

## RECENT DEVELOPMENTS

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### COMMONWEALTH

#### THE TIMOR GAP TREATY IN TRANSITION\*

The Timor Gap Treaty (the Treaty) has functioned well in creating a workable legal framework for hydrocarbon exploration and exploitation in the seabed area between Australia and East Timor, where agreement could not be reached on a "classic" seabed boundary. The Timor Gap arose in 1972, when Indonesia and Australia agreed to leave a "gap" in their seabed boundary to reflect the maritime zones off East Timor, which was then a non-self-governing territory of Portugal. The Treaty, which entered into force in 1991, filled this gap, creating the Timor Gap Zone of Cooperation (ZOC) and a system of joint rights and responsibilities applying to it. Production began at the Elang-Kakatua field within the ZOC in 1998.

With the separation of East Timor from Indonesia, a question arose as to the future of the Treaty. The Treaty can no longer be between Australia and Indonesia, as no part of the ZOC remains subject to Indonesian sovereign rights or jurisdiction - this is a view shared by Australia and Indonesia. The Australian Government has made clear its view that it is in the interests of Australia and East Timor for the Treaty to continue, and contractors have underlined their support for a continuation of the current regime. East Timorese spokesmen have also expressed publicly and in discussions with Australian officials their willingness to honour the terms of the Treaty at this time. The UN has indicated that it is prepared to facilitate the continued operation of the Treaty, in consultation with East Timorese representatives.

There are compelling economic reasons for ensuring the continuation of the Treaty during this crucial transitional period, providing a stable legal basis for ongoing investment and production in the ZOC. Production from the world-scale Bayu-Undan field is currently scheduled to commence from 2003-2004. The Bayu-Undan project offers prospects of revenue flows to East Timor which could average several tens of millions of dollars each for over a decade, representing a significant percentage of current East Timorese GDP.

So there is a will for the Treaty to continue, but how can this be achieved? If this were the "usual" independence scenario, then a new East Timorese State could succeed to the rights and responsibilities formerly exercised by Indonesia under the Treaty. However, this is not the "usual" scenario. A new independent state of East Timor has not yet emerged. So, in the absence of such a state, with whom can Australia enter into an agreement to secure the continued operation of the Treaty? The answer involves a new precedent in international law.

Under United Nations Security Council Resolution 1272 of 25 October 1999, the United Nations Transitional Administration in East Timor (UNTAET) has been established to administer East Timor, in close cooperation and consultation with East Timorese representatives. UNTAET's mandate will cease upon East Timorese independence, which is generally expected to be two or three years away. Under

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paragraph 35 of the UN Secretary-General's report of 1 October 1999, which has been incorporated by reference into Security Council Resolution 1272, the UN "will conclude such international agreements with States and international organizations as may be necessary for the carrying out of the functions of UNTAET in East Timor". This wide-ranging treaty-making power is seen as providing sufficient basis for the UN to enter into an agreement with Australia confirming the continued operation of the Treaty during the period of UNTAET's mandate. This will be the first time that a UN administration has exercised treaty-making powers in this way. The 1947 *Permanent Statute of the Free City of Trieste* provided for a UN administration to exercise similarly broad treaty-making powers. The statute, to which all major allied powers were parties, formed Annex VI of the 1947 *Peace Treaty with Italy*. The Statute entered into force, but was never activated, due to Cold War differences that prevented the Security Council from agreeing on the composition of the UN administration.

Some adjustments will have to be made with regard to the implementation of the Treaty, primarily in the arrangements for the Timor Gap Joint Authority, which manages the rights and responsibilities under the Treaty on a day-to-day basis. For example, a new Joint Authority headquarters will need to be established in East Timor at the soonest practicable time.

This transitional process should provide a path for continued operation of the Treaty on a firm legal basis. The Australian Government is currently engaged in finalising necessary arrangements with the United Nations.

East Timorese spokesmen have indicated that they may wish to revisit substantive aspects of the Treaty at a later date, while acknowledging the need to maintain a stable regime for continued investment in the area which is no more onerous upon contractors than that currently in place. This would be within the rights of a newly independent East Timorese State.

## NEW SOUTH WALES

### NEW COAL MINES REGULATIONS\*

The 35 Regulations made under the *Coal Mines Regulation Act 1982* (NSW) have been repealed and replaced with three Regulations effective from 1 September 1999. Those Regulations are the *Coal Mines (General) Regulation 1999*, the *Coal Mines (Open Cut) Regulation 1999* and the *Coal Mines (Underground) Regulation 1999*.

#### **COAL MINES (GENERAL) REGULATION 1999**

This regulation applies to underground coal mines, open cut coal mines and declared coal preparation plants (which are managed separately from a coal mine).

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