

No. 30235

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
and
NETHERLANDS**

**Agreement relating to the exploitation of the Markham Field
Reservoirs and the offtake of petroleum therefrom (with
annexes and appendix). Signed at The Hague on 26 May
1992**

Authentic text: English and Dutch.

*Registered by the United Kingdom of Great Britain and Northern Ireland
on 30 August 1993.*

**ROYAUME-UNI DE GRANDE BRETAGNE
ET D'IRLANDE DU NORD
et
PAYS-BAS**

**Accord relatif à l'exploitation des gisements de Markham et
au prélèvement des hydrocarbures s'y trouvant (avec
annexes et appendice). Signé à La Haye le 26 mai 1992**

Textes authentiques : anglais et néerlandais.

*Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord
le 30 août 1993.*

AGREEMENT¹ BETWEEN THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND AND THE KINGDOM OF
THE NETHERLANDS RELATING TO THE EXPLOITATION
OF THE MARKHAM FIELD RESERVOIRS AND THE OFFTAKE
OF PETROLEUM THEREFROM

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands,

Considering that the drilling in the Continental Shelf between the United Kingdom and the Kingdom of the Netherlands has proved the existence of gas reservoirs, now named the Markham Field Reservoirs, which extend across the dividing line as defined in the Agreement of 6 October 1965 between the two Governments relating to the delimitation of the Continental Shelf under the North Sea between the two countries;²

Having regard to the Agreement of the same date relating to the exploitation of single geological structures or fields extending across that dividing line under which the two Governments have undertaken to seek agreement as to the manner in which any such structure of field shall be most effectively exploited and the manner in which the costs and proceeds relating thereto shall be apportioned;

Desiring, before production commences, to make provision for the integrated exploitation of the Markham Field Reservoirs and for the regulation of the offtake of production from the Markham Field Reservoirs;

Have agreed as follows:

PART I

DEFINITIONS

ARTICLE 1

For the purposes of this Agreement, unless the context otherwise requires:

- (a) “Development Plan” means the Development Plan approved under Article 7 below, as amended from time to time.
- (b) “Export Pipeline” means the pipeline into which Markham Petroleum is discharged for transmission from the Markham System.
- (c) “Government Redetermination” has the meaning given in Article 6(3) below.
- (d) “Group of Markham Licensees” means all those individuals or bodies corporate, holding for the time being a licence from one of the Governments under which exploration or exploitation of naturally occurring hydrocarbons within a particular part of the Markham Area may be carried out, together with any individual or body

¹ Came into force on 3 March 1993, the date on which the Parties informed each other of the completion of the internal requirements, in accordance with article 25 (1).

² United Nations, *Treaty Series*, vol. 595, p. 113.

corporate appointed by that Government to participate on its behalf in the exploitation of that part. Any reference to a particular Government's Groups of Markham Licensees is a reference to the individuals or bodies corporate holding such a licence or licences from or so appointed by that Government.

- (e) "Initial Determination" means a determination of any of the matters specified in Article 5(1) below which has been approved by the Governments in accordance with Article 5(2) below or which has resulted from the operation of Article 5(3) below.
- (f) "Intrafield Pipeline" means any pipeline, installed or to be installed for the purpose of exploiting the Markham Field Reservoirs, connecting Markham Installations.
- (g) "Leman Sandstone Formation" means the geological formation (known in the Netherlands as the Slochteren Sandstone Formation) of the Lower Permian Rotliegendes Group, typically consisting of sandstones with thin siltstones and shales, which underlies and is, in part, the lateral equivalent of the Silver Pit Formation and which overlies the unconformity at the top of the Carboniferous system.
- (h) "Licensees' Agreement" means any agreement between all Groups of Markham Licensees relating to the exploitation of the Markham Field Reservoirs including any agreement in respect of accounting, operating or other specialised aspects of such exploitation.
- (i) "Licensees' Redetermination" means a review of any of the determinations reached on the matters specified in Article 5(1) below including any such review involving a referral to an independent expert to resolve a dispute in accordance with any Licensees' Agreement.
- (j) "Markham Area" means that area which is within the boundary delineated by lines, as described in Annex I of this Agreement, joining the points defined by the co-ordinates of latitude and longitude set out in that Annex.
- (k) "Markham Field Reservoirs" means—
 - (a) any part of the Leman Sandstone Formation which underlies the Markham Area and—
 - (i) which extends across the dividing line; or
 - (ii) which can be exploited by way of a well for which provision is made in the Development Plan; or
 - (iii) which the Markham Licensees have agreed with the approval of Governments to exploit under Licensees' Agreements;and—
 - (b) any other petroleum-bearing formation—
 - (i) the liquid or gaseous hydrocarbons in which can be proved to be in pressure and phase communication with the liquid or gaseous hydrocarbons in a part of the Leman Sandstone Formation within the scope of paragraph (a) above, and
 - (ii) which can be exploited by way of a well for which provision is made in the Development Plan.

- (l) “Markham Installations” means any structure or device installed or to be installed above, on or under the sea bed, excluding any Intrafield Pipeline and the Export Pipeline, for the purpose of exploiting the Markham Field Reservoirs in accordance with the Development Plan.
- (m) “Markham Licensees” means any individuals or bodies corporate belonging to a Group of Markham Licensees.
- (n) “Markham Petroleum” means, as the context may require, all naturally occurring liquid and gaseous hydrocarbons contained in or produced from the Markham Field Reservoirs.
- (o) “Markham System” means the Markham Installations and any Intrafield Pipeline.
- (p) “Unit Operator” has the meaning given in Article 4 below.

PART II

EXPLOITATION OF THE MARKHAM FIELD RESERVOIRS

ARTICLE 2

- (1) The exploitation of the Markham Field Reservoirs shall be undertaken in an integrated manner in accordance with the terms of this Agreement.
- (2) Each Government shall ensure that the obligations of the Governments contained in this Agreement, with respect to ensuring compliance by the Markham Licensees with the terms of this Agreement, shall be fully observed.

ARTICLE 3

Agreements

- (1) Each Government shall require its Groups of Markham Licensees, as comprised at the date on which this Agreement enters into force, to conclude Licensees’ Agreements to regulate the exploitation, in accordance with this Agreement, of the Markham Field Reservoirs by means of the Markham System.
- (2) Any Licensees’ Agreement shall incorporate provisions to ensure that in the event of a conflict between that Licensees’ Agreement and this Agreement, the terms of this Agreement shall prevail. Any Licensees’ Agreement requires the prior approval of the two Governments.
- (3) Any Licensees’ Agreement shall incorporate, *inter alia*, provisions to ensure that, except in so far as the contrary is expressly stated in that Agreement,—
 - (a) any agreed proposal to amend, modify, or otherwise change the Licensees’ Agreement, and
 - (b) any agreed proposal to waive or depart from any provision of the Licensees’ Agreement

shall require the approval of the two Governments before any such proposal may be implemented. Each Government shall acknowledge receipt of notice of any such proposal and shall specify the date of receipt. Approval shall be deemed to have been given unless the Unit Operator has been notified to the contrary by one or both Governments not later than 45 days after the later of the specified dates.

ARTICLE 4

Unit Operator

A single Markham Licensee shall be appointed by agreement between the Markham Licensees as their agent for the purposes of exploiting the Markham Field Reservoirs in accordance with this Agreement ("the Unit Operator"). The appointment of and any change of the Unit Operator shall be subject to prior approval by both Governments.

ARTICLE 5

Determination and Apportionment of Markham Petroleum

(1) The Unit Operator shall be required to make written submissions, including supporting documentation, to the Governments, at least 45 days before production of Markham Petroleum is scheduled to commence, setting out proposals for the determination of:

- (a) the position and extent of the Markham Field Reservoirs; and
- (b) an apportionment of Markham Petroleum as between the Groups of Markham Licensees calculated in accordance with the formula specified in the relevant Licensees' Agreement under which tract participations are finally determined;

and the Governments shall consult each other with regard to such proposals.

(2) Following such consultation and in any event within 180 days of receipt of any determination proposal, or such shorter period as the Governments may agree in any particular case, each Government shall, on the basis of the information in the Unit Operator's submission, either approve it or notify the Unit Operator and the other Government that it is unable to approve it. In the event that either Government is unable to approve a determination proposal, the Governments shall consult each other and the Unit Operator with a view to reaching agreement on the determination of the matter in question; the Unit Operator may submit alternative proposals for this purpose.

(3) If either Government remains unable to approve a determination proposal within 30 days of the end of the period provided for in paragraph (2) above, a single expert shall be appointed to determine the matter in question. The two Governments shall, within 60 days of any notification under paragraph (2) above, try to reach agreement on the appointment of such an expert. If, within this 60 days period, no agreement has been reached, the procedures specified in paragraph 2(b) and (c) of Annex II of this Agreement shall be followed. The expert appointed shall act in accordance with the terms of Annex II. The two Governments shall facilitate the task of the expert, in particular in the ways specified in Annex II. The expert's decision shall be binding on both Governments and on the Markham Licensees. The two Governments shall ensure that the Unit Operator is promptly notified by the expert of his decision. The decision shall take effect on the first

day of the month following the month in which it is notified to the Unit Operator and shall be implemented in accordance with the relevant Licensees' Agreement as if the data resulting from the expert's decision were inserted within that Agreement.

- (4) If the Governments approve a determination proposal prior to the commencement of production, it shall take effect from the commencement of production. In the event that—
- (a) either Government has notified the other and the Unit Operator under paragraph (2) above that it is unable to approve a determination proposal with respect to a particular matter;
 - (b) any of the matters the subject of a determination proposal has been referred by the Governments to an expert in accordance with paragraph (3) above and the expert has not issued his decision; or
 - (c) the Unit Operator is ready to commence production before the Governments have approved a determination proposal with respect to a matter or either Government has notified that it is unable to approve the proposal,

production shall commence on the basis of the determination proposal for the matter in question. Production shall continue on this basis until the first day of the month following the month in which there is an Initial Determination with respect to that matter.

(5) Where production has commenced on the basis of a determination proposal in accordance with paragraph (4) above, the Initial Determination shall be implemented in such a way that, within a period to be set out in the relevant Licensees' Agreement, Markham Petroleum shall have been received by each Group of Markham Licensees as if the Initial Determination had been applied from the commencement of production.

(6) Each Government shall require each of its Groups of Markham Licensees to use its best efforts to secure that Markham Petroleum is shared among the Groups of Markham Licensees so that the cumulative volume each receives corresponds to the apportionment determined according to the procedures in this Article, as varied by any redetermination under the procedures in Article 6 below, so that at the end of the life of the field, the proportion of Markham Petroleum received by each Group of Markham Licensees corresponds exactly to the determination or redetermination applying at the time. In the event that this result is not achieved, the applicable provisions of the relevant Licensees' Agreement shall have effect.

(7) For the purposes of enabling any Group of Markham Licensees to acquire information on the matters specified in paragraph (1) above, neither Government shall, subject to its laws, withhold a drilling consent requested on behalf of such a Group licensed by the other Government.

ARTICLE 6

Redetermination and Reapportionment of Markham Petroleum

(1) A Licensees' Redetermination may only be undertaken in accordance with the relevant Licensees' Agreement; that Agreement shall incorporate provisions to ensure that both Governments are given notice of the commencement of such a Redetermination and of the outcome; notice of the outcome shall be accompanied by supporting documentation and the Governments shall consult each other with regard to the outcome. Within 180 days

of receiving notice of the outcome of a Licensees' Redetermination (or such shorter period as the Governments may agree in any particular case), each Government shall either approve it or notify the Unit Operator and the other Government that it is unable to approve it. In the event that either Government is unable to give its approval, the Governments shall consult each other and the Unit Operator with a view to reaching agreement on the determination of the matter in question; the Unit Operator may submit alternative proposals for this purpose. If there is no agreement between the Governments within 30 days of the end of the period provided for above, an expert shall be appointed to determine the matter in question. The provisions of Article 5(3) above shall apply in such circumstances as they apply where a Government is unable to approve a determination proposal.

(2) Any Licensees' Agreement which provides for a Licensees' Redetermination shall incorporate provisions to ensure that, where the Governments have agreed to do so and following consultations with the Markham Licensees, both Governments may require the Unit Operator to undertake a Licensees' Redetermination.

(3) Either Government shall have the right to initiate a review (to be known as a "Government Redetermination") of any of the determinations reached on the matters specified in Article 5(1), at the following times:—

(a) at any time after the Initial Determination of the matter in question has been arrived at, but not less than:

(i) two years after

—such Initial Determination has taken effect; or

—a Government Redetermination of the matter in question has taken effect; or

(ii) three years after

—the commencement of a Licensees' Redetermination of the matter in question under paragraph (1) or paragraph (2) above;

(b) at any other time agreed by both Governments.

(4) In deciding whether the Unit Operator shall be required to undertake a Licensees' Redetermination or whether to initiate a Government Redetermination, each Government shall have regard to the desire to minimise the number of redeterminations.

(5) A Government initiating a Government Redetermination shall give the other Government and the Unit Operator due notice thereof by means of a written notification and shall nominate an expert within 90 days of making that notification. If the Government receiving the notification consents to the nomination, the nominee shall be duly appointed as expert. If the Government receiving the notification does not consent to the nomination within 30 days of receiving notice of it or rejects the nomination, the procedures specified in paragraph 2(b) and (c) of Annex II shall be followed.

(6) An expert, appointed to carry out a Government Redetermination, shall act in accordance with the terms of Annex II. The two Governments shall facilitate the task of the expert, in particular in the ways specified in Annex II. The expert's decision shall be binding on both Governments and on the Markham Licensees. The two Governments shall ensure that the Unit Operator is promptly notified by the expert of his decision. The decision shall take effect on the first day of the month following the month in which it was

notified to the Unit Operator and shall be implemented in accordance with the relevant Licensees' Agreement as if the data resulting from the expert's decision were inserted within that Agreement.

ARTICLE 7

Development Plan

(1) Production shall not commence until a development plan for the effective exploitation of the Markham Field Reservoirs, which has been submitted by the Unit Operator and contains a programme and plans agreed in accordance with Licensees' Agreements, has been approved by the two Governments. The two Governments shall ensure that the exploitation of the Markham Field Reservoirs shall be in accordance with the Development Plan.

(2) The Unit Operator may at any time submit, and shall be required at any time if either Government so decides, to submit, proposals to bring up-to-date or otherwise amend the Development Plan. Where a Government requires the Unit Operator to submit proposals, it shall at the same time notify the other Government that it is doing so. All amendments or additions to the Development Plan require the prior approval of both Governments.

(3) The Markham Licensees shall be required not to change the status or function of any Markham Installation in any way except in accordance with an approved amendment to the Development Plan.

ARTICLE 8

Installations

(1) Both Governments shall be informed by the Unit Operator of the exact position of each Markham Installation and shall ensure that no Markham Installation shall be placed within 125 metres of the dividing line except with the agreement of both Governments.

(2) For the purposes of exploiting the Markham Field Reservoirs and subject to the requirements of safety, neither Government shall hinder the free movement of personnel and materials between the Markham Installations and landing facilities on those installations shall be freely available to vessels and aircraft of either State.

ARTICLE 9

Authorisation of Intrafield Pipelines

(1) Each Government, following consultation with the other shall, subject to its laws and this Agreement, grant any necessary authorisation and give any necessary consent for the construction and use of an Intrafield Pipeline, or any part of such a Pipeline.

(2) A copy of any such authorisation or consent by a Government shall be made available to the other Government.

(3) Any such authorisation or consent shall not be altered, modified or revoked by one Government without the prior agreement of the other.

(4) In the event of the expiration, surrender or revocation of any such authorisation or consent, the Government which issued the authorisation or consent shall seek to ensure that the exploitation of the Markham Field Reservoirs is continued in accordance with the terms of this Agreement. In particular, the Government concerned shall use its best efforts to issue a new authorisation or consent in replacement of the one which has terminated and without any interval between the periods of validity of the old and new authorisations or consents or shall take such other action to continue the exploitation of the Markham Field Reservoirs as the two Governments may agree.

ARTICLE 10

Safety of the Markham System

(1) Each Government shall have the right to determine, in accordance with its own laws, the safety measures which are to govern the parts of the Markham System under its jurisdiction as set out in Article 24 below.

(2) Without prejudice to paragraph (1) above, the competent authorities of the two Governments shall consult one another with a view to ensuring that there are appropriate safety measures for the Markham System and the initial part of the Export Pipeline up to and including the first sub-sea isolation valve, and that the Markham System is subject to uniform safety and construction standards.

(3) The competent authorities of the two Governments shall consult each other from time to time in order to review the implementation of the arrangements under this Article.

ARTICLE 11

Markham System Inspectors

(1) Each Government shall take steps to ensure that safety or pollution inspectors appointed by one Government have:

- (a) access, in accordance with the procedure in paragraph 2 below, to any part of the Markham System within the jurisdiction of the other, and to the initial part of the Export Pipeline up to and including the first sub-sea isolation valve, during the time of fabrication as well as subsequently, and
- (b) access to all relevant information including all reports of inspections.

(2) Each Government affirms that it has the sole responsibility for all inspections of the part of the Markham System situated on the Continental Shelf appertaining to it and of the operations carried out in relation to such part, and it is responsible for its own inspectors. Following a request by an inspector of one Government (the “visiting inspector”) to the competent authorities of the other Government (the “host Government”) to visit part of the Markham System under the jurisdiction of the host Government, and the initial part of the Export Pipeline up to and including the first sub-sea isolation valve, the host Government’s Groups of Markham Licensees shall give access to the visiting inspector and his equipment

provided that he is accompanied by an inspector appointed by the host Government. The host Government's Groups of Markham Licensees shall also procure the production of any information requested by the visiting inspector, in order that the visiting inspector may be satisfied that the fundamental interests of his Government in regard to safety or pollution prevention are met. The host Government shall facilitate the task of the visiting inspector to the extent possible under the laws of the country of the host Government.

(3) If, in absence of an inspector of one Government on the part of the Markham System for which that Government has the responsibility for inspection ("Part A"), it appears to an inspector of the other Government on its part of the Markham System ("Part B") that there is in relation to Part A or Part B an imminent danger to the life of a person or of an incident involving serious pollution, that inspector shall immediately inform the persons in charge of Part A and the competent authorities of the responsible Government of the danger. In the absence of an inspector of the Government responsible for Part A, the Markham Licensees shall comply with any orders of an inspector of the other Government in such circumstances.

(4) The competent authorities of the two Governments shall consult with each other to agree practical measures for the implementation of this Article.

ARTICLE 12

Production Licences

(1) Each Government shall give prompt written notification to the other Government of the names of its Markham Licensees on the date on which this Agreement, enters into force.

(2) In the event of the surrender, revocation or expiry of any production licence or any part of such a licence under which exploitation of the Markham Field Reservoirs is proceeding, the Government which issued the licence shall use its best efforts to ensure that the exploitation of the Markham Field Reservoirs is continued in accordance with the terms of this Agreement. In particular the Government concerned shall use its best efforts to issue a licence in replacement of the licence or part thereof which has been surrendered, revoked or has expired and without any interval between the periods of the validity of the old and new licences or shall take such other action to continue the exploitation of the Markham Field Reservoirs as the two Governments may agree. In the event that an interval between periods of validity of the old and new licences is unavoidable, and unless they agree otherwise, the Governments shall use their best efforts to halt production until a new licence is issued.

(3) The Government taking action as described in paragraph (2) above shall seek to procure that the necessary Licensees' Agreements shall be entered into consequent upon the action taken.

(4) Each Government shall require that none of its Markham Licensees either transfers any of the rights granted by virtue of any production licence under which exploitation of the Markham Field Reservoirs is proceeding or grants the like rights to any other individual or body corporate without the prior consent of the licensing Government. Before granting its consent, the licensing Government shall consult with the other Government. Each Government shall give prompt written notification to the other Government of any changes in any of its Groups of Markham Licensees.

ARTICLE 13

Sale of Markham Petroleum

(1) The Governments recognise each other's legitimate interest in securing that Markham Petroleum can be delivered to any purchasers to whom any of its Markham Licensees may have sold it.

(2) The Governments acknowledge that the terms of this Agreement are based upon the understanding that the sale of gaseous hydrocarbons produced from the Markham Field Reservoirs and attributable to the United Kingdom's Groups of Markham Licensees will be completed prior to its discharge into the Export Pipeline. In the event that any of those Markham Licensees seeks to make different arrangements for the sale of such gaseous hydrocarbons, the Governments shall consult one another.

(3) In the event that the consultations under paragraph (2) above indicate that any amendment or supplementary agreement to this Agreement is necessary to provide for the changed circumstances, the two Governments shall negotiate in order to conclude such an amendment or agreement after having sought the views of the Markham Licensees. In order to facilitate such negotiations, the two Governments shall, subject to Article 21 below, exchange any relevant information.

ARTICLE 14

Use of the Markham System for non-Markham operations

(1) The Governments recognise that, subject to paragraphs (2) and (3) below, the exploitation and transmission of petroleum other than Markham Petroleum is a legitimate use of the Markham System.

(2) Either Government shall, on receipt of a request from the Unit Operator for such use of any part of the Markham System within its jurisdiction, consult the other Government with regard to that request. After such consultation, and having consulted the Markham Licensees, either Government will allow such use of any part of the Markham System within its jurisdiction, subject to the laws of the State of that Government, and provided that such use does not adversely affect the effective exploitation of the Markham Field Reservoirs and the transmission of Markham Petroleum in accordance with this Agreement and the Development Plan.

(3) In the event that the consultations under paragraph (2) above indicate that any supplementary agreement to this Agreement is necessary to give effect to paragraph (2), the two Governments shall negotiate in order to conclude such an agreement after having sought the views of the Markham Licensees. In order to facilitate such negotiations, the two Governments shall, subject to Article 21, exchange any relevant information.

(4) Notwithstanding paragraphs (1) to (3) above, neither Government shall permit a use the subject of this Article until the respective tax authorities of the two Governments have reached agreement regarding the taxation of such use.

PART III**Miscellaneous Provisions****ARTICLE 15****Radio Communications**

The regulatory authorities of the two Governments shall consult one another on the licensing and frequency co-ordination which are required in respect of the establishment and operation of equipment for radio communication to be used in connection with the exploitation of the Markham Field Reservoirs and on the control of such equipment.

ARTICLE 16**Measuring Systems**

(1) Before production of Markham Petroleum is scheduled to commence, the Unit Operator shall be required to submit to the Governments for approval proposals for the design, installation and operation of systems for measuring accurately the quantities of gas and liquids comprising, or deemed by subsequent calculation to comprise, Markham Petroleum, which are used in the operation of the field. re-injected, flared, vented or discharged into the Export Pipeline.

(2) Each Government shall facilitate and each of its Groups of Markham Licensees shall procure:

- (a) access to any equipment for Markham Petroleum measurement on any Markham Installation within the jurisdiction of that Government for, and
- (b) the production of relevant information including design and operational details of all systems relevant to the measurement of Markham Petroleum to,

inspectors appointed by the other Government to enable those inspectors to satisfy themselves that the fundamental interests of their Government in regard to measurement of Markham Petroleum are met.

(3) The Government of the Kingdom of the Netherlands shall take steps to ensure that an inspector of the Government of the United Kingdom, who shall be accompanied by an inspector of the Government of the Kingdom of the Netherlands, is given access to the onshore measuring systems for any Markham Petroleum, the sale of which is not completed prior to its discharge into the Export Pipeline.

(4) The two Governments shall seek to agree on the method and frequency of calibration of the measuring systems and each Government shall, at agreed intervals, make available to the other certified production records of Markham Petroleum together with certified records of amounts delivered ashore.

(5) The competent authorities of both Governments shall consult one another to agree on the manner in which the provisions of this Article are implemented.

(6) If the Governments are unable to reach agreement within 90 days of either the submission of proposals (the “submission”) under paragraph (1) above or a proposal by one Government on the method and frequency of calibration (a “proposed calibration”) under paragraph (4) above as appropriate, a single expert shall be appointed to resolve the matters in dispute between the Governments. The two Governments shall, within 90 days of the submission or a proposed calibration, try to reach agreement on the appointment of such an expert. If, within the latter period, no agreement has been reached, the procedure specified in paragraph 2(b) and (c) of Annex II shall be followed. An expert appointed under this paragraph shall act in accordance with the terms of Annex II. The two Governments shall facilitate the task of the expert, in particular in the ways specified in Annex II. The expert’s decision shall be binding on both Governments and shall take effect on the first day of the month following the month in which it was notified to the Governments.

(7) Each Government shall require its Groups of Markham Licensees to ensure that the measuring systems on any Markham Installation are properly installed, operated and maintained, and are calibrated as agreed under paragraph (4) above or determined by an expert under paragraph (6) above, as the case may be.

ARTICLE 17

Environmental Protection

(1) Each Government undertakes to make every endeavour, subject to its laws, to ensure as far as possible that the exploitation of the Markham Field Reservoirs and the use of Markham System shall not cause pollution of the marine or coastal environment, or damage to facilities onshore or offshore, amenities, vessels or fishing gear.

(2) The competent authorities of both Governments shall consult one another on the manner in which the provisions of this Article are to be implemented including the manner of implementation to apply in an emergency.

ARTICLE 18

Taxation and Royalties

(1) Profits, gains and capital in respect of the exploitation of the Markham Field Reservoirs shall be taxed in accordance with the laws of the United Kingdom and the Kingdom of the Netherlands respectively including the Convention for the Avoidance of Double Taxation and Fiscal Evasion signed on 7 November 1980,¹ the Protocol of 12 July 1983² the further Protocol of 24 August 1989² and such further Protocol or Protocols to that Convention and any Convention replacing that Convention as may be signed in the future.

(2) Each Government may only charge royalties and similar dues, including the Netherlands Government share in the net profits of the exploitation of natural resources levied pursuant to the “Mijnwet Continentaal Plat 1965” (the Continental Shelf Mining

¹ United Nations, *Treaty Series*, vol. 1249, p. 209.

² *Ibid.*, vol. 1694, No. A-20388.

Act of 1965), on the share of production of Markham Petroleum to which any of its Markham Licensees is entitled under Licensees' Agreements, notwithstanding the location of the installations from which the Markham Petroleum is produced.

ARTICLE 19

Security Arrangements

(1) The competent security authorities of both Governments shall consult one another with a view to concluding such mutual arrangements in relation to the physical protection of the Markham System as shall seem appropriate to them.

ARTICLE 20

Abandonment

(1) The Governments shall ensure that the abandonment of any or all parts of the Markham System shall be undertaken in accordance with their respective laws, with individual pipelines or installations being abandoned in compliance with the law of the State on whose Continental Shelf they are located.

(2) At least two years before the abandonment of any part of the Markham System is undertaken, including the preliminary removal of any large item of machinery or the decommissioning of any installation or pipeline, the Unit Operator shall be required to submit a revised development plan, in accordance with the provisions of Article 7 above, in respect of the Markham System, which contains a plan for the cessation of production from the Markham Field Reservoirs.

(3) Each Government shall require each of its Groups of Markham Licensees to enter into agreements with the other Groups of Markham Licensees on sharing the costs of discharging the abandonment obligations referred to in paragraph (1) above for the Markham System. Article 3 of this Agreement shall apply to such agreements in the same way as it applies to Licensees' Agreements.

ARTICLE 21

Provision of Information

(1) Both Governments shall ensure a free flow of information between them about matters relating to the exploration or exploitation of the Markham Field Reservoirs by means of the Markham System and any other use of the Markham System.

(2) Any information supplied by one Government to the other under paragraph (1) above shall not be further disclosed by the receiving Government without the prior consent of the supplying Government.

(3) The Governments shall require their respective Markham Licensees to permit representatives of the Governments to attend, as observers, meetings of the Unit Operating Committee or any equivalent body, or any technical sub-committee meeting which all the

Markham Licensees are entitled to attend and to procure that such representatives receive all papers relevant to these meetings.

(4) The Unit Operator shall be required, in any case where a proposal is submitted to the Unit Operating Committee to be voted on and determined by notice in writing rather than at a meeting, to notify both Governments of the proposal at the same time as it is put to the Committee, and subsequently to notify the Governments of the Committee's determination regarding it.

(5) The Unit Operator shall be required to supply to both Governments:

- (a) monthly reports recording details of the progress of the construction or decommissioning of the Markham System and project expenditure and contractual commitments entered into;
- (b) monthly reports of production from the Markham Field Reservoirs and annual production profiles for the remainder of the field life;
- (c) such other reports as the Unit Operator has prepared pursuant to a decision of the Operating Committee or a request by any of the Markham Licensees;

at the same time as such reports are supplied to the Markham Licensees.

ARTICLE 22

Markham Commission

An inter-Governmental commission to be known as the Markham Commission shall be established for the purpose of facilitating the implementation of this Agreement. The Commission shall consist of two joint Chairmen and two joint Secretaries, one Chairman and one Secretary to be nominated by each Government with substitutes as necessary, together with any other persons which either Government considers should be present at any Commission meeting. The functions of the Commission, which shall include that of considering matters referred to it by either or both of the Governments, and its procedures shall be subject to such further arrangements which may be agreed by the two Governments from time to time.

ARTICLE 23

Settlement of Disputes

(1) Any disputes about the interpretation or application of this Agreement, except those to which the experts procedure referred to in Articles 5, 6 and 16 above applies, shall be resolved through the Markham Commission or, failing that, by negotiation between the two Governments.

(2) If any dispute the subject of this Article cannot be resolved in the manner specified in paragraph (1) above or by any other procedure agreed to by the two Governments, the dispute shall be submitted, at the request of either Government, to an Arbitral Tribunal composed as follows:

Each Government shall designate one arbitrator, and the two arbitrators so designated shall elect a third, who shall be the Chairman and who shall not be a national of or

habitually reside in the United Kingdom or in the Kingdom of the Netherlands. If either Government fails to designate an arbitrator within three months of a request to do so, either Government may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within one month of the designation or appointment of the second arbitrator, the third arbitrator has not been elected. The Tribunal shall determine its own procedure, save that all decisions shall be taken, in the absence of unanimity, by majority vote of the members of the Tribunal. The decisions of the Tribunal shall be final and binding upon the two Governments.

ARTICLE 24

Jurisdiction

- (1) Nothing in this Agreement shall be interpreted as affecting the jurisdiction which each State has under international law over the Continental Shelf which appertains to it. In particular, any part of the Markham System located on the Continental Shelf appertaining to the United Kingdom shall be under the jurisdiction of the United Kingdom and any part of the Markham System located on the Continental Shelf appertaining to the Kingdom of the Netherlands shall be under the jurisdiction of the Kingdom of the Netherlands.
- (2) Nothing in this Agreement shall be interpreted as prejudicing or restricting the application of the laws of either State or the exercise of jurisdiction by their Courts, in conformity with international law.

ARTICLE 25

Entry into Force and Duration

- (1) This Agreement shall enter into force on the date on which the two Governments shall have informed each other that all necessary internal requirements have been fulfilled.
- (2) The two Governments may amend or terminate this Agreement at any time by agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at The Hague, this 26th day of May 1992 in the English and Netherlands languages, both texts being equally authoritative.

For the Government
of the United Kingdom of Great Britain
and Northern Ireland:

MICHAEL JENKINS

For the Government
of the Kingdom of the Netherlands:

KOOS ANDRIESEN

ANNEX I

Delineation of Markham Area

The Markham Area is bounded by a line joining, in the sequence shown, the points set out below defined by co-ordinates of latitude and longitude on European Datum (1st Adjustment 1950). That part of the line joining sequentially points 1 to 10 and 17 to 38, and joining point 38 to point 1, is composed of parallels of latitude and meridians of longitude; that part of the line joining sequentially points 10 to 17 is composed of geodesics.

Latitude	Longitude
1) 53° 51' 45"N	02° 48' 00"E
2) 53° 51' 45"N	02° 49' 15"E
3) 53° 52' 15"N	02° 49' 15"E
4) 53° 52' 15"N	02° 50' 00"E
5) 53° 53' 25"N	02° 50' 00"E
6) 53° 53' 25"N	02° 51' 00"E
7) 53° 53' 40"N	02° 51' 00"E
8) 53° 53' 40"N	02° 53' 00"E
9) 53° 53' 20"N	02° 53' 00"E
10) 53° 53' 20"N	02° 53' 30"E
11) 53° 50' 30"N	02° 56' 40"E
12) 53° 50' 00"N	02° 56' 45"E
13) 53° 49' 55"N	02° 57' 15"E
14) 53° 48' 20"N	02° 59' 00"E
15) 53° 47' 15"N	02° 59' 00"E
16) 53° 47' 00"N	02° 57' 00"E
17) 53° 47' 40"N	02° 55' 10"E
18) 53° 47' 40"N	02° 54' 00"E
19) 53° 47' 50"N	02° 54' 00"E
20) 53° 47' 50"N	02° 53' 00"E
21) 53° 48' 10"N	02° 53' 00"E
22) 53° 48' 10"N	02° 52' 00"E
23) 53° 48' 30"N	02° 52' 00"E
24) 53° 48' 30"N	02° 51' 45"E
25) 53° 48' 40"N	02° 51' 45"E
26) 53° 48' 40"N	02° 51' 25"E
27) 53° 48' 50"N	02° 51' 25"E
28) 53° 48' 50"N	02° 51' 00"E
29) 53° 49' 00"N	02° 51' 00"E
30) 53° 49' 00"N	02° 50' 00"E
31) 53° 49' 15"N	02° 50' 00"E
32) 53° 49' 15"N	02° 49' 35"E
33) 53° 49' 30"N	02° 49' 35"E
34) 53° 49' 30"N	02° 49' 00"E
35) 53° 49' 45"N	02° 49' 00"E
36) 53° 49' 45"N	02° 48' 20"E
37) 53° 50' 00"N	02° 48' 20"E
38) 53° 50' 00"N	02° 48' 00"E
1) 53° 51' 45"N	02° 48' 00"E

ANNEX II

Expert Procedure

1. Paragraphs 2 to 4 below shall apply where any matter falls to be determined by an expert appointed by the Governments pursuant to Articles 5, 6 or 16 of this Agreement.
2. (a) The expert shall be chosen by agreement between the two Governments from amongst persons who possess acknowledged expertise in the field and who have no conflict of interest. Immediately before accepting the appointment, the expert shall give the first undertaking set out in the Appendix or such other undertaking as the Governments may agree is appropriate in the circumstances.
- (b) If, by the end of the relevant period specified in Article 5(3), Article 6(5) or Article 16(7) of this Agreement as appropriate, no agreement has been reached over the choice of the expert, each Government shall at that time exchange with the other a list of not more than three independent experts, putting the same in order of preference whereof the first shall have five points the second four points and the third three points. The expert having the greatest number of points from the two lists shall be appointed within 20 days thereafter as the expert to resolve the matter in question. If two or more of the experts named on the lists exchanged by the Governments share the greatest number of points, then within 30 days of the exchange the Governments shall by agreement, or failing that, by lot select which of the experts shall be appointed as the expert to decide the matter in question.
- (c) If the expert to be appointed is unable or unwilling to act, or fails, in the opinion of both Governments, to act within a reasonable period of time to decide the matter in question, then the expert with the greatest number of points among the experts remaining shall be the expert to decide the matter in question. If two or more such experts share the greatest number of points, both Governments shall, by unanimous agreement or by lot, select which expert shall be appointed as the expert to decide the matter in question.
- (d) If a Government fails to respond to any request or notice within the time specified under this Annex II, such Government shall be deemed to have waived its rights in respect thereof under this Annex II, but nevertheless shall be bound by the actions of the other Government in selecting an expert and by the decision of such expert.
- (e) The task of the expert will be to reach an independent determination of whatever matters are in question.
- (f) The expert may engage independent contractors to undertake work which is necessary to enable him to reach a decision, provided that any contractor nominated by the expert for such a purpose is approved by the Governments and gives the second undertaking set out in the Appendix, or such other undertaking as the Governments may agree is appropriate in the circumstances.
- (g) The fees and costs of the expert shall be paid initially by the Government which first—
 - (i) indicated its dissent from the Unit Operator's proposal for a determination, or
 - (ii) initiated the Government Redetermination, or

(iii) disagreed with the submission or the proposed calibration as defined in Article 16(7) of this Agreement.

and shall be recoverable from the Unit Operator. The latter shall be required to use best efforts to reimburse the initial payer, in the case of the Government of the Netherlands within the same calendar year as the payment was made and in the case of the Government of the United Kingdom within the same period of twelve months beginning on 1 April as the payment was made.

3. In the case of a determination for the purposes of Articles 5 or 6 of this Agreement, the expert shall not take into account data other than—

- (a) the data in the Common Data Base, as that term is defined in Licensees' Agreements; and
- (b) such data in the Agreed Data Base, as that term is defined in Licensees' Agreements, as the Governments agree—
 - (i) are both accurate and relevant, and
 - (ii) it is appropriate to take into account.

4. The expert shall follow the procedures specified in the relevant Licensees' Agreement for evaluating and applying the data specified in paragraph 3 above, except in so far as—

- (a) both Governments agree (following a proposal from the expert or otherwise) that he should follow a different procedure; or
- (b) both Governments agree (following a proposal by the expert) that the procedure to be followed should be left to the expert to decide;

provided, however, that the expert shall not be entitled to depart from the formula specified in Licensees' Agreements under which tract participations are finally determined.

5. (a) The expert shall only meet with a Government jointly with the other Government. All communications between the Governments and the expert outside such meetings shall be conducted in writing, and a person making any such communication shall at the same time send a copy of it to the other Government.

(b) A Government may be assisted by any of its Markham Licensees.

6. (a) The expert shall issue a preliminary decision within a period of 90 days (or such other period as the Government may decide) commencing from the date the expert who is selected agrees to act as such. The preliminary decision shall be accompanied by such supporting documentation as is necessary for the Governments to make a reasoned assessment thereof. Each Government shall have the right, within 90 days of receipt of the expert's preliminary decision, to seek clarification of that decision and the supporting documentation, request the expert to review his preliminary decision and to make submissions to the expert for his consideration. The other Government in the event of such request and further submission shall, within a period of 15 days after receipt of a copy of the other Government's submissions, have the right to make further submissions. The expert shall issue his final decision on the matter in question no later than 140 days from the date of issuance of his preliminary decision.

(b) The expert shall consider all communications and submissions made by Governments before giving a decision.

- (c) In his final decision, which shall be in writing, the expert shall give fully detailed reasons therefor, and such decision shall be final and binding on both Governments save in the event of fraud or manifest error.
7. Each Government shall require its Groups of Markham Licensees to co-operate fully in supplying the information specified in paragraph 3 above and otherwise in facilitating any Government Redetermination.
8. The Governments shall require the expert and any independent contractor engaged by him to give an undertaking to safeguard the confidentiality of any information supplied to him.

APPENDIX

MODEL CONFLICT OF INTEREST UNDERTAKINGS

1. [Name of company acting as expert] hereby warrants that it has not performed since [date], and will not perform during the course of its resolution of the matters in question, any work for either the Government of the United Kingdom or the Government of the Kingdom of the Netherlands, or any Markham Licensee, which could influence its performance of, or conflict with its duties in relation to its resolution of the aforesaid matters in question. In particular, it warrants that it has undertaken no work relating to the Markham Field Reservoirs or the Markham Installations for any of the Markham Licensees within the last two years.

2. [Name of contractor] hereby warrants that it has not performed since [date], and will not perform during the period for which it has been engaged by [name of company acting as expert] in connection with the Markham Treaty, any work for either the Government of the United Kingdom or the Government of the Kingdom of the Netherlands, or any Markham Licensee, which could influence its performance of, or conflict with its duties under its contract with [name of company acting as expert]. In particular, it warrants that it has undertaken no work relating to the Markham Field Reservoirs or the Markham Installations for any of the Markham Licensees within the last two years.
