

**No. 39154. Equatorial Guinea**

~~TREATY BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE REPUBLIC OF EQUATORIAL GUINEA CONCERNING THEIR MARITIME BOUNDARY. MALABO, 23 SEPTEMBER 2000<sup>1</sup>~~

~~PROTOCOL ON IMPLEMENTATION OF ARTICLE 6.2 OF THE TREATY BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE REPUBLIC OF EQUATORIAL GUINEA CONCERNING THEIR MARITIME BOUNDARY (WITH ANNEX). ABUJA, 2 APRIL 2002~~

~~Entry into force : 29 June 2002 by the exchange of instruments of ratification, in accordance with article 14~~

~~Authentic texts : English and Spanish~~

~~Authentic text (annex) : Spanish~~

~~Registration with the Secretariat of the United Nations : Equatorial Guinea, 1 July 2003~~

**No. 39154. Guinée équatoriale et Nigéria**

~~TRAITÉ ENTRE LA RÉPUBLIQUE FÉDÉRALE DU NIGÉRIA ET LA RÉPUBLIQUE DE GUINÉE ÉQUATORIALE RELATIF À LEUR DÉLIMITATION MARITIME. MALABO, 23 SEPTEMBRE 2000<sup>1</sup>~~

~~PROTOCOLE RELATIF À L'APPLICATION DE L'ARTICLE 6.2 DU TRAITÉ ENTRE LA RÉPUBLIQUE FÉDÉRALE DU NIGÉRIA ET LA RÉPUBLIQUE DE GUINÉE ÉQUATORIALE RELATIF À LEUR DÉLIMITATION MARITIME (AVEC ANNEXE). ABUJA, 2 AVRIL 2002~~

~~Entrée en vigueur : 29 juin 2002 par échange des instruments de ratification, conformément à l'article 14~~

~~Textes authentiques : anglais et espagnol~~

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~~Enregistrement auprès du Secrétariat des Nations Unies : Guinée équatoriale, 1er juillet 2003~~

[ ENGLISH TEXT — TEXTE ANGLAIS ]

PROTOCOL IN IMPLEMENTATION OF ARTICLE 6.2 OF THE TREATY BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE REPUBLIC OF EQUATORIAL GUINEA CONCERNING THEIR MARITIME BOUNDARY

The Government of the Federal Republic of Nigeria and the Government of the Republic of Equatorial Guinea,

Desiring to implement Article 6.2 of the Treaty of 23 September 2000 concerning their Maritime Boundary ("the Treaty"),

1. United Nations, *Treaty Series*, Vol. 2205, No. I-39154 — Nations Unies, *Recueil des Traités*, Vol. 2205, no I-39154.

Considering that the area described in Article 6.2 of the Treaty can be developed more efficiently if developed together with a contiguous area lying to the north-west, as a single unit,

Have agreed as follows:

*Article 1*

1. The objective of this Protocol is to facilitate the establishment of appropriate arrangements to enable the area described in Article 6.2 of the Treaty to be developed in a commercially feasible manner, in accordance with the requirements of that Article.

2. For the purpose of this Protocol, unless the context otherwise requires:

(a) "Agreements" mean the present Protocol and the Associated Commercial Agreements.

(b) "Associated Commercial Agreements" mean the following agreements signed on ----- between the representatives of the concession holders for Nigeria's Block 102 and Equatorial Guinea's Block B, and such supplemental agreements as may be approved in accordance with Article 3 of this Protocol:

- (i) Unitisation and Unit Operating Agreement;
- (ii) Crude Processing and Handling Agreement;
- (iii) Ekanga Lifting Agreement; and
- (iv) Marketing Services Agreement.

(c) "Concession" means any lease, license, production sharing contract or other right in respect of either of the areas currently referred to as Equatorial Guinea's Block B and Nigeria's Block 102.

(d) "Concession Group Operator" means, as the case may be, from time to time, the Block B Operator or the Block 102 Operator.

(e) "Concession Holder" means a party to any of the Associated Commercial Agreements, including the Unit Operator, and any successor to or assignee of a current party.

(f) "Installation" means any structure or device installed in, on, or above the seabed within the Unit Area, including pipelines, pursuant to the Agreements.

(g) "Licensing Government" means the Government from which a Concession Holder holds its Concession or, where the Concession Holder concerned is the Unit Operator, the Government of the Republic of Equatorial Guinea.

(h) "Relevant Authorities" mean Equatorial Guinea's Ministry of Mines and Energy and Nigeria's Ministry of Petroleum Resources or their respective successors.

(i) "Unit Area" means the area described and identified in the Schedule to this Protocol and Schedule 1 to the Unitisation and Unit Operating Agreement.

(j) "Unit Operator" means the Concession Holder which acts as the Operator in the Unit Area under the terms of the Associated Commercial Agreements, from time to time.

(k) "Unit Reservoirs" means all reservoirs to the extent that they underlie the Unit Area.

*Article 2*

1. The Government of the Federal Republic of Nigeria and the Government of the Republic of Equatorial Guinea hereby approve the Associated Commercial Agreements and authorize their implementation.

2. The Government of the Federal Republic of Nigeria and the Government of the Republic of Equatorial Guinea shall each ensure that the Concession Holders in respect of which it is the Licensing Government fulfil all of their obligations under the Associated Commercial Agreements.

3. The Government of the Federal Republic of Nigeria and the Government of the Republic of Equatorial Guinea shall ensure that the respective governmental authorities in each country carry out their responsibilities consistent with this Protocol, and that they take no action, which may impede the operation of the Agreements.

4. The Government of the Federal Republic of Nigeria and the Government of the Republic of Equatorial Guinea shall apply their respective national laws consistently with this Protocol.

*Article 3*

1. The Concession Holders may amend or supplement the Associated Commercial Agreements only by means of written supplemental agreements. No such supplemental agreement shall be entered into unless the Relevant Authorities of both Governments have consented thereto in writing. Consequently, the final drafts of all such supplemental agreements shall be submitted to the Relevant Authorities of both Governments prior to the supplemental agreement being entered into, accompanied by a statement prominently indicating that consent shall be deemed to have been given unless notice to the contrary is given within 60 days, as herein provided. Written consent shall be deemed to have been given unless any Concession Holder has been notified to the contrary by either of the Relevant Authorities within 60 days after the date upon which that Relevant Authority receives the draft accompanied by the statement referred to above.

2. Re-determination of the reserves in the Unit Reservoirs (" Re-determination ") shall be carried out consistent with Clause 5 of the Unitisation and Unit Operating Agreement and this paragraph:

(a) If the Concession Group Operators reach agreement on the Re-determination within the 30 days specified in the first sentence of Clause 5.1(b)(vi)(A) of the Unitisation and Unit Operating Agreement, the Concession Group Operators shall refer the agreed Re-determination to both Governments for their review and approval. If neither Government gives notice in writing of an objection to such agreed Re-determination to the other Government and its own Concession Group Operator within 45 days of such referral, the agreed Re-determination shall become effective. If either Government gives notice in writing of an objection to such agreed Re-determination to the other Government and its own Concession Group Operator within 45 days of such referral, the Governments shall continue to seek agreement. If the Governments reach written agreement on the Re-determination within 165 days after the referral to the Governments, the Governments shall give notice of

their agreement to the Concession Group Operators, whereupon such Re-determination shall become effective. If the Governments are unable to reach written agreement on the Re-determination within 165 days of the referral to the Governments, any Concession Group Operator may then refer the matter to an independent expert for an opinion as provided in Clause 5.1(b)(vi)(A) of the Unitisation and Unit Operating Agreement and Schedule 4 thereto.

(b) If the Concession Group Operators are unable to reach agreement on the Re-determination within the 30 days specified in the first sentence of Clause 5.1(b)(vi)(A) of the Unitisation and Unit Operating Agreement, they shall refer the matter to both Governments. If the Governments reach written agreement on the Re-determination within 120 days after the referral to the Governments, the Governments shall give notice of their agreement to the Concession Group Operators, whereupon such Re-determination shall become effective. If the Governments are unable to reach written agreement on the Re-determination within 120 days of the referral to the Governments, any Concession Group Operator may then refer the matter to an independent expert for an opinion as provided in Clause 5.1(b)(vi)(B) of the Unitisation and Unit Operating Agreement and Schedule 4 thereto.

(c) Where the Re-determination is the result of a referral to an independent expert pursuant to sub-paragraphs (a) or (b) above, the opinion of that independent expert shall be binding.

#### *Article 4*

1. In carrying out its duties under the Associated Commercial Agreements within the Unit Area, the Unit Operator shall be subject to and abide by the laws and regulations of the Republic of Equatorial Guinea, and shall not be subject to the laws and regulations of the Federal Republic of Nigeria.

2. The Government of the Republic of Equatorial Guinea shall be responsible for the operations carried out within the Unit Area pursuant to the Agreements and shall ensure that Nigeria's interests relating to the Unit Area are protected.

3. The Government of the Republic of Equatorial Guinea shall consult with the Government of the Federal Republic of Nigeria concerning the location of Installations within the Unit Area.

#### *Article 5*

Without limitation to Article 4 and Article 9 of this Protocol, the Republic of Equatorial Guinea shall be responsible for security of operations and for inspecting Installations within the Unit Area to ensure compliance with applicable safety, environmental, construction and other relevant standards. Without prejudice to paragraph 2 of Article 4 of this Protocol, in the event that inspectors for the Government of the Federal Republic of Nigeria wish to inspect Installations within the Unit Area, the inspectors of the two Governments shall act in cooperation.

*Article 6*

1. Each Concession Holder shall be subject to taxation only by its Licensing Government with regard to all operations conducted pursuant to the Agreements and all benefits derived by a Concession Holder from the Agreements. Taxation will be consistent with the laws of the relevant Licensing Government applicable to the respective Concession Holders.

2. Personnel employed by or under contract to a Concession Holder and engaged in operations carried out pursuant to the Agreements shall, in respect of such operations, be subject to and abide by the laws of the Licensing Government, to the exclusion of any other laws.

3. Goods and materials procured by the Unit Operator for operations within the Unit Area shall be subject only to the customs laws, import duties, levies, taxes, exactions and associated fees of the Republic of Equatorial Guinea, unless such goods and materials are either imported to or exported from the territory or waters of the Federal Republic of Nigeria outside of the Unit Area.

4. Neither Government shall charge or apply any withholding tax, value-added tax or other levy, fee or exaction against a Concession Holder of which the other Government is the Licensing Government with respect to advances, payments, credits and refunds made pursuant to the Agreements.

*Article 7*

The Licensing Government shall ensure that its Concession Holder shall not transfer any of the rights or obligations provided for in the Associated Commercial Agreements without its consent. Before granting its consent, the Licensing Government shall consult with the other Government.

*Article 8*

1. Without prejudice to Article 2 of this Protocol, in the event of the expiration, surrender or revocation of any Concessions, the Licensing Government shall ensure that the objective of this Protocol and the rights of the other Concession Holders under the Associate Commercial Agreements are not affected. In particular, the Government concerned shall take one of the following steps:

(a) issue a new concession in replacement of the Concession which has expired, been surrendered or revoked; or

(b) itself assume the rights and obligations of the Concession Holder under the Associated Commercial Agreements; or

(c) take such other action as the two Governments may agree.

2. Without prejudice to Article 2 of this Protocol, the Licensing Government shall ensure that any new holder of a Concession accepts the terms and conditions of the Associated Commercial Agreements and assumes the rights and obligations of the Concession Holder which it is replacing.

3. In the event of the cessation of activity in accordance with Clause 11.1 (b)(ii) or (iii) or the Crude Processing and Handling Agreement or the termination of any of the Associated Commercial Agreements, the Governments will consult on the best way to ensure that the objective of this Protocol is fulfilled in the light of the circumstances, having regard to the provisions of the Associated Commercial Agreements, the history of operations under those agreements and the potential for exploitation of the remaining reserves in Equatorial Guinea's Block B and the Unit Area.

*Article 9*

Without prejudice to Articles 4 and 5, the Government of the Republic of Equatorial Guinea shall make every endeavour to ensure that operations carried out under the Agreements shall not cause pollution of the marine environment or damage by pollution to the coastline, shore facilities or amenities, or vessels or fishing gear of any country, and shall regularly consult with the Government of the Federal Republic of Nigeria for these purposes.

*Article 10*

1. The Associated Commercial Agreements shall remain confidential and available only to the Concession Holders and to the Governments concerned.

2. All information pertaining to operations under the Agreements shall remain confidential among the Government of the Federal Republic of Nigeria and the Government of the Republic of Equatorial Guinea and the Concession Holders.

3. Each Government shall nevertheless be entitled at any time to make use of information of a general nature for the purpose of preparing summary reports on activities associated with the Agreements. Copies of all such summary reports or statements (including press releases) published by one Government shall be transmitted to the other Government not later than seven days before the date of publication.

*Article 11*

In the event of a national or international emergency, consultations shall be held at the earliest opportunity in order that the two Governments may agree on appropriate measures to reconcile the urgency of the situation with their common interest in the most effective exploitation of the petroleum resources from the Unit Area.

*Article 12*

Any dispute about the interpretation or application of this Protocol shall be resolved by negotiation between the two Governments. In the event of a continuing dispute between the Governments concerning the interpretation or application of this Protocol, the matter shall be referred to the Heads of State for their resolution.

*Article 13*

1. Nothing in this Protocol shall be interpreted as affecting the sovereign rights and jurisdiction which each State has under international law over the waters and seabed and subsoil which appertains to it pursuant to the Treaty except as expressly provided in this Protocol.

2. Nothing in this Protocol shall be interpreted as expanding, prejudicing or restricting the application of the laws of either State or the exercise of jurisdiction by their Courts, except as provided by this Protocol.

3. This Protocol is without prejudice to any other arrangements, which may be necessary to fulfil the purposes of Article 6.1 of the Treaty.

*Article 14*

1. This Protocol is subject to ratification.

2. This Protocol shall enter into force on the date of the exchange of the instruments of ratification, which shall be on or after the date that the Treaty enters into force.

Done in ABUJA on this 2nd day of April 2002, in the English and Spanish languages, both texts being equally authoritative.

H.E. OLUSEGUN OBASANJO, GCFR  
President, Federal Republic of Nigeria

H.E. OBIANG NGUEMA MBASOGO  
President, Republic of Equatorial Guinea