in the Timor Sea.

In October 2016, the Conciliation Commission reached agreement with the Parties on certain confidence-building measures, which included a series of actions by both Timor-Leste and Australia to demonstrate each Party's commitment to the conciliation process and to create the conditions conducive to the achievement of an agreement on permanent maritime boundaries.



As part of this integrated package of confidence-building measures, the Foreign Ministers of Timor-Leste and Australia and the Conciliation Commission issued a Trilateral Joint Statement on 9 January 2017, noting Timor-Leste's intention to terminate the Treaty on Certain Maritime Arrangements in the Timor Sea and setting out the Parties' agreement on the legal consequences of such termination. On 10 January 2017, Timor-Leste formally notified Australia of the termination of the Treaty, which shall cease to be in force on 10 April 2017, in accordance with its terms.

Over the course of the week, the Commission met with the Parties to explore their negotiating positions on where the maritime boundary in the Timor Sea should be set with a view to identifying possible areas of agreement for discussion in future meetings. Both Timor-Leste and Australia agreed that the meetings were productive, and reaffirmed their commitment to work in good faith towards an agreement on maritime boundaries by the end of the conciliation process in September 2017. The Commission intends to do its utmost to help the Parties reach an agreement that is both equitable and achievable.

Recognizing that the Parties are undertaking good faith negotiations on permanent maritime boundaries, and in continuation of the confidence-building measures and the dialogue between the Parties, on Friday, 20 January 2017, Timor-Leste wrote to the tribunals in the two arbitrations it had initiated with Australia under the Timor Sea Treaty in order to withdraw its claims. These arbitrations had previously been suspended by agreement of the two governments following the Commission's meeting with the Parties in October 2016. The withdrawal of these arbitrations was the last step in the integrated package of confidence-building measures agreed during the Commission's meetings with the Parties in October 2016.

The Commission and the Parties recognise the importance of providing stability and certainty for petroleum companies with current rights in the Timor Sea. The Parties are committed to providing a stable framework for existing petroleum operations. They have agreed that the 2002 Timor Sea Treaty and its supporting regulatory framework will remain in force between them in its original form until a final delimitation of maritime boundaries has come into effect. As this process continues, the Commission and the Parties will ensure that the issue of transitional arrangements for any new regime will be included in the program of work for the conciliation with a view to ensuring that current rights of these companies are respected.

Timor-Leste and Australia enjoy a close and strong friendship. The governments of both countries are committed to their important relationship and working together on many shared interests.<sup>53</sup>

117. On 6 February 2017, the Commission wrote separately to each Party, enclosing a confidential *Issues Paper* setting out what the Commission considered to be the issues and concerns that were relevant to that Party that should be taken into consideration in the course of the conciliation proceedings. The Commission invited each Party to provide the Commission with a confidential written response in order (a) to provide its comments on the formulation of the issues identified by the Commission; (b) to identify any issues not included by the Commission that it considered relevant; and (c) to indicate if it considered the Commission to have misunderstood its position. The Commission also invited each Party to indicate if it would object to any element of the Commission's *Issues Paper* being shared with the other Party in a subsequent joint paper.
118. On 27 February 2017, each Party wrote to the Commission, setting out its confidential comments on the *Issues Paper* provided to that Party by the Commission and agreeing to the Commission

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<sup>53</sup> A copy of this Trilateral Joint Statement is enclosed as Annex 18 to this Report.

consolidating these papers into a single joint issues paper for both Parties. At the same time, each Party provided the Commission with a number of additional confidential background papers and documents as anticipated in the Commission's *Proposal on Next Steps*. The Parties also provided the Commission with their confidential views on the further conduct of the conciliation.

**E. THE COMMISSION'S ELABORATION OF OPTIONS AND IDEAS**

119. In early March 2017, the Commission met for internal deliberations to consider the materials received from the Parties and to identify the Commission's intended approach for further meetings with the Parties. The Commission noted that the Parties had clearly elaborated their positions and that further engagement in this respect was likely to further entrench their positions on issues where the two Parties were diametrically opposed and already strongly committed. The Commission determined that it would complete the process by providing the Parties with a *Joint Issues Paper*, but would treat this document as a reference, rather than as the subject of further debate. Instead, the Commission would endeavour to shift the Parties' focus away from seeking to reinforce their legal positions and towards a search for a potential settlement. The Commission would engage with the Parties to indicate where it found their positions not convincing, but would also provide the Parties with a paper outlining the Commission's own options and ideas.
120. On 9 March 2017, the Commission wrote jointly to the Parties, enclosing a *Joint Issues Paper* setting out the Commission's understanding of the issues relevant to both Parties.
121. Also on 9 March 2017, the Commission wrote separately to each Party, enclosing an *Annotated Agenda* for that Party for the meetings scheduled for 27 to 31 March 2017. In these documents, the Commission noted that it intended to continue meeting separately with each Party and identified a number of issues that the Commission considered essential to explore further if the Parties were to find a potential agreement. The Commission also identified a number of issues on which it considered that it fully understood the Parties' respective legal positions and did not, for the time being, wish to explore further. The Commission indicated its intention to advance additional options and ideas in the course of the March meetings, on the basis of initial discussions with each Party.
122. Over the course of March 2017, the Chairman of the Commission engaged in a number of informal telephone consultations with representatives of each Party.

123. Between 27 and 31 March 2017, the Commission met separately with the Parties in Washington, D.C.<sup>54</sup> In keeping with the Commission's practice, no formal written record was kept of the session.
124. During the March 2017 session, following initial discussions regarding certain aspects of the positions taken by each Party, the Commission provided the Parties with a *Commission Non-Paper* setting out options and ideas for a possible comprehensive agreement on maritime boundaries in the Timor Sea, including a sketch map of a possible boundary. The *Non-Paper* invited the Parties to consider a single maritime boundary as set out in an attached sketch map. In the east, the *Non-Paper* raised the possibility of seabed boundaries that would partially run through Greater Sunrise. The *Non-Paper* also invited the Parties to give consideration to the need for a shared regime for Greater Sunrise and agreement on the development of the resource as part of reaching an agreement on the maritime boundary. A copy of the *Commission Non-Paper* is enclosed as Annex 19 to this Report.
125. In presenting the *Non-Paper*, the Commission emphasized that it did not consider the package outlined therein to represent the only solution or to foreclose other possibilities. Rather, the package represented where the Commission could see a potential comprehensive solution that it wished the Parties to seriously consider. The Commission engaged in discussions with each Party regarding the *Commission Non-Paper* for the remainder of the session.
126. At the close of the March 2017 session, the Commission requested both Parties to give serious consideration to the ideas advanced by the Commission and to engage with all elements of the package identified in the *Commission Non-Paper*, including those that the Parties found difficult to accept or that would involve a departure from long-held positions. Without prejudice to the location of the boundary, the Commission invited both Parties to give further consideration to arrangements for the joint management of resources in the Timor Sea that could lessen the difficulties the Parties had encountered in previous instances of joint management. The

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<sup>54</sup> The following persons participated in the March 2017 session:

For Timor-Leste: H.E. Minister Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, H.E. Minister Alfredo Pires, Ms. Elizabeth Exposto, H.E. Ambassador Abel Guterres, Mr. Gualdino do Carmo da Silva, Mr. Francisco da Costa Monteiro, Mr. Ricardo Alves Silva, Sir Michael Wood KCMG, Professor Vaughan Lowe QC, Mr. Eran Sthoeger, Dr. Robin Cleverly, Mr. Simon Fenby, Ms. Sadhie Abayasekara, Ms. Adelsia Coelho da Silva, Mr. Stephen Webb, Ms. Gitanjali Bajaj, .

For Australia: Sir Daniel Bethlehem KCMG QC, Mr. Gary Quinlan AO, Ms. Katrina Cooper, Mr. John Reid PSM, Mr. Bruce Wilson, Ms. Lisa Schofield, Mr. Justin Whyatt, Ms. Megan Jones, Ms. Amelia Telec, Ms. Esther Harvey, Mr. Mark Alcock, Dr. Thomas Bernecker, Mr. Benjamin Huntley, Ms. Natalie Taffs, Ms. Negah Rahmani, Ms. Hailee Adams, and Mr. Ben O'Sullivan.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

Commission also requested the Australian delegation to confer with its political level regarding its negotiating mandate if the delegation considered that its mandate would prevent it from engaging on the basis of the *Commission Non-Paper*. The Commission also noted that the Chairman would, as necessary, be available for informal consultations with the Parties between sessions.

**F. INFORMAL CONSULTATIONS AT THE POLITICAL LEVEL**

127. Over the course of April and May 2017, the Commission sought to engage with the Parties regarding their reactions to ideas set out in the *Commission Non-Paper*, in particular the ideas of seabed boundaries beyond the limits of the JPDA and the development of Greater Sunrise in a joint manner. The Commission also began to engage with the Parties at multiple levels and to increase the frequency of informal contacts, with its Chairman meeting with the Parties' leadership in Singapore, Sydney, and Canberra.
128. In April and May 2017, the Chairman of the Commission engaged in a number of informal telephone consultations with representatives of each Party.
129. On 5 May 2017, Timor-Leste wrote confidentially to the Commission, providing it with an *Initial Response to the Commission's Non-Paper of 31 March 2017*.
130. On 20 May 2017, the Chairman of the Commission met informally in Singapore with Timor-Leste's Agent, H.E. Minister Hermenegildo Pereira. Also present at this meeting were Mr. Stephen Webb, Ms. Greta Bridge, and Messrs. Schofield and Doe of the Registry.
131. On 21 May 2017, the Chairman of the Commission met informally in Sydney with Mr. Gary Quinlan AO and Australia's Co-Agent, Ms. Katrina Cooper. Also present at this meeting were Messrs. Schofield and Doe of the Registry.
132. On 22 May 2017, the Chairman of the Commission met informally in Canberra with the Foreign Minister of Australia, the Honourable Julie Bishop MP, and the Attorney-General of Australia, the Honourable George Brandis QC. Also present at this meeting were Australia's Agent, Mr. John Reid PSM, Australia's Co-Agent, Ms. Katrina Cooper, and Messrs. Schofield and Doe of the Registry. No formal written record was kept of these meetings.
133. On 1 June 2017, following consultations at the political level, Australia wrote confidentially to inform the Commission that its delegation had been mandated to engage in negotiations on the basis of the *Commission Non-Paper*.

**G. DISCUSSIONS ON RESOURCE SHARING, BROADER ECONOMIC BENEFITS, AND GOVERNANCE**

134. On 2 June 2017, Australia wrote confidentially to the Commission, providing an *Australian Non-Paper on a Greater Sunrise Special Regime* regarding the joint management of resources, as requested by the Commission at the close of the March 2017 session.
135. Between 6 and 9 June 2017, the Commission met separately with the Parties in Copenhagen.<sup>55</sup> In keeping with the Commission's practice, no formal written record was kept of the meetings. On 8 June 2017, the Commission and the Parties attended an informal social reception hosted by the Danish Foreign Ministry.
136. During the June 2017 session, the Commission's discussions with the Parties focused on the potential governance arrangements for a special regime in respect of the Greater Sunrise gas field. Timor-Leste agreed for its delegation to participate in these discussions on an exploratory basis, without abandoning its position regarding the location of maritime boundaries. Each Party also provided the Commission with various papers regarding aspects of possible governance arrangements for a special regime for Greater Sunrise.
137. At the close of the June 2017 session, the Commission provided each Party with a separate paper containing the Commission's *Inter-Session Guidance* for that Party. These papers addressed four issues:
- (a) First, the Commission noted that many aspects of the governance of a possible special regime were not issues in respect of which there were significant differences between the Parties. The Commission provided each Party with a Non-Paper setting out what the Commission understood to be uncontroversial elements of a special regime for Greater Sunrise and invited each Party to prepare a detailed paper on governance that could be shared with the other Party.
  - (b) Second, the Commission noted that the Parties' positions regarding the eastern seabed boundary were irreconcilable and deeply held on both sides. The Commission invited each

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<sup>55</sup> The following persons participated in the June 2017 session.

For Timor-Leste: H.E. Minister Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, H.E. Ambassador Abel Guterres, Sir Michael Wood KCMG, Professor Vaughan Lowe QC, Mr. Eran Sthoeger, Dr. Robin Cleverly, Mr. Simon Fenby, Ms. Sadhie Abayasekara, Ms. Adelsia Coelho da Silva, Ms. Iriana Ximenes, Mr. Stephen Webb, Ms. Gitanjali Bajaj, .

For Australia: Sir Daniel Bethlehem KCMG QC, Mr. Gary Quinlan AO, Ms. Katrina Cooper, Mr. John Reid PSM, Ms. Lisa Schofield, Mr. Justin Whyatt, Ms. Megan Jones, Ms. Angela Robinson, Ms. Amelia Telec, Ms. Esther Harvey, Mr. Mark Alcock, Mr. Benjamin Huntley, Ms. Natalie Taffs, and Ms. Negah Rahmani.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

Party to give further consideration to its position in the event that agreement on its preferred position could not be reached and to explore potential creative solutions in respect to the location of the boundary.

- (c) Third, the Commission noted that both Parties had expressed a strong concern that any agreement must be sustainable. The Commission invited each Party to give consideration to steps that could be taken to increase the “legal durability” and political sustainability of a potential agreement. The Commission also invited the Parties to give further consideration to potential formulations for the legal status of areas within a possible special regime.
  - (d) Finally, the Commission requested the Parties to prepare for discussions on the revenue implications of the development of Greater Sunrise, including the revenue derived from downstream operations and the broader economic benefits accruing to the country in which the LNG plant for the field was located. The Commission also requested the Parties to prepare for discussions regarding the remaining production and revenue to be generated from petroleum resources within the existing JPDA.
138. In the course of June and July 2017, the Chairman of the Commission continued to engage in informal telephone consultations with representatives of each Party.
139. On 14 July 2017, Timor-Leste wrote confidentially to the Commission, transmitting five non-papers regarding (a) elements of a Greater Sunrise special regime, (b) the development plan for Greater Sunrise and its relationship to a comprehensive agreement, (c) the location of the eastern seabed boundary, (d) the status of the area within a special regime, legal durability, and political sustainability, and (e) elements to be considered with respect to revenue from Greater Sunrise.
140. On 17 July 2017, Australia wrote confidentially to the Commission, transmitting four non-papers regarding (a) elements of a Greater Sunrise special regime; (b) the development plan for Greater Sunrise and its relationship to a comprehensive agreement; (c) the status of the area within a special regime, legal durability, and political sustainability; and (d) elements to be considered with respect to revenue from Greater Sunrise. At the same time, Australia wrote to the Commission with a confidential proposal regarding the location of maritime boundaries.
141. On 19 July 2017, as anticipated in the Commission’s *Inter-Session Guidance* at the end of the June meetings, the Commission shared each Party’s non-paper regarding elements of a Greater Sunrise Special Regime with the other Party.

142. Between 24 and 28 July 2017, the Commission met separately with the Parties in Singapore.<sup>56</sup> In keeping with the Commission's practice, no formal written record was kept of the meetings. At the close of the July 2017 session, the Commission also invited the Parties' delegations to attend an informal social reception.
143. During the July 2017 session, the Commission's discussions with the Parties focused on their differing understandings of the broader economic benefits that had resulted from the downstream operations in Australia of previous petroleum development in the Timor Sea and the corresponding implications of different scenarios for the future development of other fields in the area to be delimited, in particular Greater Sunrise. The Commission also continued discussions with the Parties on the governance structure for a potential special regime for Greater Sunrise. At the Commission's invitation, the Parties organized a joint working group to seek agreement on governance arrangements, working in parallel with the Parties' separate discussions with the Commission on other issues. This discussion was conducted on the basis that it was without prejudice to the Parties' differing positions on the location of the seabed boundary in relation to Greater Sunrise.
144. During that same session, the Commission, at the request of both Parties, wrote to the Greater Sunrise Joint Venture, the licence holder to Greater Sunrise, to invite the Joint Venture "to provide the governments and the Conciliation Commission with a comparative analysis of the Timor LNG and Darwin LNG development concepts, showing the Joint Venture's views as to costs, revenue and likely timing of each concept, as well as any additional information that you think the governments, and the Conciliation Commission, may find useful to know."
145. In addition, the Commission provided the Parties over the course of the week with a *Non-Paper on Political Sustainability* and a *Non-Paper on Legal Security*, consolidating the various ideas advanced by the Parties regarding steps that could be taken and elements that could be included in a potential agreement on maritime boundaries. At the close of the meetings, the Commission also provided each Party with a separate paper containing the Commission's *Inter-Session*

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<sup>56</sup> The following persons participated in the July 2017 session:

For Timor-Leste: H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, H.E. Ambassador Abel Guterres, Professor Vaughan Lowe QC, Mr. Eran Sthoeger, Dr. Robin Cleverly, Mr. Alfredo Pires, Mr. Gualdino da Silva, Mr. Francisco Monteiro, Mr. Ricardo Alves Silva, Mr. Simon Fenby, Ms. Sadhie Abayasekara, Ms. Adelsia Coelho da Silva, Mr. Stephen Webb, Ms. Gitanjali Bajaj, and Ms. Greta Bridge.

For Australia: Sir Daniel Bethlehem KCMG QC, Mr. Gary Quinlan AO, Ms. Katrina Cooper, Ms. Lisa Schofield, Mr. Justin Whyatt, Ms. Megan Jones, Mr. Todd Quinn, Ms. Angela Robinson, Ms. Amelia Telec, Ms. Esther Harvey, Mr. Mark Alcock, Mr. Benjamin Huntley, Ms. Natalie Taffs, Ms. Negah Rahmani, Mr. Geoffrey Francis, and Ms. Anastasia Phylactou.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

*Guidance* for that Party. These papers identified “what the Commission sees as the principal issues that continue to separate the Parties” as follows:

- (a) The location of the eastern seabed boundary;
- (b) The legal status of the seabed within a Greater Sunrise Special Regime area;
- (c) The allocation of upstream revenue from the development of Greater Sunrise;
- (d) The scope of the broader economic benefits that would follow from the development of Greater Sunrise and the extent to which such benefits would be reflected in potential revenue-sharing arrangements for Greater Sunrise.

The Commission invited each Party to consider its position on these issues and to indicate to the Commission in writing in advance of the August meetings its views regarding the elements that would be necessary to forge a comprehensive package agreement.

146. The Commission and the Parties agreed during the July meetings that the conciliation process had so far been productive and should therefore continue beyond the 19 September 2017 deadline provided for in Annex V to the Convention and in the Commission’s *Decision on Competence*. The Commission and the Parties also agreed that the deadline for the Commission to submit its report should be extended to occur only after the conclusion of the Commission’s engagement with the Parties, so as to permit the Commission to devote its full attention to assisting the Parties in reaching a comprehensive agreement. The Parties agreed that the meeting scheduled for August 2017 would be the final substantive session between the Parties and the Commission, but that there would be an additional meeting in October 2017 to enable the Parties to come back to the Commission regarding the results of the August meetings after engaging in internal consultations. The Parties also agreed that the deadline for the Commission’s report would be extended to 15 December 2017. These agreements were subsequently confirmed in correspondence exchanged on 7, 8, and 11 August 2017.

#### **H. FURTHER INFORMAL CONSULTATIONS AT THE POLITICAL LEVEL**

147. Over the course of the July meetings, Australia outlined to the Commission a number of areas where it considered that it could show significant flexibility in the interest of reaching a compromise with Timor-Leste. This flexibility from Australia was instrumental in enabling the Commission to engage effectively with the political leadership of Timor-Leste.



148. Following the conclusion of the July meetings, a delegation from the Commission composed of the Chairman and Judge Koroma travelled to Timor-Leste for informal consultations at the political level.
149. On 29 July 2017, the Chairman and Judge Koroma met in Dili with Timor-Leste's Chief Negotiator, H.E. Kay Rala Xanana Gusmão; Timor-Leste's Agent, H.E. Mr. Hermenegildo Pereira; and H.E. Ambassador Abel Guterres. Also present during this meeting were Messrs. Schofield and Doe of the Registry.
150. On 30 July 2017, the Chairman and Judge Koroma travelled to Suai on the south coast of Timor-Leste with H.E. Mr. Alfredo Pires, Minister of Petroleum and South Coast Development, and a delegation of representatives of Ministry of Petroleum, the Autoridade Nacional do Petróleo e Minerais (the "ANPM"), TIMOR GAP, the Timor-Leste Maritime Boundary Office, and the Registry. During the course of the visit, the Chairman and Judge Koroma inspected the infrastructure development in and around Suai.
151. Later on 30 July 2017, the Chairman and Judge Koroma met again with Timor-Leste's Chief Negotiator, H.E. Kay Rala Xanana Gusmão, and its Agent, H.E. Mr. Hermenegildo Pereira in Dili. Also present during this meeting were H.E. Ambassador Abel Guterres and Messrs. Schofield and Doe of the Registry.
152. On 1 August 2017, the Chairman and Judge Koroma met separately with the President of Timor-Leste, Dr. Francisco Guterres Lu-Olo; the Prime Minister, Dr. Rui Maria de Araújo; the Secretary-General of FRETILIN, Dr. Mari Alkatiri; and the former President, Dr. José Ramos Horta. Also present during these meetings were H.E. Ambassador Abel Guterres and Messrs. Schofield and Doe of the Registry.
153. During the course of these meetings, Timor-Leste's political leadership outlined for the Commission the elements of a package agreement that Timor-Leste could accept, modifying certain elements of its position in the interest of achieving an amicable settlement. These meetings represented a breakthrough in the proceedings. They provided both Parties with an opportunity and grounds to move away from established positions and allowed the Commission to identify the core elements of an agreement that it anticipated that both Parties would ultimately be able to accept.
154. On 5 August 2017, the Chairman of the Commission conferred by telephone with Mr. Gary Quinlan AO. Thereafter, the Commission conveyed to Australia a paper setting out the elements of a package identified for possible agreement by the political leadership in Dili.

**I. DISCUSSIONS LEADING TO THE COMPREHENSIVE PACKAGE AGREEMENT**

155. On 15 August 2017, the Chairman of the Commission conferred by telephone with representatives of the Australian delegation regarding Australia's initial reaction to the paper resulting from the consultations that had taken place in Dili.
156. On 18 August 2017, the Joint Venture wrote to the Commission and to the Parties, responding to the Commission's letter of 26 July 2017 (see paragraph 144 above) and providing a submission on the development of the Greater Sunrise gas field by way of either a pipeline to Darwin, Australia ("**Darwin LNG**"), or a pipeline to Beaçó on the south coast of Timor-Leste ("**Timor LNG**").
157. Also on 18 August 2017, the representative of ConocoPhillips, one of the members of the Joint Venture, wrote separately to the Commission and to the Parties regarding time constraints on the possible development of Greater Sunrise by way of a Darwin LNG concept.<sup>57</sup>
158. In the course of August 2017, the Chairman of the Commission engaged in a number of informal telephone consultations with representatives of each Party.
159. On 27 August 2017, Australia wrote to the Commission with a proposal for a comprehensive agreement and requested the Commission to transmit this proposal to Timor-Leste. Australia also wrote confidentially to the Commission, elaborating on the rationale behind aspects of its proposal.
160. Between 28 August and 1 September 2017, the Commission met separately with the Parties in Copenhagen.<sup>58</sup> In keeping with the Commission's practice, no formal written record was kept of the meetings.

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<sup>57</sup> ConocoPhillips is both a participant in the Greater Sunrise Joint Venture and a participant in the joint venture that operates the LNG plant at Wickham Point in Darwin, Australia (a separate commercial entity). Certain measures were thus taken by the Greater Sunrise Joint Venture participants to exclude the other members of the Joint Venture from ConocoPhillips' representations on behalf of the Wickham Point facility and to exclude ConocoPhillips from the Joint Venture's discussions regarding potential tolling arrangements for the Wickham Point facility.

<sup>58</sup> The following persons participated in the August 2017 session:

For Timor-Leste: H.E. Minister Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, H.E. Minister Alfredo Pires, Ms. Elizabeth Exposto, H.E. Ambassador Abel Guterres, Mr. Gualdino do Carmo da Silva, Mr. Francisco da Costa Monteiro, Sir Michael Wood KCMG, Mr. Eran Sthoeger, Dr. Robin Cleverly, Mr. Simon Fenby, Ms. Sadhie Abayasekara, Ms. Adelsia Coelho da Silva, Ms. Iriana Ximenes, Mr. Stephen Webb, Ms. Gitanjali Bajaj, Ms. Lena Chapple, Mr. Ricardo Alves Silva .

For Australia: Sir Daniel Bethlehem KCMG QC, Ms. Katrina Cooper, Mr. John Reid PSM, Ms. Lisa Schofield, Mr. Geoffrey Francis, Mr. Justin Whyatt, Ms. Megan Jones, Ms. Diana Nelson, Ms. Angela

161. During the August 2017 session, the Commission's discussions with the Parties focused on each Party's proposal for a comprehensive package, on the allocation of revenue from Greater Sunrise, on the submission received from the Joint Venture concerning the development of Greater Sunrise, and on a procedure and timeline to engage with the Joint Venture and settle the issue of the approach to be taken to developing Greater Sunrise.
162. On 30 August 2017, on the basis of its discussions with the Parties, the Commission circulated a *Non-Paper on a Comprehensive Package Agreement*, outlining what the Commission considered to be the elements of a comprehensive package that would be acceptable to both Parties and compatible with the Convention's requirement that the delimitation of the maritime boundaries achieve an equitable solution.
163. On 31 August 2017, the Commission circulated a *Commission Non-Paper on Approach on the Greater Sunrise Development Concept*, along with a proposed action plan for engagement with the Joint Venture on the development of Greater Sunrise.
164. On 31 August and 1 September 2017, the Parties engaged in internal consultations at the political level, confirmed their agreement to the elements of the 30 August package, and finalized an agreed Action Plan for engagement with the Joint Venture (which documents collectively constituted the 30 August Agreement). The Parties also agreed that the Commission would remain involved to facilitate the Parties' engagement with the Joint Venture. A copy of the 30 August Agreement is enclosed as Annex 21 to this Report.
165. At the close of the meetings on 1 September 2017, the Commission convened a joint session with both Parties and invited the Parties to attend a social reception to celebrate the agreement reached.
166. At the close of the meetings, the Commission provided both Parties with the following *Inter-Session Guidance*:

**General**

The Commission considers that this week represents a breakthrough in these proceedings and that the Parties' agreement to the Proposal of 30 August 2017 addresses the core elements of a comprehensive solution to the issue of maritime boundaries in the Timor Sea. This achievement has only been possible through a great deal of hard work and good will on both sides, efforts that bode well for future relations between Timor-Leste and Australia.

In order to give concrete form to this agreement in principle, a large number of steps must now be taken.

**The 30 August 2017 Agreement**

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Robinson, Ms. Amelia Telec, Ms. Esther Harvey, Mr. Mark Alcock, Mr. Benjamin Huntley, Ms. Natalie Taffs, Mr. Ben O'Sullivan, Ms. Emily Stirzaker.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

The Parties' agreement to the Commission's Proposal of 30 August 2017 (the "30 August 2017 Agreement") will constitute the basis for the Commission's further engagement with the Parties and for the preparation of a draft treaty.

Other papers previously circulated by the Commission (in particular those concerning legal security and political sustainability) may usefully contribute to the further progress of the conciliation and the preparation of a treaty on the basis of 30 August 2017 Agreement.

#### **Engagement with the Sunrise Joint Venture**

As part of the 30 August 2017 Agreement, the Parties will now begin joint engagement with the Joint Venture, with a view to a timely and informed decision on the development concept for Greater Sunrise. The Parties are requested to **immediately** commence implementation of the first elements of the Action Plan, including (a) the provision of information to the Sunrise Joint Venture, (b) the formulation of an agreed timeline for a response from the Sunrise Joint Venture, and (c) the preparation of a detailed request for further and more comprehensive information from the Sunrise Joint Venture (to be sent through a letter from the Commission).

#### **Preparation for September 2017 Meetings with the Commission**

In order for the Parties and Commission to prepare for meetings in October 2017, the Parties are requested to take the following inter-sessional steps.

- (1) *Issues Register*: In order to ensure that important issues or points of detail are not missed in the Commission's further work with the Parties or in the preparation of a treaty, each Party is requested to review its files and to provide to the Commission a list of all outstanding issues or points of detail that, in that Party's view, remain to be addressed. The Parties are requested to provide their separate lists to the Commission by **Monday, 11 September 2017**. Thereafter, the Commission will compile the Party's lists, along with any other issues or points of detail the Commission may identify, and circulate a common issues register.
- (2) *Treaty Drafting*: The Commission understands that both Parties have draft treaties that are well advanced and believes that it would be helpful for the Parties to exchange their respective draft treaties and engage in informal consultations to identify areas of agreement and disagreement. The Commission considers, however, that in light of the large number of details to be resolved in October, the formulation of a common working text will need to be finalized through the Commission. The Parties are requested to exchange their respective draft treaties and to confer bilaterally to identify areas of agreement and disagreement. By **Monday, 25 September 2017**, the Parties are requested to provide the Commission with their joint or separate draft treaty texts, together with whatever commentary or explanatory memoranda each considers appropriate regarding areas of agreement and disagreement. To the extent necessary, the Commission will consolidate the Parties' drafts into a common working text, identify points of disagreement for resolution during the October session, and prepare a recommendation on outstanding issues.
- (3) *Political Sustainability*: In the discussions in Singapore, the Parties were in significant agreement on a number of steps that would contribute to the political sustainability of any agreement. Such steps were captured in the Commission's Non-Paper on Political Sustainability of 26 July 2017, and some (e.g., signing ceremonies, or the presence of certain individuals to witness the conclusion of the treaty) may require advance planning. The Parties are requested to revisit this issue and to confer bilaterally regarding the political sustainability arrangements that they would consider appropriate and to begin making any necessary logistical arrangements. The Commission requests the Parties to provide it with an update on these discussions during the October session. Should it prove necessary, however, either Party may request that the Commission join the Parties' discussions on these issues to facilitate resolving any points of disagreement.

**J. FORMALIZATION OF THE 30 AUGUST AGREEMENT AND INITIAL ENGAGEMENT WITH THE JOINT VENTURE**

167. In the course of September 2017, the Chairman of the Commission engaged in a number of informal telephone consultations with representatives of each Party.
168. Between 5 and 8 September 2017, the Parties and the Commission exchanged correspondence regarding engagement with the Joint Venture.
169. On 11 September 2017, the Commission wrote to the Joint Venture, outlining the Action Plan for engagement on the development of Greater Sunrise agreed to as part of the 30 August Agreement. The Chairman also indicated that he would shortly be writing to the Joint Venture regarding additional information sought by the Parties in respect of the development of Greater Sunrise.
170. On 12 and 18 September 2017, the Parties each wrote to the Commission, providing an initial register of outstanding issues, as anticipated in the Commission's *Inter-Session Guidance*.
171. On 12 September 2017, the Commission wrote to the Parties, requesting that they provide the Commission with complete details on (a) the information sought from the Joint Venture and (b) the areas where each Party considered that the Joint Venture's analysis regarding either Timor LNG or Darwin LNG was incorrect or should be reconsidered. The Commission also invited Timor-Leste to provide a document setting out for the Joint Venture how Timor-Leste envisaged the development of Greater Sunrise proceeding and how the Greater Sunrise project could best integrate with Timor-Leste's broader development goals under each of the Timor LNG and Darwin LNG scenarios.
172. On 15 and 19 September 2017, the Parties each wrote to the Commission, providing the information requested in the Commission's letter of 12 September 2017.
173. Between 19 and 25 September 2017, the Parties engaged in bilateral consultations, in consultations with the Chairman of the Commission, and in discussions with representatives of the Joint Venture regarding engagement on the development of Greater Sunrise.
174. Between 13 and 22 September 2017, the Parties engaged in bilateral negotiations on the text of a draft treaty on maritime boundaries to formalise the content of the 30 August Agreement.
175. On 25 September 2017, the Parties wrote jointly to the Commission, enclosing the Parties' joint draft treaty text (the "**Consolidated Draft Treaty**"), as anticipated in the Commission's *Inter-Session Guidance*.

176. On 27 September 2017, the Commission wrote to the Joint Venture enclosing the Parties' agreed *Protocol to Meet Commission's Action Plan* and a preliminary list of further information required from the Joint Venture for the assessment of the Timor LNG and Darwin LNG development concepts. The Chairman also extended an invitation for Joint Venture to join the Parties and the Commission in The Hague in October for meetings devoted to the development of Greater Sunrise.
177. On 28 September 2017, the Commission wrote to the Parties, noting its appreciation for the extent to which the Parties had succeeded in reaching agreement on the Consolidated Draft Treaty and indicating that the Commission did not consider it constructive to address the outstanding issues before meeting with the Parties in October. Instead, the Commission invited each Party to "provide, in advance of the October meetings, a short written submission setting out the rationale for the position it has taken on each of the principal points of the draft treaty that remain outstanding between the Parties and identifying any considerations of which the Commission should be aware." The Commission also invited the Parties to provide updated versions of the issues registers submitted earlier in the month.
178. On 2 October 2017, the Joint Venture wrote to the Commission regarding the engagement process envisaged in the Chairman's letter of 27 September 2017. On the same day, ConocoPhillips wrote to the Commission offering to brief the Commission and the Parties (independently from the other members of the Joint Venture in order to prevent a conflict of interest) regarding time constraints on the possible development of Greater Sunrise by way of a Darwin LNG concept.
179. On 5 October 2017, the Parties each wrote to the Commission, enclosing a written submission on outstanding issues and points of detail in the Consolidated Draft Treaty.
180. On 6 October 2017, the Commission wrote to the Joint Venture regarding the agenda for the Commission and Parties' meetings with the Joint Venture. On the same day the Commission also wrote to the Joint Venture regarding the confidentiality of the proceedings and of information shared in the course of engagement between the Parties and the Joint Venture. The Commission also accepted ConocoPhillips offer of a separate briefing on time constraints on a Darwin LNG approach.

181. Between 9 and 13 October 2017, the Commission met jointly and separately with the Parties in The Hague.<sup>59</sup> In keeping with the Commission’s practice, no formal written record was kept of the meetings.
182. On 10 October 2017, the Commission and the Parties met with the Joint Venture regarding the development of Greater Sunrise and, separately, with ConocoPhillips regarding time constraints on a Darwin LNG approach. On the margins of this meeting the Parties also reached agreement with the Joint Venture on a *Timeline for Greater Sunrise Deliverables* to elaborate on the 27 September 2017 Protocol to the Commission’s *Action Plan*. Following those discussions, the Commission further wrote to the Joint Venture on 11 October 2017, setting out a confidentiality regime for the Parties’ further engagement with the Joint Venture.
183. During the October 2017 session, the Parties continued to negotiate on a bilateral basis in respect of outstanding issues in the Consolidated Draft Treaty. On 12 October 2017, the Parties informed the Commission that they had reached complete agreement on the text of a *Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea* (the “**Final Draft Treaty**”). On 13 October 2017, the Agents of the Parties, H.E. Mr. Hermenegildo Pereira and Mr. John Reid PSM, initialled a copy of the Final Draft Treaty, which was deposited with the Registry for safe-keeping.
184. During the course of the week, it became evident that the Parties were not in agreement in respect of the timetable for signature of the Treaty or its relationship with the procedure for engagement with the Joint Venture regarding the development of Greater Sunrise. Accordingly, the Commission and the Parties agreed to revisit this question during a stock-taking meeting in November 2017 and to tentatively schedule two further meetings in December 2017 and January

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<sup>59</sup> The following persons participated in the October 2017 session:

For Timor-Leste: H.E. Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, Mr. Alfredo Pires, H.E. Ambassador Abel Guterres, Mr. Gualdino do Carmo da Silva, Mr. Francisco da Costa Monteiro, Sir Michael Wood KCMG, Mr. Eran Sthoeger, Dr. Robin Cleverly, Mr. Simon Fenby, Ms. Sathie Abayasekarae, Ms. Erin Michelle Gourlay, Ms. Adelsia Coelho da Silva, Ms. Iriana Ximenes, Ms. Janet Legrand QC (Hon), Mr. Stephen Webb, Ms. Gitanjali Bajaj, Ms. Lena Chapple, and Mr. Ricardo Alves Silva.

For Australia: Sir Daniel Bethlehem KCMG QC, Mr. Gary Quinlan AO, Mr. John Reid PSM, Mr. James Larsen, Ms. Lisa Schofield, Mr. Justin Whyatt, Ms. Diana Nelson, Ms. Angela Robinson, Ms. Amelia Telec, Ms. Esther Harvey, Mr. Simon Winckler, Mr. Mark Alcock, Mr. Benjamin Huntley, Ms. Natalie Taffs, Mr. Todd Quinn, Mr. Patrick Mullins, Ms. Indra McCormick, and Ms. Christina Hey-Nguyen.

For the Greater Sunrise Joint Venture: Mr. Mike Nazroo, Ms. Michelle Clark, and Ms. Larina Taylor of ConocoPhillips; Mr. Robert Edwardes, Mr. Hendrik Snyman, and Mr. John Prowse of Woodside Petroleum; Mr. Julian von Fumetti of Royal Dutch Shell; Ms. Patricia Lim of Osaka Gas; and Mr. Sam Luttrell of Clifford Chance LLP.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

2018 to consider the process of engagement with the Joint Venture and the Parties' decisions regarding the development of Greater Sunrise. At the close of the meeting, the Commission and the Parties agreed to the following *Draft Scheduling Protocol* regarding next steps:

In July 2017, the Parties and Commission reached agreement on a schedule for the remainder of these proceedings, anticipating a meeting from 9 to 13 October 2017 and the completion of the Commission's report by 15 December 2017. This timeline has now been overtaken by the Parties' conclusion of the Comprehensive Package Agreement on 30 August 2017 and the included Action Plan for engagement with the Greater Sunrise Joint Venture.

The Commission considers that the Report cannot be issued in the midst of the Parties' engagement with the Joint Venture and that it is essential that the Parties be given the opportunity to review the report in draft before it is made public or transmitted to the UN Secretary General as required by Annex V to the Convention. The Commission also considers that scheduling arrangements should be put in place for the Commission to engage with the Parties regarding the Development Concept as necessary, as anticipated in the Comprehensive Package Agreement. Accordingly, the Commission proposes the following timetable:

**Disclosure of the Draft Treaty**

- Parties to disclose details of the agreement to stakeholders during November 2017 in a manner to be agreed
- Further details of the agreement to be made public during November as agreed between the Parties

**Signature of the Treaty**

- Parties to initial draft Treaty today in The Hague; PCA to hold initialled copy in vault.
- Parties to pursue their domestic approval processes with a view to signing the treaty
- Parties to meet in Singapore before the end of November with the Commission / Commission Chair, as appropriate, in order to review progress on the Comprehensive Package Agreement pathway to the development of the resource and set a date for signing of the Treaty by the end of the year or early 2018 if satisfied with progress

**Engagement with the Greater Sunrise Joint Venture:**

- Parties to engage with Joint Venture according to the attached Timeline for Greater Sunrise Deliverables
- Parties to provide the Commission with informal weekly updates (by telephone, through the Registry) regarding the status of engagement with the Greater Sunrise Joint Venture
- Commission to confer with the Parties (and the Joint Venture as necessary) upon the request or if the Commission considers that the Parties' informal updates indicate a need for Commission engagement
- Dates reserved for a meeting between the Parties and the Commission regarding engagement with the Joint Venture and the Development Concept from 12-14 December 2017 in Singapore. The Commission will confer with the Parties by 30 November regarding whether to go ahead with this meeting.
- Dates reserved for a meeting between the Parties and the Commission regarding engagement with the Joint Venture and the Development Concept from 29-31 January 2018 in a location to be agreed. The Commission will confer with the Parties by 10 January 2018 regarding whether to go ahead with this meeting.

**Procedure for the Commission's Report Unless Otherwise Agreed**

- Commission's Report will follow the completion of the Action Plan for engagement with the Joint Venture.



- If the approach to the Development Concept is agreed by 15 December 2017: The Commission will transmit the Report to the Parties in draft by 10 January 2018. The Parties will provide any comments on the draft Report by 31 January 2018. The Commission will then consider Parties' comments and transmit the Report to the Parties and UN Secretary-General by 14 February 2018.
- If that is not the case: The Commission will transmit the Report to the Parties in draft by 14 February 2018. The Parties will provide any comments on the draft Report by 7 March 2018. The Commission will then consider the Parties' comments and transmit Report to the Parties and UN Secretary-General by 21 March 2018.
- Parties to confirm in writing, by Friday, 20 October 2017, their agreement to these new deadlines for the completion of the Report.

185. On 20 October 2017, Australia wrote to the Commission, confirming its agreement to the dates set out in the Draft Scheduling Protocol and to the corresponding extension of the Commission's mandate. On 25 October 2017, Timor-Leste wrote to the Commission, confirming the same.

#### **K. ENGAGEMENT WITH THE GREATER SUNRISE JOINT VENTURE**

186. On 17 October 2017, the Joint Venture wrote to the Commission regarding confidentiality. With its e-mail communication, the Joint Venture enclosed a counter-signed version of the Chairman's letter of 11 October 2017, but indicated that it wished to pursue a more comprehensive information-sharing agreement with the governments of Timor-Leste and Australia.

187. The Joint Venture subsequently wrote to the Parties on 19 October 2017, proposing a draft of a possible information-sharing agreement.

188. On 20 October 2017, Timor-Leste provided the Joint Venture and Australia access to a data room containing documents and data prepared by Timor-Leste in relation to the development of Greater Sunrise.

189. The Parties conducted a series of preliminary discussions with the Joint Venture by videoconference on 23 October 2017 concerning the modelling of reserve estimates for Greater Sunrise and the Joint Venture's ideas concerning potential initiatives to ensure Timorese local content and the development of the south coast of Timor-Leste in connection with the development of Greater Sunrise.

190. The Parties conducted another series of preliminary discussions with the Joint Venture by videoconference on 25 October 2017 concerning facilities and infrastructure on the south coast of Timor-Leste.

191. The Parties conducted a further series of preliminary discussions with the Joint Venture by videoconference on 27 October 2017 concerning the route of the pipeline and financial models for the development of Greater Sunrise. On the same day, the Parties conducted a preliminary

discussion with Woodside Petroleum, without the involvement of the other Joint Venture partners, regarding tolling arrangements in the event that Greater Sunrise were to be developed through the use of the LNG Plant at Wickham Point in Darwin, Australia.

192. On 7 and 8 November 2017, the Parties met with the Joint Venture in Brisbane, Australia for a first trilateral meeting. During this meeting, the Joint Venture gave an presentation on each of the Darwin LNG and Timor LNG approaches to the development of Greater Sunrise, following which the Parties provided the Joint Venture with detailed feedback regarding issues on which they were unconvinced by the Joint Venture's analysis or considered that additional work and discussion would be required. The Parties and the Joint Venture also concluded an Information Sharing Agreement. The Commission was not involved in these various videoconferences or trilateral meetings.

**L. STOCKTAKING AND ARRANGEMENTS FOR THE SIGNATURE OF THE TREATY**

193. Throughout late October and early November 2017, the Parties exchanged correspondence bilaterally regarding the manner and timing for the disclosure of details of the Parties' agreement on maritime boundaries to the Joint Venture and other stakeholders with interests in the Timor Sea. The Parties also exchanged correspondence regarding other transitional arrangements, including domestic legislation that would need to be adopted to implement the Parties' agreement on maritime boundaries and the Greater Sunrise Special Regime.
194. On 9 November 2017, the Parties met bilaterally in Brisbane to discuss transitional arrangements and the disclosure of details of the Final Draft Treaty.
195. On 18 November 2017, the Commission held a one-day stocktaking session in Singapore with the Parties and a separate meeting with the Joint Venture. During these meetings, Timor-Leste indicated its view that the timetable for engagement with the Joint Venture was unreasonably compressed. Australia, for its part, indicated that it did not believe that sufficient progress had been achieved with respect to the development concept to fix a timetable for signature of the Final Draft Treaty. In keeping with the Commission's practice, no formal written record was kept of the meetings.<sup>60</sup>

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<sup>60</sup> The following persons participated in the November 2017 session:

For Timor-Leste: H.E. Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, Mr. Alfredo Pires, H.E. Ambassador Abel Guterres, Mr. Gualdino do Carmo da Silva, Mr. Francisco da Costa Monteiro, Sir Michael Wood KCMG, Mr. Simon Fenby, Ms. Sadhie Abayasekarae, Mr. Stephen Webb, Ms. Gitanjali Bajaj, Ms. Lena Chapple, Mr. Jeffrey Sheehy, Mr. Ricardo Alves Silva,

196. Following its November stocktaking session with the Parties, the Commission scheduled a further stocktaking session for mid-December, in order to review progress with respect to the development concept for Greater Sunrise and to coordinate steps regarding the disclosure and signature of the treaty.

**M. FURTHER ENGAGEMENT BETWEEN THE PARTIES AND THE JOINT VENTURE**

197. On 18 November 2017, the Joint Venture provided the Parties with a first draft of a possible Framework Agreement for the development of Greater Sunrise.
198. The Parties subsequently met with the Joint Venture in Singapore for a second trilateral meeting on 19 and 20 November 2017. During this meeting, the Parties and the Joint Venture discussed their respective positions concerning the Timor LNG and Darwin LNG approaches, including outstanding technical issues, economics, socio-economic considerations, and a potential Framework Agreement.
199. On 4 and 5 December 2017, the Parties met with the Joint Venture in Melbourne for a third trilateral meeting. During this meeting, the Parties and the Joint Venture discussed the two development concepts, technical issues relating to pipelines and the use of existing facilities, local content, and the economics of both concepts.
200. On 11 December 2017, the Parties met with the Joint Venture in Singapore for a fourth trilateral meeting concerning the economics of the two development concepts.

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Mr. Sivakumar Muniappan, Mr. Paul Hayward, Mr. Rod McKellar, Mr. David Lawson, Ms. Emilie Barton, Mr. Ernesto Pinto, Mr. Angelo Lay, and Mr. Agus Maradona Tilman.

For Australia: Mr. Gary Quinlan AO, Mr. James Larsen, Ms. Lisa Schofield, Mr. Michael Googan, Ms. Amelia Telec, Ms. Esther Harvey, Ms. Rebecca Curtis, Mr. Steven Taylor, Mr. Benjamin Huntley, Mr. Peter Carter, Dr. Evan Hynd, Mr. Patrick Mullins, and Ms. Vrinda Tiwari.

For the Greater Sunrise Joint Venture: Mr. Mike Nazroo, Ms. Michelle Clark, Ms. Larina Taylor, Ms. Kayleen Ewin, Mr. Chris Wilson, Mr. Frank Krieger, Mr. Dave Fillman, Mr. David Jamieson, Mr. Mike Timmeke, Mr. Damien Yelverton, Mr. Seamus Arundel, Mr. Mark Hunter, and Mr. John Devins of ConocoPhillips; Ms. Tricia Desplace, Mr. Paul Baker, Mr. Robert Edwardes, Mr. Andrew Pearce, Mr. Scott Amos, Mr. Daniel Bathe, and Mr. Ben Coetzer of Woodside Petroleum; Mr. Damian Deveney and Mr. Nilofar Morgan of Royal Dutch Shell; and Ms. Patricia Lim, Mr. Wataru Kato, Mr. Prady Chaliha, and Mr. Craig Dingley of Osaka Gas.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

**N. THE COMMISSION'S DIRECT ENGAGEMENT ON THE GREATER SUNRISE DEVELOPMENT CONCEPT**

201. From 12 to 14 December 2017, the Commission held a session in Singapore with the Parties regarding the development concept for Greater Sunrise, as well as separate meetings with the Joint Venture.<sup>61</sup> During these meetings, the two governments indicated that it was not realistic, on the information before them, for the governments to take a decision on the development concept for Greater Sunrise by 15 December 2017 as anticipated by the 30 August Agreement. Both governments, however, reaffirmed to the Commission their wish to continue to discuss the development concept for Greater Sunrise with a view to resolving this matter within the context of the conciliation proceedings. During the course of the December session, the Parties also agreed on the terms of an exchange of letters concerning the interpretation of the Final Draft Treaty.
202. In accordance with the fall-back provisions of the 30 August Agreement, the Commission acceded to the Parties' request that it engage directly with the Parties and the Joint Venture "with a view to facilitating agreement on the Development Concept." In consultation with the two governments and the Joint Venture, the Commission adopted a Supplemental Action Plan pursuant to which the Commission would appoint an independent expert in oil and gas development planning to advise it and would meet with the Parties in January and February 2018, leading to a decision on the development concept by no later than 1 March 2018.<sup>62</sup> The

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<sup>61</sup> The following persons participated in the December 2017 session:

For Timor-Leste: H.E. Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, Mr. Alfredo Pires, H.E. Ambassador Abel Guterres, Mr. Gualdino do Carmo da Silva, Mr. Francisco da Costa Monteiro, Sir Michael Wood, Mr. Eran Sthoeger, Mr. Simon Fenby, Ms. Sadhie Abayasekarae, Ms. Adelsia Coelho da Silva, Mr. Stephen Webb, Ms. Gitanjali Bajaj, Ms. Lena Chapple, Mr. Jeffrey Sheehy, Mr. Ricardo Alves Silva, Mr. Sivakumar Muniappan, Mr. Paul Hayward, Mr. Rod McKellar, Mr. David Lawson, and Ms. Emilie Barton, Ms. Fiona Macrae, Ms. Felismina Carvalho dos Reis, Mr. Ernesto Pinto, Mr. Mateus da Costa, Mr. Angelo Lay, Mr. Agus Maradona Tilman, Mr. João Leite, and Mr. Nuno Delicado.

For Australia: Mr. Gary Quinlan AO, Mr. John Reid PSM, Mr. James Larsen, Ms. Lisa Schofield, Mr. Michael Googan, Ms. Amelia Telec, Ms. Esther Harvey, Mr. Jeremy Noye, Ms. Rebecca Curtis, Mr. Steven Taylor, Mr. Benjamin Huntley, Mr. Peter Carter, Dr. Evan Hynd, and Ms. Vrinda Tiwari.

For the Greater Sunrise Joint Venture: Mr. Chris Wilson, Mr. Mike Nazroo, Ms. Kayleen Ewin, Ms. Michelle Clark, Ms. Larina Taylor, Mr. Mark Hunter, and Mr. Marcello Iuliano of ConocoPhillips; Mr. Robert Edwardes, Ms. Tricia Desplace, Mr. Daniel Bathe, and Mr. Tom Van Der Meulen of Woodside Petroleum; Mr. Damian Deveney, Mr. Nilofar Morgan, and Ms. Elaine Loh of Royal Dutch Shell; and Ms. Patricia Lim, Mr. Wataru Kato, and Mr. Craig Dingley of Osaka Gas.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

<sup>62</sup> Based on the information available to it regarding timing constraints on the potential availability of the Wickham Point LNG plant in Darwin, Australia, the Commission and the Parties considered that both options would likely remain available through 1 March 2018, rather than 1 February 2018 as anticipated in the 30 August Agreement.

Supplemental Action Plan also set out a detailed list of requests for additional information from both governments and from the Joint Venture. A copy of the Commission's Supplemental Action Plan is attached as Annex 27 to this Report. The Commission also agreed with the Parties on Terms of Reference for the expert to be appointed to assist the Commission. The Terms of Reference identified the scope of the expert's duties as follows:

- 3.1. The Expert shall assist the Conciliation Commission in relation to its consideration of the information provided by the Governments of Timor-Leste and Australia and the Joint Venture regarding the development of the Sunrise and Troubadour gas fields ("**Greater Sunrise**") and, in particular, in:
  - 3.1.1. examining and analysing the data and materials relating to the development concept for Greater Sunrise;
  - 3.1.2. assessing whether the informational basis exists to evaluate and compare the Darwin-LNG and Timor-LNG concepts in accordance with international best oilfield practice and the agreed development concept decision criteria;
  - 3.1.3. identifying any gaps in the available information necessary for the comparison of the Darwin-LNG and Timor-LNG concepts and for an informed high-level decision between concepts in accordance with international best oilfield practice and the agreed development concept decision criteria ;
  - 3.1.4. assessing the comparative economics and economic viability of the Darwin-LNG and Timor-LNG concepts and the economic implications of each concept for Australia, Timor-Leste, the Joint Venture, and any other relevant actors;
  - 3.1.5. assessing the suitability for investment of the Darwin-LNG and Timor-LNG concepts in accordance with international best oilfield practice and the agreed development concept decision criteria;
  - 3.1.6. consideration of any such other matters as the Commission or Expert may determine to be relevant during the course of the reference.

In keeping with the Commission's practice, no formal written record was kept of the meetings.

203. Both during and after the December 2017 session, the two governments conveyed a number of informal suggestions regarding individuals and organizations that could potentially be considered in seeking to identify an expert with the experience necessary to advise the Commission.
204. On 10 January 2018, the Commission wrote to the Parties, inviting their comments on three potential candidates for the expert to be appointed to assist the Commission. On 11 January 2018, the Commission wrote to the Parties regarding a fourth potential candidate for consideration.
205. On 12 and 13 January 2018, the Commission conferred informally with the Parties regarding the choice of the expert to be appointed. At this point, Timor-Leste raised the question of the Commission potentially also seeking expertise in development economics. In response, the Commission recalled the scope of the mandate in the Terms of Reference and emphasized that it did not intend to make any formal recommendation on the choice of development concept or on how best to develop the Timor-Leste economy. Consequently, the Commission had looked for individuals with the expertise to undertake a comparative technical and financial analysis of the

two development concepts under consideration in order to allow for an informed decision by the two governments.

206. On 16 and 17 January 2018, the two governments and the Joint Venture wrote to the Commission, providing their responses to the Commission's requests for additional information, made as part of the Supplemental Action Plan. Upon receipt, each response was circulated to the other parties for their information.
207. On 17 January 2018, the Commission, with the agreement of the Parties, appointed Mr. Mike Wood of Gaffney, Cline & Associates as expert to assist the Commission in the final phase of the proceedings.<sup>63</sup>
208. On 22, 23, and 25 January 2018, the two governments and the Joint Venture each wrote confidentially to the Commission, providing a submission setting out their views regarding the development concept for Greater Sunrise.
209. On 27 January 2018, the Commission wrote to the Parties with regard to its three objectives for the upcoming session:
  - (a) First, the Commission noted its intention to develop with the two governments and the Joint Venture the details of both the Timor LNG and Darwin LNG concepts in order to allow both to be fully explored, with a strong commitment to the development of Timor-Leste regardless of the concept chosen and with a common understanding of the economic implications of that choice.
  - (b) Second, in addition to consideration of the choice between development concepts, the Commission noted that it considered it imperative to also move forward on certain matters that would be relevant regardless of the choice between concepts and necessary to formalize agreement on the concept chosen. These included the fiscal regime to be applicable within the Greater Sunrise Special Regime and the terms of a Framework Agreement and production sharing contract that are not contingent on the choice of development concept.
  - (c) Third, the Commission recalled that the issue of transitional arrangements for areas other than Greater Sunrise had proven more complicated than anticipated and requested an

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<sup>63</sup> Prior to confirming this appointment, the Commission exchanged correspondence with Gaffney, Cline & Associates and with Australia, acknowledging Gaffney, Cline & Associates' past work on behalf of the Government of Timor-Leste, confirming that no individuals involved in these prior engagements would play any role in supporting or advising the Commission, and recording Australia's non-objection to the appointment.

update from each government regarding outstanding issues in relation to transitional arrangements. The Commission indicated that it would then propose that the governments seek to agree a roadmap to move forward with these issues in advance of the signature of the Treaty in early March.

210. Between 29 January and 2 February 2018, the Commission met separately with the two governments and the Joint Venture in Sydney.<sup>64</sup> In keeping with the Commission's practice, no formal written record was kept of the meetings.
211. The Commission continued to confer informally with both governments and with the Joint Venture throughout February 2018.
212. On 9 February 2018, Australia wrote to the Commission in response to several requests from the Commission for additional information.
213. On 14 and 15 February 2018, Australia and Timor-Leste each wrote confidentially to the Commission providing a further submission on their views regarding the development concept for Greater Sunrise.
214. Between 19 and 23 February 2018, the Commission met separately with the two governments and the Joint Venture in Kuala Lumpur.<sup>65</sup> In keeping with the Commission's practice, no formal written record was kept of the meetings.

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<sup>64</sup> The following persons participated in the January 2018 session:

For Timor-Leste: H.E. Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, Mr. Alfredo Pires, H.E. Ambassador Abel Guterres, Mr. Gualdino do Carmo da Silva, Mr. Francisco da Costa Monteiro, Mr. Amado Hei, Mr. Florentino Soares Ferreira, Mr. Carlos Alves, Mr. Rod McKellar, Mr. Sivakumar Muniappan, Mr. Simon Fenby, Mr. Stephen Webb, Ms. Gitanjali Bajaj, Mr. Jack Brumpton, Ms. Sadhie Abayasekara, Mr. Ricardo Alves Silva, Mr. João Leite, Mr. David Lawson, Mr. Paul Hayward, Mr. Nuno Delicado, Ms. Adelsia Coelho da Silva, Mr. Jeffrey Sheehy, Ms. Melody McLennan, and Mr. Agus Maradona Tilman.

For Australia: Mr. Gary Quinlan AO, Mr. James Larsen, Mr. Michael Googan, Ms. Rebecca Curtis, Ms. Vrinda Tiwari, Mr. Jeremy Noye, Ms. Rori Moyo, Mr. John Reid PSM, Ms. Amelia Telec, Ms. Holly Matley, Ms. Lisa Schofield, Ms. Esther Harvey, Ms. Bernadette Shanahan, Dr. Evan Hynd, Mr. Steven Taylor, and Mr. Peter Carter.

For the Joint Venture: Mr. Mike Nazroo, Ms. Michelle Clark, Mr. Mark Hunter, Ms. Larina Taylor, Mr. Damien Yelverton, Ms. Kayleen Ewin, Mr. Dane Paddon, Mr. David Jamieson, and Mr. Michael Britton of ConocoPhillips; Mr. Paul Baker, Mr. Ben Coetzer, Ms. Tricia Desplace, Mr. John Prowse, and Mr. Moses Kim of Woodside Petroleum; Mr. David Shepherd, Mr. Damian Deveney, and Mr. Doug McKay of Royal Dutch Shell; and Ms. Patricia Lim, Mr. Wataru Kato, and Mr. Craig Dingley of Osaka Gas.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.

<sup>65</sup> The following persons participated in the February 2018 session:

For Timor-Leste: H.E. Kay Rala Xanana Gusmão, H.E. Minister Hermenegildo Pereira, Ms. Elizabeth Exposto, Mr. Alfredo Pires, H.E. Ambassador Abel Guterres, Mr. Gualdino do Carmo da Silva, Mr.

215. On Thursday, 22 February 2018, the Commission requested a meeting with the leadership of each government's delegation on the following morning, to discuss the Commission's conclusions on the development concept for Greater Sunrise.
216. On Friday, 23 February 2018, the Commission provided the two governments with a series of documents concerning the development of Greater Sunrise. These documents comprised: (1) the Commission's Paper on the Comparative Development Benefits of Timor LNG and Darwin LNG; (2) a condensed analysis of the comparative economics of the two concepts; and (3) the Commission's proposed framework agreements for a decision on a Timor LNG concept, for a decision on a Darwin LNG concept with operations from Timor-Leste, and for the event that no decision is taken. Copies of the first two documents are attached as Annex 28 to this Report.
217. On 28 February 2018, Timor-Leste informed the Commission that it was not in a position to take a decision on the development concept for Greater Sunrise, and expressed the wish to continue discussions with Australia with a view to agreeing on a development concept as soon as possible.
218. On 6 March 2018, the Parties both confirmed to the Commission their willingness to proceed with the signature of the Treaty on Maritime Boundaries.

**O. SIGNATURE OF THE TREATY ON MARITIME BOUNDARIES**

219. On 6 March 2018, the Treaty on Maritime Boundaries (the "**Treaty**") was signed at the United Nations in New York for Australia by The Honourable Julie Bishop MP, Minister for Foreign Affairs, and for Timor-Leste by H.E. Hermenegildo Augusto Cabral Pereira, Minister in the Office of the Prime Minister for the Delimitation of Borders and the Agent in the Conciliation. The signing of the Treaty was witnessed by the Secretary-General of the United Nations,

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Francisco da Costa Monteiro, Mr. Amado Hei, Mr. Florentino Soares Ferreira, Mr. Carlos Alves, Mr. Rod McKellar, Mr. Sivakumar Muniappan, Mr. Simon Fenby, Mr. Stephen Webb, Ms. Gitanjali Bajaj, Mr. Jack Brumpton, Ms. Emilie Barton, Ms. Sadhie Abayasekara, Mr. Ricardo Alves Silva, Mr. João Leite, Mr. David Lawson, Mr. Paul Hayward, Mr. Nuno Delicado, Mr. Agus Maradona Pereira Tilman, Ms. Adelsia Coelho da Silve, .

For Australia: Mr. Gary Quinlan AO, Mr. John Reid PSM, Mr. James Larsen, Ms. Lisa Schofield, Mr. Michael Googan, Ms. Rebecca Curtis, Ms. Vrinda Tiwari, Mr. Patrick Mullins, Ms. Esther Harvey, and Mr. Steven Taylor.

For the Joint Venture: Mr. Mike Nazroo, Mr. Mark Hunter, Ms. Larina Taylor, Mr. Damien Yelverton, Ms. Kayleen Ewin, Mr. Dane Paddon, Mr. Jason Fior, and Mr. Patrick Hastwell of ConocoPhillips; Mr. Paul Baker, Mr. Mark Kain, Ms. Tricia Desplace, and Mr. John Prowse of Woodside Petroleum; Mr. David Shepherd, Mr. Damian Deveney, Ms. Elaine Loh, and Mr. Doug McKay of Royal Dutch Shell; Ms. Patricia Lim, Mr. Wataru Kato, Mr. Masaaki Kishimoto, and Mr. Craig Dingley of Osaka Gas; and Mr. Sam Luttrell of Clifford Chance LLP.

For the Registry: Mr. Garth Schofield and Mr. Martin Doe.



H.E. António Manuel de Oliveira Guterres and by the Chairman, in the presence of the other members of the Conciliation Commission.<sup>66</sup> The Chairman was also invited to sign the Treaty on behalf of the Commission.

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<sup>66</sup> Video of the signing ceremony is available at <<files.pca-cpa.org/signingceremony.mp4>>.

## **VI. THE ISSUES BEFORE THE COMMISSION**

220. In the sections that follow, the Commission has set out for each phase of the proceedings the principal issues separating the Parties and the steps taken by the Commission to facilitate an amicable settlement.

### **A. THE COMMISSION'S DECISION ON COMPETENCE**

221. As mentioned earlier (see paragraphs 76 to 88 above), at the outset of these proceedings, in its Response to the Notice of Conciliation, Australia objected to the competence of the Commission, principally on the grounds that recourse to compulsory conciliation under the Convention was precluded by CMATS. The Commission decided at the July 2016 procedural meeting to hear Australia's objections as a preliminary matter, and thereafter received written submissions from the Parties and convened a hearing on competence in August 2016. Having considered Australia's objections and Timor-Leste's response, the Commission issued a *Decision on Competence* on 19 September 2016, rejecting Australia's objection and upholding its competence. A copy of the Commission's *Decision on Competence* is found at Annex 9 to this Report and is incorporated by reference herein.

### **B. ENGAGEMENT ON THE DELIMITATION OF MARITIME BOUNDARIES**

222. This Report is issued in the context of the Parties having reached agreement on the delimitation of maritime boundaries in the Timor Sea, as set out in Treaty annexed to this Report.<sup>67</sup> The preamble to the Treaty provides that the Parties' agreement "is based on a mutual accommodation between the Parties without prejudice to their respective legal positions."

223. The Commission briefly records the positions espoused by the Parties in the course of these proceedings, as well as certain of the reactions to these positions conveyed by the Commission. The Commission does this both to provide background to facilitate the understanding of the Parties' agreement and to make clear that the significant accommodation necessary to reach this agreement was not undertaken lightly by either Party.

#### ***1. Relevant Provisions of the Convention and Related Treaties***

224. In order to better understand the Parties' initial positions with respect to their maritime delimitation in the Timor Sea, it is useful to recall the legal framework for maritime boundaries under international law, which has undergone significant evolution.

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<sup>67</sup> The Treaty, in turn, was based on the agreement reached in Copenhagen on 30 August 2017.

225. As already noted above, the 1958 Continental Shelf Convention was ratified in 1963 by both Australia and Portugal, with the latter having extended its application to its colony in East Timor.<sup>68</sup> In accordance with its terms, the 1958 Continental Shelf Convention entered into force on 10 June 1964 and defined the continental shelf as follows:

For the purpose of these articles, the term “continental shelf” is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

226. This convention governed the continental shelf claims made by Australia and Portugal, in 1953 and 1956 respectively, until the adoption of the Convention on 10 December 1982 and its subsequent entry into force for Australia and Timor-Leste.<sup>69</sup>

227. Article 76 of the Convention defines the continental shelf and continental margin as follows:

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.

[ . . . ]

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.

The Convention recognises in Article 77 that “[t]he coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.”

228. The Convention also provides for the establishment by States Parties of exclusive economic zones for the exercise of sovereign rights, defined by Articles 55 and 56 as follows:

*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

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<sup>68</sup> See paragraphs 17 to 19 above.

<sup>69</sup> See paragraphs 28 to 29 above.

- 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.

229. As regards delimitation of the aforementioned continental shelf and exclusive economic zone, the Convention provides in Articles 74 and 83 as follows:

*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.

*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.

## **2. *The Parties' Opening Positions***

230. As set out above (see paragraph 60), the Commission's Rules of Procedure permitted the Parties to communicate with the Commission in confidence, under an assurance that views expressed would not subsequently be made public without the consent of the Parties concerned. In preparing this Report, the Commission thus provides only a limited summary of the positions taken by the Parties in the course of the conciliation, in keeping with the aforementioned option of confidentiality which it considers to have been essential to the conduct of the proceedings.

### *a. Timor-Leste's Opening Position*

231. In its discussions with the Commission, Timor-Leste took the position that the delimitation of a maritime boundary should be based upon contemporary international law as reflected in the recent jurisprudence of courts and tribunals engaged in the delimitation of maritime boundaries. Timor-Leste argued that this would entail the delimitation of a boundary for both the continental shelf and exclusive economic zone that would follow the median line between the coasts of Timor-Leste and Australia.
232. In Timor-Leste's view, there was no basis for the application of different principles to the delimitation of the exclusive economic zone and of the continental shelf. According to Timor-Leste, the adoption of the Convention and the introduction of distance from the coast as an element of the definition of the continental shelf were such that concepts of natural prolongation and the geology and geomorphology of the seabed were no longer relevant to the delimitation of a continental shelf between two States situated at a distance of less than 400 nautical miles. Moreover, Timor-Leste argued that it did not accept, as a matter of fact, that the Timor Trough represents a fundamental geological discontinuity separating the continental shelf of Australia from that of Timor-Leste. According to Timor-Leste, the outer edge of the continental shelf of Australia actually lies to the north of the island of Timor, and the Timor Trough represents only a "crumple zone" that was formed within the Australian continental plate as it collided with Eurasian continental plate to create the formation known as the Banda Arc.
233. With respect to the median line, Timor-Leste indicated that it did not consider that there were any relevant circumstances that would call for the adjustment of the median line. Timor-Leste thus took the view that the boundary between the Parties' exclusive economic zones should follow the median line until it reached an area in which the rights of Indonesia would be affected. Thereafter, Timor-Leste proposed that the median line would continue as a continental shelf boundary until, in the east, it reached the line of the 1972 Seabed Treaty between Australia and Indonesia. In the

west, Timor-Leste argued that median line could continue as a continental shelf boundary until it reached a distance of 200 nautical miles from the coast of Timor-Leste.

*b. Australia's Opening Position*

234. In its discussions with the Commission, Australia took the position that the delimitation of the continental shelf between Timor-Leste and Australia should take account of the unique configuration of the seabed in the Timor Sea. Australia rejected Timor-Leste's account of the law on the delimitation of the continental shelf, and in particular that natural prolongation is no longer relevant to maritime boundary delimitation. Australia argued that the physical continental shelves of Australia to the south and Timor-Leste and Indonesia to the north are entirely separate, and that these significant factual characteristics geologically, geomorphologically and ecologically remained relevant in maritime boundary delimitation.<sup>70</sup> As such considerations would not, however, be relevant to the delimitation of the exclusive economic zone, Australia proposed that there should be separate boundaries for the two regimes, arguing that international law does not require or prefer a single maritime boundary.
235. In addition, Australia considered that the delimitation of eastern and western lateral seabed boundaries should be on the basis of equidistance lines drawn from the coasts of Timor-Leste and Indonesia. In particular, Australia argued that the lateral boundaries of the JPDA were based upon historical equidistance lines from the coasts of Timor-Leste and Indonesia.<sup>71</sup>

**3. *The Commission's Reaction and Exploration of Options and Ideas***

236. In engaging with the Parties, the Commission explored a wide range of issues relating to the delimitation of maritime boundaries, including:
- (a) whether either physically, or as a legal matter, the seabed between Timor-Leste and Australia is composed of a single continental shelf or two separate shelves;
  - (b) the evolution of the law of the sea relating to the continental shelf and, in particular, the differences between the basis for sovereign rights to the continental shelf under the 1958 Continental Shelf Convention and under the Convention;
  - (c) the relevance of geologic and geomorphologic factors;
  - (d) the potential interaction between claims to sovereign rights based on natural prolongation and claims based on distance from the coast;

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<sup>70</sup> Opening Session Transcript, pp. 91-92.

<sup>71</sup> Opening Session Transcript, p. 94.

- (e) the relevant base points for the calculation of a median line;
- (f) relevant circumstances that might lead to the adjustment of a provisional median line;
- (g) the concept of “lateral” boundaries and the role, if any, of the coast of third States in the delimitation of a boundary between Timor-Leste and Australia;
- (h) the extent of potentially overlapping claims by third States and their effect;
- (i) the effect of prior treaties and agreements in the area; and
- (j) historic claims.

237. In responding to the positions set out by the Parties, the Commission sought to be guided by its understanding of its mandate pursuant to the Convention and by what it considered would best assist the Parties in reaching an amicable settlement. The Commission informed the Parties that it did not consider that it would be beneficial for the Commission to express a definite opinion on certain issues of the law of maritime boundary delimitation on which the Parties had divergent—and deeply held—views. At the same time, the Commission sought during its discussions with the Parties in March 2017 to meet the Parties’ requests for the Commission to indicate a view on the positions they had presented and to advise the Parties as to where it did not consider their positions to be compatible with an amicable settlement.

238. After discussing the Parties’ positions with them in March 2017, the Commission introduced a *Non-Paper* setting out options and ideas that the Commission wished the Parties to consider. In presenting its *Non-Paper*, the Commission sought to emphasize that it was not making a proposal, but rather wished to gauge the Parties’ reactions to certain elements that could potentially form part of an amicable settlement. The Commission’s *Non-Paper* was intended to—and did—provoke strong reactions from both Parties.

239. In broad terms, the *Non-Paper* invited the Parties to consider a single maritime boundary as set out in an attached sketch map. In the east, the *Non-Paper* set out a seabed boundary that would extend beyond the confines of the JPDA, but would still partially run through Greater Sunrise and would leave the intersection with the 1972 Seabed Treaty for future determination. Although the 30 August Agreement differs in significant respects from the Commission’s options and ideas in March, the Commission considers this process to have been wholly beneficial in concentrating the Parties’ minds and enabling further discussions to engage with the merits (and demerits) of potential agreed outcomes, rather than adhering to rigid positions.

240. In its further meetings with the Parties and in informal discussions with each Party at the political level, the Commission continued to engage with the Parties regarding the location of the seabed boundary. These discussions were particularly focused on the location of the eastern seabed boundary, where each Party's view on the appropriate location of the boundary was strongly coloured by the location of the known resources of Greater Sunrise. In these discussions, the Commission continued to emphasize five points, as follows:

- (a) that it was not convinced either Party's opening legal position was entirely correct;
- (b) that Timor-Leste's maritime entitlements could not be constrained by the boundaries of the JPDA or the 1972 Seabed Treaty boundary between Australia and Indonesia;
- (c) that the Commission considered that there were relevant circumstances that would require the median line to be adjusted to achieve an equitable result;
- (d) that the Commission would not exclude that an adjustment of the eastern portion of the median line could lead to a seabed boundary running through Greater Sunrise; and
- (e) that the Commission did not see that such a seabed boundary dividing Greater Sunrise would be inequitable or inconsistent with the Convention.

The Commission also emphasized to the Parties that it did not consider that a compromise could be reached that would restrict Timor-Leste's maritime entitlements to the area of the JPDA or that would give either Party exclusive control over Greater Sunrise.

## **C. ENGAGEMENT ON RESOURCE GOVERNANCE AND REVENUE ISSUES**

### ***1. Resource Governance and the Greater Sunrise Special Regime***

241. At the Commission's suggestion, the Parties agreed to separate the discussion of Greater Sunrise from the location of the seabed boundary and to explore the possibility of establishing a special regime for Greater Sunrise. These discussions were begun further to the Commission's recommendation that it did not consider that an agreement could be reached without shared control over Greater Sunrise, but on the basis that a special regime was without prejudice to the location of the boundary in relation to Greater Sunrise.

242. In the Commission's discussions with the Parties, it quickly became clear that although the Parties continued to disagree as to whether a special regime was necessary, the differences between them regarding how the governance of a special regime should be structured were comparatively minor. The Parties already had significant experience in the joint management of petroleum resources through the JPDA and its associated governance structures and had similar views regarding how



these mechanisms could be improved. Australia indicated to the Commission that it was comfortable with Timor-Leste's regulator, the ANPM, exercising day-to-day oversight over joint petroleum activities, as it had done within the JPDA. Indeed Australia indicated that it would prefer a mechanism that would encourage the ANPM to exercise greater discretion and to refer fewer issues for resolution at the inter-governmental level. Both Parties also recognized the need for a special regime to include greater clarity on the allocation of jurisdiction and a dispute-resolution procedure for issues that could not be resolved through consensus at the inter-governmental level, both areas in which the governance structure of the JPDA had proved lacking.

243. In addition to governance, the Commission's discussions with the Parties sought to explore the issue of how Greater Sunrise would be developed in the context of a potential special regime. In this respect, the Parties indicated that the Joint Venture had previously proposed to both governments to develop Greater Sunrise by re-using the LNG plant at Wickham Point in Darwin and a significant portion of the Bayu-Undan pipeline, once production from Bayu-Undan ceased in 2022 (*i.e.*, the Darwin LNG concept). Timor-Leste, however, indicated to the Commission that, in its view, the Joint Venture had never appropriately considered the possibility of developing Greater Sunrise by way of a pipeline to Timor-Leste. When the decision had been taken to develop Bayu-Undan by way of the pipeline to Darwin, the Timorese government had anticipated that the next pipeline developed in the Timor Sea would necessarily run to Timor-Leste, in order to support the economic development of Timor-Leste's south coast. In Timor-Leste's view, the location of the LNG Plant for Bayu-Undan in Australia had led to substantial economic benefits for the city of Darwin and the development there of significant expertise and infrastructure for offshore petroleum. In contrast, while Bayu-Undan had provided Timor-Leste with revenue, it had led to little in the way of broader economic development. Timor-Leste indicated to the Commission that its own studies indicated that development of Greater Sunrise by way of a pipeline to Timor-Leste and the construction of a new LNG plant in Timor-Leste (*i.e.*, a Timor LNG concept) was technically and commercially feasible, but had not been given serious consideration by the Joint Venture.
244. For its part, Australia indicated to the Commission that it had no preference regarding the development of Greater Sunrise or the choice between a Darwin LNG and Timor LNG concept. Under Australia's general approach to the regulation of petroleum activities, it would ordinarily approve a commercially viable development concept proposed by a licence holder and would not seek to influence the concept proposed. Australia indicated, however, that it believed, on the basis of the information available to it at that time, that the Joint Venture's analysis that a Timor LNG concept was not commercially viable in the existing market context was probably correct.

Additionally, Australia noted that the operators of the Wickham Point LNG Plant would be seeking to link that infrastructure to a new gas field as soon as possible following the completion of production from Bayu-Undan. While Greater Sunrise represented the largest and highest quality of the known fields in the Timor Sea, it was not the only option, and a decision would be taken to connect the Wickham Point plant with another field if regulatory approval to develop Greater Sunrise did not appear to be forthcoming. In that case, Australia considered that there was a significant likelihood that Greater Sunrise would remain undeveloped for the foreseeable future, given an environment of low prices that rendered the construction of new LNG plants generally non-viable. Australia thus emphasized that, while it had no view on the development concept to be chosen, it considered it essential that a decision on Greater Sunrise be made promptly.

245. Based on its discussions with each Party, the Commission informed the Parties that it believed there was significant common ground between the Parties on which the framework of a special regime could be constructed. The Commission provided the Parties with a *Non-Paper on Uncontroversial Elements of a Greater Sunrise Special Regime* setting out the elements of a regime where it believed agreement could be easily reached. The core elements of the Commission's *Non-Paper* included:
- (a) The objective of the special regime would be the shared development, exploitation, and management of the Greater Sunrise field, including the participation of both Timor-Leste and Australia in the overall benefits to be derived from the development and exploitation of Greater Sunrise.
  - (b) The special regime would be limited to Greater Sunrise and would apply within an area corresponding to the area of the Unitisation Agreement.
  - (c) The special regime would include clear allocation of areas of joint and exclusive jurisdiction.
  - (d) The choice of development concept, as between Darwin LNG and Timor LNG, would be decided by Timor-Leste, in agreement with the Joint Venture, according to commercial principles consistent with good oilfield practice, but would be taken as part of the overall agreement on the special regime.
  - (e) The Designated Authority for day-to-day oversight of petroleum operations in the special regime area would be Timor-Leste's ANPM.

- (f) New Production Sharing Contracts (“PSCs”) would be concluded with the joint venture by the ANPM to replace and consolidate the existing PSCs and retention leases covering the area of Greater Sunrise on conditions equivalent to those existing instruments.
- (g) One or more governance/appeal boards would be established with responsibility for high-level strategic policy and decision-making, as well as ensuring accountability to that policy.
- (h) Revenue-sharing arrangements would include consideration of upstream and downstream activities, including direct and indirect tax revenues and other economic benefits.

246. The Commission invited the Parties to give further consideration to these issues and, during the July 2017 meetings, established a Working Group of representatives of both Parties, as well as an observer from the Registry, to formulate an agreed governance mechanism for a potential special regime. During the course of several meetings, the Working Group was able to reach substantial agreement with the exception of three issues that were deferred for further consideration with the Commission:

- (a) the legal status of the seabed within the special regime area, which the Parties considered linked to the ongoing discussions on the location of the seabed boundary, as well as certain issues of jurisdiction that were also consequential thereto;
- (b) whether the governance mechanism would include procedures for the approval of the development concept, which Australia considered should be agreed promptly as part of the conciliation process and which Timor-Leste considered might need to be decided through the operation of the treaty mechanism; and
- (c) revenue sharing.

247. The product of the Working Group discussions was further refined during the Parties’ preparation of the Consolidated Draft Treaty and during discussions in October 2017 and now constitute Annex B to the Final Draft Treaty.

## **2. *Economic Benefits and Revenue Sharing***

248. While the Parties were agreed in principle that Timor-Leste and Australia should share in the overall benefit of the development of Greater Sunrise, it became apparent to the Commission that there remained significant differences between them, stemming from their differing understanding of the broader economic benefits that would follow from developing Greater Sunrise.

249. As noted above, Timor-Leste was concerned that the broader economic benefits of developing Bayu-Undan by way of a pipeline to Darwin had largely accrued to Australia. According to Timor-Leste, although the Timor Sea Treaty had divided the upstream revenue from Bayu-Undan on a 90:10 basis in favour of Timor-Leste, the actual allocation of economic benefits was closer to 55:45 in favour of Australia once downstream tax revenues and economic multipliers were considered. Timor-Leste was determined not to repeat this scenario with the development of Greater Sunrise.
250. For its part, Australia questioned the methodology underlying Timor-Leste's study on economic multipliers and noted that the Bayu-Undan project had been deliberately structured to shift the majority of corporate profits to the upstream portion of the project where they would be subject to Timorese taxation. Australia derived only a small, fixed amount of tax revenue from the operation of the Wickham Point plant, which employed only a small number of people in its day-to-day operations. Australia acknowledged that the city of Darwin had experienced an economic boom during the decade in which the Bayu-Undan project had been operational, but denied that this growth could be significantly attributed to the LNG plant. Australia also indicated that it would be open to encouraging the Greater Sunrise Joint Venture to include significant Timorese local content under a Darwin LNG concept so as to help Timor-Leste meet its broader economic development goals for the south coast of Timor-Leste.
251. Based on these radically different understandings of the economic benefits of developing Greater Sunrise, the Parties proposed correspondingly different approaches to meet the objective of developing the field as a shared resource from which both States would derive benefits. Timor-Leste suggested that if the field were potentially to be developed through a pipeline to Darwin, Australia would already share in the economic benefits and no direct sharing of revenue was necessary. Even if, Timor-Leste noted, the field were to be developed by way of a pipeline to Timor-Leste, Australian companies would still end up carrying out the majority of the construction work and bringing benefits to Australia. Australia, in contrast, was of the view that sharing the benefits of Greater Sunrise necessarily entailed sharing in the revenue to be derived from the field.
252. The Commission invited the Parties to share their economic modelling with one another and engaged in extensive discussions on these issues with both Parties during the July 2017 meetings. The Commission indicated to both Parties that it did not consider either Party's economic analysis to be fully convincing. More importantly, however, the Commission informed the Parties that it did not see that either Party's economic arguments were capable of convincing the other or achieving a shared understanding of the broader economic benefits of Greater Sunrise.

253. The Commission explored with the Parties several potential approaches to reaching a neutral, agreed quantification of the broader value of Greater Sunrise. Ultimately, however, both Parties indicated to the Commission that they considered that any precise quantification would be extremely difficult and that they preferred to reach a simplified, negotiated outcome. Such an outcome would recognize and reflect the broader economic effects of development—and that these effects would differ depending on the development concept chosen—without attempting to reach agreement on precise figures. Through the course of their meetings and discussions with the Commission, the Parties ultimately arrived at the differential factor reflected in the 30 August Agreement to account for the broader economic benefits accruing to each State, respectively, from the Darwin LNG and Timor LNG development concepts.

**D. THE COMPREHENSIVE PACKAGE AGREEMENT OF 30 AUGUST 2017**

254. Following the July 2017 meetings, a delegation from the Commission met with Timor-Leste at the political level in Dili regarding outstanding issues, in particular the location of the eastern seabed boundary and the approach to revenue sharing.<sup>72</sup> In these discussions, Timor-Leste indicated that it could accept the joint management of Greater Sunrise for the lifetime of the resource and the sharing of revenue, provided that the proportion sufficiently favoured Timor-Leste. Timor-Leste could also accept seabed boundaries to the east and west of the JPDA that would connect with the 1972 Seabed Treaty boundary at its current endpoints (thus running through Greater Sunrise in east), provided that such boundaries were subject to adjustment once Timor-Leste concluded its seabed boundary with Indonesia and the relevant resources were depleted.<sup>73</sup>

255. Timor-Leste indicated, however, that it was not prepared, on the information available to it, to agree to the development concept for Greater Sunrise or, in particular, to accept the Joint Venture's view that the field could only feasibly be developed by way of a pipeline to Darwin. Timor-Leste maintained the view that the Joint Venture had never properly evaluated the possibility of developing Greater Sunrise through a Timor LNG concept. Timor-Leste reiterated to the Commission that it was unwilling to agree to any development concept for the field unless and until the Joint Venture gave fair consideration to Timor LNG, enabling Timor-Leste to make a proper comparison of the two approaches. While Timor-Leste emphasized that it had more interest than anyone in having Greater Sunrise developed as soon as possible, it was not willing

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<sup>72</sup> The Commission's visit to Dili is also described above at paragraphs 147 to 153.

<sup>73</sup> Adjustment of the seabed boundary in the west may take place only after the commercial depletion of the the Laminaria and Corallina Fields, and adjustment in the east only after the commercial depletion of Greater Sunrise.

to sacrifice a point of principle or take a rushed decision on the basis of what it considered to be incomplete information.

256. Australia, on the other hand, considered that prior agreements between the Parties had failed in significant part due to the failure to agree on a development concept for Greater Sunrise and was unwilling to conclude an agreement on a special regime for the resource without knowing that a development concept would be approved.
257. In its discussions with the Parties, the Commission sought to resolve this impasse on the basis of three principles. First, Timor-Leste must have the space to take a decision on a matter of great importance to its national development in accordance with its own national interest. Second, Timor-Leste could not be expected to take a decision without full information or proper engagement by the Joint Venture. Third, the interests of both Parties would best be served by their taking a decision on the development of Greater Sunrise as soon as possible and before the Wickham Point plant was allocated to another project, potentially foreclosing the possibility of Darwin LNG. The Commission indicated to the Parties that it considered these principles compatible if the Parties were to initiate an expedited process of joint engagement with the Joint Venture in order to generate the basis for Timor-Leste to take an informed decision on development of Greater Sunrise within the conciliation process. If the Parties could work together in negotiating with the Joint Venture on both concepts and the terms on which Greater Sunrise would be developed, the Commission indicated that it believed the basis existed for an agreement between the Parties on all aspects of their dispute.

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258. On the basis of these discussions, the Commission sought to assemble all of the elements of a settlement into a comprehensive package that would be acceptable to both Parties and that would meet the Convention's requirement that the delimitation of the maritime boundaries achieve an equitable solution, compatible with the Convention and with the international law of maritime boundary delimitation.
259. The 30 August Agreement was thus the product of a proposal advanced by the Commission during meetings in Copenhagen based on informal consultations. The agreement and the Treaty agreed between the Parties are annexed to this Report. The principal elements of this agreement were as follows.
260. The Parties agreed to maritime boundaries as depicted in Annex A to the Final Draft Treaty and in Map 4 on page 79 of this Report.

261. The southern maritime boundary between the Parties would take the form of a single maritime boundary (except in the southwest, where the rights of Indonesia to the water column may be affected) and would partially follow the median line and partially run to the north of the median line along an agreed course.
262. The western boundary would be a continental shelf boundary only and would run to the west of the JPDA. This would allocate the Buffalo oil field—where recent reports indicate a new find estimated at 31 million barrels of oil—to Timor-Leste, and the Corallina and Laminaria fields to Australia for their remaining production life.
263. The eastern boundary would be a continental shelf boundary only and would run to the east of the JPDA and largely to the east of Greater Sunrise before turning back to run through Greater Sunrise and meet the 1972 Seabed Treaty boundary.
264. The eastern and western seabed boundaries would meet the 1972 Seabed Treaty boundary at points A16 and A17, respectively, but pursuant to Article 2(2) of the Treaty, these portions of the boundary are “provisional,” which for the purposes of the Treaty means they are subject to automatic adjustment as follows:
- (a) In the west, the boundary would adjust following (i) the commercial depletion of the Corallina and Laminaria fields and (ii) the conclusion of a continental shelf boundary between Timor-Leste and Indonesia. After adjustment the boundary would run to meet the 1972 Seabed Treaty boundary at either (i) the same point as the continental shelf boundary concluded between Timor-Leste and Indonesia, if that boundary meets the 1972 Seabed Treaty boundary between points A17 and A18, or (ii) point A18, if the continental shelf boundary concluded between Timor-Leste and Indonesia meets the 1972 Seabed Treaty boundary to the west of point A18.
  - (b) In the east, the northern two segments of the boundary would adjust following (i) commercial depletion of the Sunrise and Troubadour fields and (ii) the entry into force of an agreement between Timor-Leste and Indonesia delimiting the continental shelf. After adjustment the boundary would run to meet the 1972 Seabed Treaty boundary at the same point as the continental shelf boundary concluded between Timor-Leste and Indonesia.

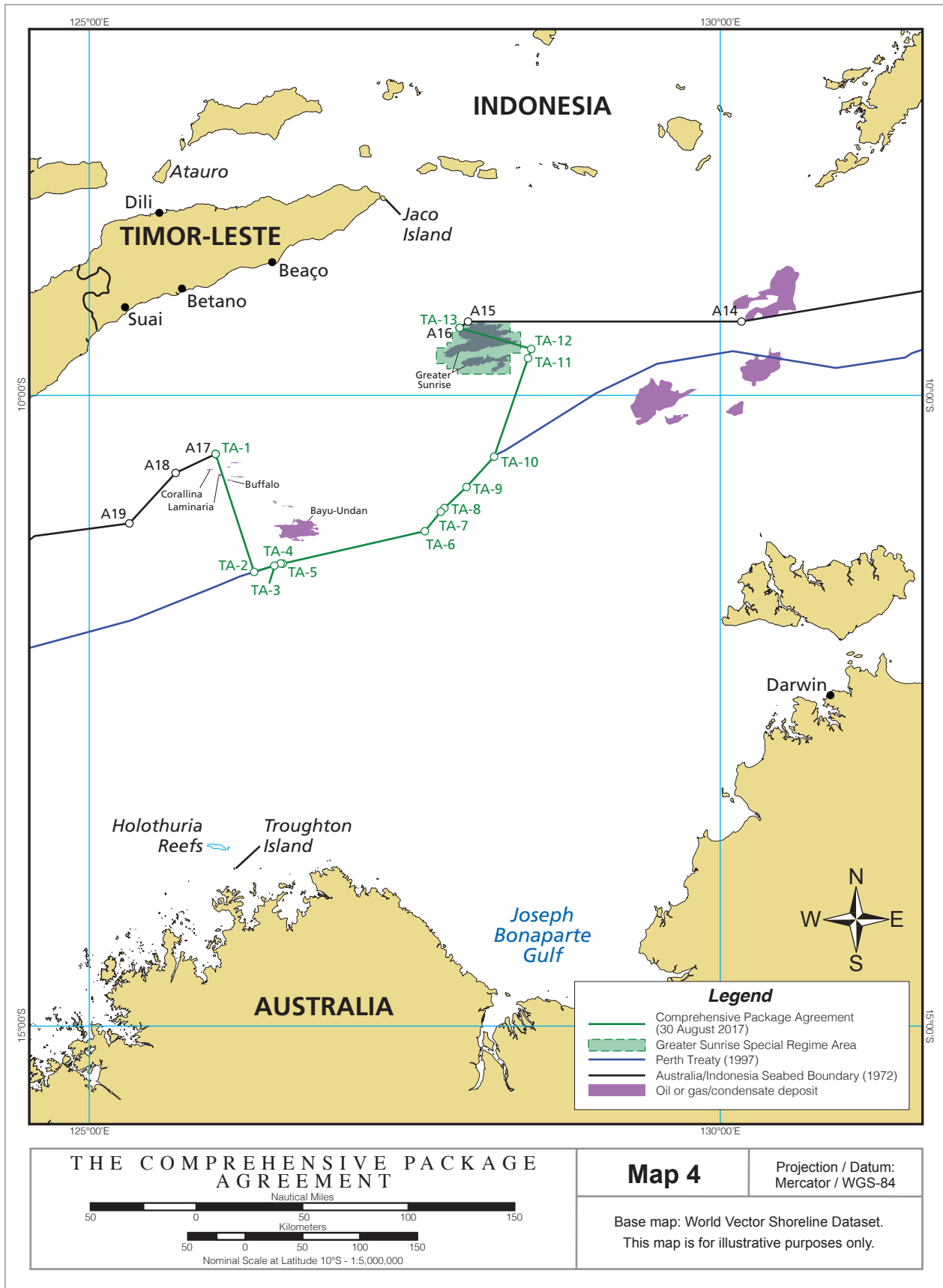
Through this adjustment mechanism, the Parties’ agreement is intended to avoid any prejudice to the 1972 Seabed Treaty or to Timor-Leste’s ongoing negotiations with Indonesia concerning maritime boundaries.

265. Greater Sunrise would be governed through a special regime, within the area of which the Parties would jointly exercise their rights as coastal States pursuant to Article 77 of the Convention. Upstream revenue from Greater Sunrise would be split on an 80:20 basis in favour of Timor-Leste in the event that that field was developed through a Darwin LNG concept, and on a 70:30 basis in favour of Timor-Leste in the event that the field was developed through a Timor LNG concept. Through this contingent apportionment, the Parties agreed that they were reflecting the broader economic effects and benefits of developing Greater Sunrise.
266. For other petroleum resources previously located within the JPDA, the Parties agreed that Timor-Leste would receive all future revenue, including from the operating Bayu-Undan and Kitan fields. However, for simplicity and continuity, the governance and regulatory arrangements for the remaining life of Bayu-Undan and Kitan would be “grandfathered” (*i.e.*, remain as is).
267. Finally, the Parties agreed to initiate a process of intense engagement with the Joint Venture through an agreed action plan, and prolonged the Commission’s mandate for it to remain involved in this process. The purpose of this engagement would be to reconcile the Joint Venture and Timor-Leste’s differing views on the commercial viability of a Timor LNG approach and to establish the negotiated commercial terms on which both options could be undertaken. This was intended to permit a proper comparison of both approaches and to ensure that a decision on the development of Greater Sunrise was taken by 15 December 2017 or, at the latest, by 1 February 2018.

**E. ENGAGEMENT ON THE DEVELOPMENT OF GREATER SUNRISE**

268. Although these proceedings were initially concerned with the delimitation of maritime boundaries, the Parties subsequently requested that the Commission engage with them with a view to facilitating agreement on the development concept for Greater Sunrise, it being an integral part of the 30 August Agreement that a decision on the development concept should be taken within the context of the conciliation process.
269. As noted above, the Parties and the Joint Venture had before them two concepts for the development of Greater Sunrise. Timor-Leste proposed a Timor LNG approach in which Greater Sunrise would be connected to an LNG plant to be constructed at Beaço in Timor-Leste by way of a pipeline across the Timor Trough. The Joint Venture proposed a Darwin LNG approach in which Greater Sunrise would be connected to the existing pipeline running from Bayu Undan and would make use of the existing LNG plant at Wickham Point in Darwin, following the depletion of Bayu Undan.





270. While Australia emphasized that it had no preference for either the Timor LNG or Darwin LNG approach (provided that the concept was technically feasible and commercially viable), it was concerned that a Darwin LNG concept would soon be foreclosed if the Wickham Point plant were to commit its capacity to the development of another field, potentially leaving Greater Sunrise without a commercially viable development option.
271. Timor-Leste, for its part, indicated that it could not take a decision on the development concept until it considered that Timor LNG had been properly considered and analysed. Timor-Leste emphasized, however, that it was the most interested party to see Greater Sunrise promptly developed and indicated that it was willing to engage intensively with the Joint Venture, provided that engagement was based on the consideration of both development concepts.
272. The 30 August Agreement accordingly set out an Action Plan for the two governments to engage with the Joint Venture, leading to a decision on the development concept to be taken by 15 December 2017, with a fall-back date of 1 February 2018. These dates were dictated by an understanding of the timeframe in which the Wickham Point plant was likely to award contracts for the use of the facility and thus the latest point at which a Darwin LNG concept could be safely be expected to remain available. Although Timor-Leste indicated that it considered this schedule to be ambitious, it endorsed the 30 August Agreement.
273. During the Parties' initial engagement with the Joint Venture in September and October 2017, the Commission sought to facilitate the process, but did not engage directly regarding the substance of the two development concepts. The Commission acted to facilitate an agreement between the two governments and the Joint Venture concerning confidentiality, to coordinate the two governments' requests to the Joint Venture for additional information, and to emphasize to all parties the need to build up both development concepts, rather than merely advocate for a preferred outcome. The Commission did not, however, participate in the videoconference sessions in October 2017 or in the three trilateral meetings held in Brisbane, Singapore, and Melbourne in November and December 2017.
274. During the course of this initial engagement, both Timor-Leste and the Joint Venture established virtual data rooms and exchanged a large volume of technical material and economic data regarding the Timor LNG and Darwin LNG concepts. These initial exchanges contributed to the parties' respective understanding of the views and concerns of the other. However, it became evident to the Commission in December 2017 that this initial engagement had not led the parties to a common understanding on the development of Greater Sunrise, or brought them any closer to taking a decision on the development concept. Rather, Timor-Leste and the Joint Venture each used the process to advocate for its preferred option.

275. The Joint Venture continued to assert that only a Darwin LNG concept was commercially viable and that Timor-Leste had not engaged with the economic reality facing a Timor LNG concept. Timor-Leste maintained that Timor LNG was commercially viable and that only a Timor LNG concept would meet its development objectives. Timor-Leste also considered that the Joint Venture had not made a serious effort to ensure that either concept would meaningfully contribute to the development of Timor-Leste. Timor-Leste and the Joint Venture also had diametrically opposed views on the economics of the two concepts and the anticipated return of the project. While for Timor-Leste the mid- and long-term economic consequences for the national economy were decisive, the Joint Venture concentrated on the commercial viability and the ultimate economic return on investment. Australia continued to maintain that it had no preference between the two concepts, but was not convinced, on the basis of the information so far available to it, that a Timor LNG concept was commercially viable. During the December 2017 session, both governments were of the view that the engagement had not created the conditions necessary for a decision on the development concept. Each government, however, reiterated its interest in having the development concept settled in the context of the conciliation proceedings.
276. Pursuant to the 30 August Agreement, “[i]f the Parties are unable to agree to the Development Concept in accordance with the Criteria ahead of 15 December 2017, the Commission shall engage with the Parties with a view to facilitating agreement on the Development Concept by no later than 1 February 2018.” In approaching this mandate, however, the Commission was of the view that it was unlikely to be able meaningfully to facilitate an agreement on the development concept without expert assistance with respect to the technical and financial aspects of the two development concepts. Accordingly, the Commission reached agreement with the Parties on the Terms of Reference for the appointment of an expert in oil and gas development planning as part of its Supplemental Action Plan. The Commission also engaged with the Joint Venture regarding the likelihood that a Darwin LNG concept would remain available until at least 1 March 2018. A copy of the Commission’s Supplemental Action Plan is attached as Annex 27 to this Report.
277. During the course of its January session with the Parties and the Joint Venture, the Commission pursued five objectives:
- (a) The Commission sought to build up understanding of both the Darwin LNG and Timor LNG concepts, engaging with the Joint Venture and Timor-Leste, respectively, regarding areas in which the Commission considered that their respective concepts could be further developed. In the case of Darwin LNG, the Commission sought more concrete detail on local content that would meaningfully contribute to the economic development of Timor-

Leste. In the case of Timor LNG, the Commission sought clarification on the financing and operation of the project.

- (b) The Commission sought to encourage both Timor-Leste and the Joint Venture to step away from their preferred concept and to consider what it would take to make the other approach viable and attractive. At the Commission's request, both Timor-Leste and the Joint Venture provided the Commission with details in this respect.
- (c) The Commission sought to facilitate agreement on certain issues relating to the development of Greater Sunrise that would need to be determined irrespective of the development concept chosen. This concerned in particular the fiscal regime that would apply to the Greater Sunrise project and how the application of the Parties' taxation laws would provide the Joint Venture with "conditions equivalent", as required by Article 22 of the Timor Sea Treaty and Article 27 of the Unitisation Agreement.
- (d) The Commission sought to reach agreement on a framework agreement to provide all parties with the necessary certainty to move forward with the project once the development concept was chosen. Both governments as well as the Joint Venture provided the Commission with their proposed drafts for a potential agreement.
- (e) The Commission sought to ensure that its expert had all of the technical and economic information necessary for him to undertake a comparative analysis of the two development concepts.

278. In approaching its final session with the Parties, the Commission considered that it could best facilitate a decision on the development concept by providing the Parties with the basis for an informed decision. During the period between the January and February sessions as well as in the course of the February session, the Commission accordingly continued to engage with the Parties on the issues set forth above (see paragraph 277). At the request of the Commission, the Joint Venture and Australia indicated certain commitments they would be willing to make in respect of local content.

279. The Commission also sought to elaborate, with the input of both governments and the Joint Venture, draft framework agreements covering three scenarios: (a) for a decision on a Timor LNG concept; (b) for a decision on a Darwin LNG concept with operations from Timor-Leste; and (c) for the event that no decision is taken.

280. At the close of the February session, the Commission provided the Parties with a paper on the comparative benefits of the two concepts and a condensed comparative economic analysis of the

two concepts undertaken by the Commission's expert. Copies of these documents are attached as Annex 28 to this Report. The Commission also provided both governments and the Joint Venture with copies of its proposed framework agreements for all three scenarios.<sup>74</sup>

281. As mentioned earlier (see paragraphs 215 to 218 above), the Parties have not yet agreed on the development concept for Greater Sunrise.

282. The Parties signed the Treaty on Maritime Boundaries on 6 March 2018 at a ceremony hosted by the Secretary-General of the United Nations in New York.

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<sup>74</sup> Due to the inclusion of potentially confidential information in the draft framework agreement, the Commission has elected not to include copies of those documents with this Report.

## **VII. THE COMMISSION'S REFLECTIONS ON THE PROCEEDINGS**

283. Beyond the foregoing description of the procedural steps taken by the Commission and the agreement reached by the Parties, the Commission wishes to record some of the key elements that, in its view, contributed to the outcome of these proceedings.

284. As noted above, however, these proceedings have progressed through two distinct phases. The first phase, concerning the delimitation of a maritime boundary, has been brought to a full conclusion through the signature on 6 March 2018 of the Parties' Treaty on Maritime Boundaries. The second phase, in which the Commission, pursuant to the Parties' 30 August Agreement, sought to facilitate agreement on the development concept for Greater Sunrise, remains ongoing in that the Parties will still need to reach agreement on a concept, now without the involvement of the Commission. The Commission's reflections on these two phases are different, and the Commission will address each in turn.

### **A. REFLECTIONS ON THE PROCEEDINGS CONCERNING MARITIME BOUNDARIES**

285. The Commission recalls that the Parties came to these proceedings deeply entrenched in their legal positions, something which had frustrated previous efforts to achieve a settlement through negotiation. In considering how an agreement was ultimately reached, however, the Commission considers it important that the Parties' interests in the Timor Sea were such that it remained possible to envisage a mutually beneficial result meeting both sides' essential interests. In particular, given that the issue of maritime boundaries marked a serious obstacle in the otherwise close relationship between the peoples of Timor-Leste and Australia, the prospect of resolution itself offered the potential to unlock significant benefits in the broader bilateral relationship. While strongly committed to upholding their rights, both Parties ultimately preferred an amicable solution to the continuation of an unsatisfactory status quo. In this sense, the matter can be considered to have been ripe for resolution. In the Commission's view, it is in fact a significant benefit of conciliation that the proceedings were able to build on these aspirations for a positive outcome and preferable to a resolution of the dispute consisting merely of identifying a "winner".

286. In addition to the above, the Commission considers that a number of steps taken in the course of the conciliation were instrumental in bringing the Parties together. In particular, the Commission considers that a constructive outcome was enabled (a) by efforts throughout the proceedings to build the Parties' trust in each other, in the Commission, and in the process; (b) by the possibility of managing the scope of the proceedings to encompass the elements necessary for a solution; (c) by the Commission's pro-active efforts to advance ideas and direct the course of the

proceedings; and (d) by sustained, informal contacts with the Parties' representatives and counsel at a variety of different levels.

287. At the outset of these proceedings, the Parties were frank with the Commission regarding the extent that each distrusted the other, at least with respect to resources and maritime boundaries. A significant element of the Commission's efforts, both initially and throughout the proceedings was thus concerned with building trust between the Parties and removing obstacles to productive and successful conciliation on the substance of the Parties' dispute. As already noted, the Commission believes that the early resolution of Australia's objections to the competence of the Commission proved essential to allowing Australia to engage effectively in the conciliation process thereafter. At the same time, while the resolution of competence as a preliminary matter removed a significant obstacle, the unavoidably adversarial character of a challenge to competence did little to foster trust or compromise.
288. In the Commission's view, the confidence-building measures agreed in October 2016 were thus essential in changing the dynamic of the proceedings and generating early positive momentum. The Commission sought to mark a clear break from the competence proceedings by meeting with the Parties principally bilaterally, away from The Hague, and in as informal a setting as possible. From those early discussions it became apparent that a further break from the past would be necessary for both Parties to move forward. The continued presence of CMATS and pending arbitrations initiated by Timor-Leste under the Timor Sea Treaty constituted a symbolic barrier to progress and kept the Parties looking backwards. The Commission thus sought to establish a clean slate for these proceedings through confidence-building measures centred on the termination of the CMATS treaty and the withdrawal of both arbitrations. In the case of CMATS, however, the legal effects of termination were uncertain. At the suggestion of the Commission, both Parties thus undertook to cooperate in terminating CMATS in a manner that preserved the stability of their legal relations and thereby also maintained legal certainty for other stakeholders in the Timor Sea.
289. This confidence-building exercise benefited, in the Commission's view, from the fact that the proposed measures were not wholly transactional in nature. While remaining balanced and closely aligned in both timing and substance, the various steps were not strictly reciprocal, tit-for-tat concessions. They envisaged independent actions which sought to demonstrate to the other Party a genuine commitment to the success of the conciliation process. Inasmuch as the Rules of Procedure sought to enable the Parties to engage without prejudice to their respective legal positions, the Commission's confidence-building measures required the opposite: *i.e.*, that the Parties abandon certain stances which constituted an obstacle to moving forward with the

conciliation and were intended to preserve leverage against the other for the possibility that the conciliation might fail to produce an agreed outcome. The Parties were thus required each to demonstrate through independent measures a sincere and substantial commitment to a successful conciliation. This initial investment paid dividends throughout the remainder of the process as the Parties did, through the conciliation, engage bilaterally in a constructive manner to achieve an equitable compromise.

290. At the same time, it was also necessary to establish a foundation of trust between the Parties and the Commission. The Commission is cognizant that Timor-Leste initiated these proceedings as much due to the absence of other options as from a belief in the virtues of conciliation or in the likelihood of success. The Commission thus devoted significant time to making sure that it fully understood not only the Parties' formal positions, but also the interests and sensitivities underpinning those positions. The first step in this process was to receive brief but comprehensive written statements of the Parties' opening positions. Although soliciting what amounted to legal argument bore the risk of entrenching positions, it provided an opportunity for the Parties to evaluate and express positions in detailed form, which they may not have done previously. It also had the associated benefit of requiring the Parties to define their own positions in a more precise manner, especially where some of their own priorities may not yet have been reconciled within their respective governments and delegations. The Commission then engaged the Parties in open-ended discussions in January 2017 and sought to confirm its understanding by providing the Parties, first separately and then jointly, with *Issues Papers* outlining—in the Commission's words—the elements of the dispute and the Parties' respective views. In the Commission's view, these proceedings truly became productive at the point at which both Parties became convinced that the Commission's objective was not to push them to abandon long-held positions, but rather to understand and assist the Parties to identify a solution they had been unable to reach themselves.
291. As the Commission moved to considering matters of substance, it proved essential that the Commission's mandate extended to the consideration of the Parties' broader, non-legal interests to the extent necessary for an amicable settlement and that the proceedings could be expanded, with the Parties' agreement, to encompass issues beyond the strict delimitation of the maritime boundary. These proceedings began with a focus exclusively on delimitation under Articles 74 and 83 of the Convention and always remained focused on achieving an equitable solution consistent with those legal provisions. At the same time, it was apparent that both Parties' views on the location of the boundary were—understandably—influenced by the effect of the boundary on prominent seabed resources, in particular Greater Sunrise. It became apparent to the Commission that any agreed outcome would also have to address in a comprehensive manner the development and exploitation of resources in the area and the Parties' respective rights and status



as coastal States under Article 77 of the Convention. The Parties' 30 August Agreement thus incorporated a special regime for Greater Sunrise, defined the two States' respective legal rights within the area of the special regime, and incorporated a roadmap for the development of the resource as an integral element of agreement. The conciliation proceedings were accordingly adapted to include the second phase of the proceedings discussed below.

292. The Commission notes that the very exercise of defining, with the Parties, the issues that were—or were not—relevant to achieving an agreement on maritime boundaries was itself a difficult process. For the Commission, however, the ability to calibrate the proceedings to address the elements necessary for an amicable settlement, even where those extend beyond purely legal considerations, is a hallmark advantage of conciliation as compared to adjudication.
293. In the course of engaging with the Parties, it was likewise essential for the Commission to take a pro-active role in managing the process. This was particularly the case when the Commission sought to shift the Parties' focus away from the arguments in favour of their opening positions and towards the requirements of a possible settlement by advancing the Commission's own options and ideas in March 2017. This was done with full knowledge that the Commission's *Non-Paper* was likely to encounter strong resistance, but would nevertheless provide a useful reference point around which further discussions could be oriented. Such a change in dynamic to a problem-solving approach was vital to obtaining the necessary flexibility from the Parties over the course of the various sessions that followed, so as to create a platform for creative thinking and eventually generate the space for mutually acceptable outcomes. The Commission likewise ensured that discussions were held on the modalities of the joint management of petroleum resources and on the broader economic effects of developing seabed gas deposits, notwithstanding doubts at the time by one Party or the other that these issues were truly necessary for an amicable settlement.
294. The proactive approach taken by the Commission required a high degree of coordination within the Commission itself. As most discussions took place between the Commission and one or the other of the Parties, the Commission was regularly called on to probe the Parties' positions and to respond with the Commission's reaction on the spot (or on short notice), while at the same time mapping the course with respect to next steps. It was important, in the Commission's view, that it maintain unity in its engagement with the Parties while still devoting the time for internal deliberation necessary to produce a considered response. The Commission notes that a different composition could well have rendered it difficult to maintain this objective while still keeping up the pace called for in these proceedings. Indeed, effective conciliation requires that a careful mix of diplomatic and legal skills, backgrounds, and approaches be deployed in varying combinations at different stages of the process.

295. A further key element of the procedure that the Commission wishes to highlight is the value and importance of informal contacts at a variety of levels. The Commission sought to engage with the Parties' representatives through formal and informal sessions, through conversations at the political level and working level, and through a nearly continuous flow of letters, e-mail communications, telephone calls, and text messages. The Commission also made extensive use of its Registry as an additional channel of communication with the Parties and to record and share within the Commission the details of informal contacts and conversations. Many of the principal steps that were instrumental to bringing the Parties together occurred as much in late night conversations with various members of each delegation as in any formal meeting. The ongoing process of building trust with and between the Parties likewise occurred, not only through joint sessions or information sharing, but also through social receptions and other unplanned encounters. In many ways, one of the Commission's main functions was to provide as many opportunities as possible for the Parties to reassess the degree of flexibility in their positions and contemplate creative solutions to their differences, and to continually encourage them to do so.
296. Finally, it was essential that all discussions between the Parties and the Commission operated on the basis that a mutually acceptable outcome would necessarily be a package and that both Parties would have to make compromises, while at the same time recognizing that all concessions were made without prejudice to the Parties' evaluation and acceptance of a final, balanced package. While the importance of this may be obvious to some, it was something that the Commission found important to reiterate, along with the non-binding character of conciliation, at various key stages over the course of the process.

**B. REFLECTIONS ON THE PROCEEDINGS CONCERNING THE DEVELOPMENT CONCEPT**

297. Following the Parties' agreement on their maritime boundaries, the Commission was also requested, through the 30 August Agreement, to attempt to facilitate an agreement on the development concept for Greater Sunrise. The Commission interpreted its role as being to provide the Parties with the basis on which to take an informed decision, but not to recommend a development concept. No agreement has so far been reached, and it will remain for the Parties to continue with the process of seeking an agreement on the development concept for Greater Sunrise.
298. In the preceding sections, the Commission has set out the issues involved and the steps it took in engaging with the Parties and the Joint Venture in respect of the development concept. The Commission has also provided the Parties with a number of documents, some appended to this report and others confidential, that may inform future discussions between them. Insofar as

discussions regarding the development concept remain ongoing, the Commission considers that no further comment or reflections are warranted.

299. The Commission hopes that its efforts may contribute to further discussions between the Parties. The Commission recommends that the Parties continue their discussions with a view to maximizing the benefit of this shared resource for the peoples of both States.

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### VIII. THE COMMISSION'S CONCLUSIONS AND RECOMMENDATIONS

300. The Commission commends the Parties on the manner in which they have approached these conciliation proceedings and welcomes the opportunity available to them to use these proceedings as the basis for a lasting partnership in their mutual relations.

301. The Commission records and recalls its decision that the Commission is competent with respect to the compulsory conciliation of the matters set out in Timor-Leste's *Notification Instituting Conciliation under Section 2 of Annex V of UNCLOS* of 11 April 2016. That decision is incorporated here by reference.

302. As a result of the agreement reached between the Parties, the Commission's formal task under Article 7 of Annex V of the Convention has been rendered significantly more straightforward. Article 7 of its Annex V provides as follows:

The commission shall report within 12 months of its constitution. Its report shall record any agreements reached and, failing agreement, its conclusions on all questions of fact or law relevant to the matter in dispute and such recommendations as the commission may deem appropriate for an amicable settlement. The report shall be deposited with the Secretary-General of the United Nations and shall immediately be transmitted by him to the parties to the dispute.

303. In accordance with that provision, the Commission first records the Parties' agreement to extend by agreement the Commission's mandate and the period for the submission of this Report.

304. Having subsequently heard the Parties, examined their claims and objections, and made proposals to the Parties with a view to reaching an amicable settlement, the Commission is pleased to note the successful outcome of these conciliation proceedings. Pursuant to its mandate under Annex V to the Convention, the Commission therefore records that the Parties have reached agreement on the delimitation of a maritime boundary between them in the Timor Sea, as set out in the Treaty signed on 6 March 2018 and annexed to this Report.

305. The Commission further records that the Parties' agreements are consistent with the UN Convention on the Law of the Sea and other provisions of international law and recommends that the Parties implement the agreements reached in the course of these conciliation proceedings, including the transitional arrangements pertaining thereto.

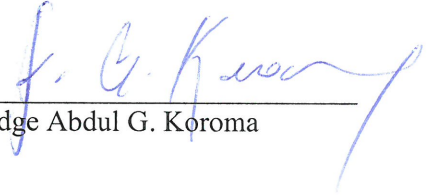
306. The Commission also recommends that the Parties continue their discussions regarding the development of Greater Sunrise with a view to reaching agreement on a concept for the development of the resource.

\* \* \*

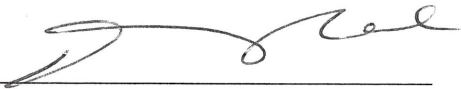
Done this 9th day of May 2018,



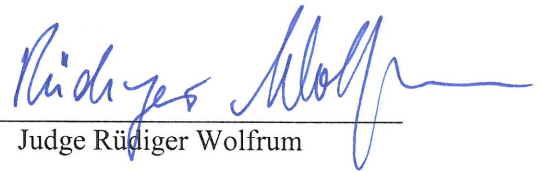
Dr. Rosalie Balkin



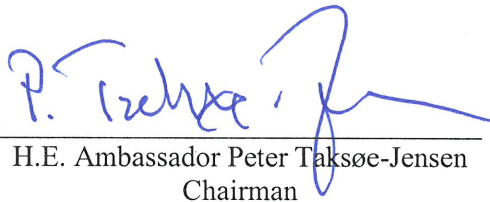
Judge Abdul G. Koroma



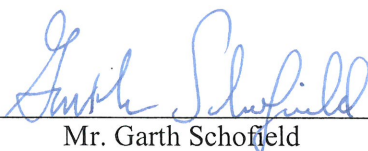
Professor Donald McRae



Judge Rüdiger Wolfrum



H.E. Ambassador Peter Taksøe-Jensen  
Chairman



Mr. Garth Schofield  
Registrar