

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

[Note from the United Nations Transitional Administration in East Timor, Dili, to the Australian Mission in East Timor, Dili]

I
UNITED NATIONS

UNTAET
UNITED NATIONS TRANSITIONAL ADMINISTRATION IN EAST TIMOR

The United Nations Transitional Administration in East Timor (UNTAET) presents its compliments to the Australian Mission in East Timor and has the honour to refer to the fact that, pursuant to United Nations Security Council resolution 1272 (1999) of 25 October 1999, and in accordance with paragraph 35 of the Report of the Secretary-General (S/1999/1024), the United Nations will conclude such international agreements with States and international organisations as may be necessary for the carrying out of the functions of UNTAET in East Timor.

An agreement between UNTAET, acting on behalf of East Timor, and Australia, providing practical arrangements for the continuity of the terms 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" (the "Timor Gap Treaty")[1] in the transitional period, will benefit the people of East Timor and will assist UNTAET in carrying out its functions entrusted to it under Security Council resolution 1272 (1999). The conclusion of this agreement, however, is without prejudice to the position of the future government of an independent East Timor with regard to the Treaty.

UNTAET therefore has the honour to advise the Australian Mission in East Timor that all rights and obligations under the Timor Gap Treaty previously exercised by Indonesia are assumed by UNTAET, acting on behalf of East Timor, until the date of independence of East Timor. UNTAET, acting on behalf of East Timor, and Australia may enter into subsidiary arrangements or agreements relating to the continued operation of the terms of the Treaty. In agreeing to continue the arrangements under the terms of the Treaty, the United Nations does not thereby recognise the validity of the "integration" of East Timor into Indonesia.

If the understanding of Australia is in accordance with the foregoing advice, UNTAET has the honour to propose that this Note and Australia's confirmatory Note in reply shall constitute an agreement between UNTAET, acting on behalf of East Timor, and Australia which shall be applied as of 25 October 1999.

UNTAET avails itself of this opportunity to renew to the Australian Mission in East Timor the assurances of its highest consideration.

10 February 2000

UNTAET

[Note from the Australian Mission in East Timor, Dili, to the United Nations Transitional Administration in East Timor, Dili]

II

Note No. 2/2000

The Australian Mission in East Timor presents its compliments to the United Nations Transitional Administration in East Timor (UNTAET) and has the honour to refer to UNTAET's Note to the Mission dated 10 February 2000 which reads as follows:

[Here follows text as printed under I.]

The Australian Mission has the honour to advise that the foregoing proposal is acceptable to the Government of Australia and to agree that the UNTAET Note and this reply shall constitute an Agreement between the Government of Australia and UNTAET which shall be applied as of 25 October 1999.

The Australian Mission in East Timor avails itself of this opportunity to renew to the United Nations Transitional Administration in East Timor the assurances of its highest consideration.

DILI

10 February 2000

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE UNITED NATIONS TRANSITIONAL ADMINISTRATION IN EAST TIMOR (UNTAET), ACTING ON BEHALF OF EAST TIMOR, ON ARRANGEMENTS RELATING TO THE TIMOR GAP TREATY, 10 February 2000

1. General

This Memorandum is concluded pursuant to the Agreement between the Government of Australia and UNTAET on the Timor Gap Treaty (the "Treaty") contained in the exchange of notes between the Australian Mission in East Timor and UNTAET dated 10 February 2000. The Government of Australia and UNTAET confirm that UNTAET will exercise its rights and obligations under the Treaty in close consultation and cooperation with representatives of the East Timorese people.

2. Continued applicability fo the legal regime of the Treaty

(a) In accordance with UNTAET Regulation 1999/1, the laws applied in East Timor prior to 25 October 1999, to the extent necessary to give effect to the Treaty, will continue to apply.

(b) All rules, regulations, directions, decisions, guidelines, procedures, approvals, authorisations and other determinations made by either the Ministerial Council for the Zone of Cooperation ("the Ministerial Council") or the Joint Authority for Area A of the Timor Gap Zone of Cooperation ("the Joint Authority") before 25 October 1999, will continue to apply.

(c) All existing Production Sharing Contracts under the Treaty will continue to apply.

(d) The Government of Australia and UNTAET recognise that it will be important to facilitate, as a matter of priority, training and employment opportunities for East Timorese nationals and permanent residents.

3. Ministerial Council

UNTAET will designate its representative on the Ministerial Council as soon as possible.

4. The Joint Authority

(a) UNTAET will nominate for appointment by the Ministerial Council a person as Executive Director in the head office of the Joint Authority as soon as possible. Pending the appointment of the Executive Director by the Ministerial Council, in order to ensure the continued efficient operation of the Joint Authority, UNTAET will appoint an acting Executive Director.

(b) UNTAET will nominate persons for appointment as Technical Director or Finance Director, and as Senior Technical Officer, on the Joint Authority as soon as possible.

(c) The head office of the Joint Authority will be established in East Timor as soon as possible, having regard to ensuring the continued efficient operation of the Joint Authority. Pending the establishment of the head office of the Joint Authority in East Timor, both of its offices will be consolidated in Darwin on a temporary basis.

(d) The registered address for the interim head office of the Joint Authority will be NT House, 8th Floor, 22 Mitchell Street, Darwin, Australia, until the head office has been established in East Timor.

(e) The Joint Authority will pay East Timor's share of the proceeds collected from the production sharing arrangements under the Treaty, from 25 October 1999, into a bank account to be advised by UNTAET.

(f) The Joint Authority will close its bank accounts in Jakarta and consolidate all of its funds into its existing bank accounts in Darwin.

(g) UNTAET will advise contractors of details of a bank account into which all taxes payable to UNTAET pursuant to petroleum operations under the Treaty will be deposited.

5. Amendments

Amendments to this Memorandum may be made at any time by an arrangement in writing between the Government of Australia and UNTAET.

6. Duration

This Memorandum shall be applied as of 25 October 1999. It will continue in effect for the duration of the transitional period.

SIGNED at Dili, in triplicate, this tenth day of February 2000.

[Signed:] [Signed:]

JAMES BATLEY

SERGIO VIEIRA DE MELLO

Australian Representative

Transitional Administrator

Head of the Australian Mission in East Timor,

for UNTAET,

for the Government of Australia

acting on behalf of East Timor

[1] ATS 1991 No. 9; Act 1990 No. 36; ILM 29 p. 469.