COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: Australia-Indonesia Maritime Delimitation Treaty

CANBERRA

Tuesday, 2 September 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

Senator Abetz	Mr Adams
Senator Bourne	Mr Bartlett
Senator Coonan	Mr Laurie Ferguson
Senator Cooney	Mr Hardgrave
Senator Murphy	Mr McClelland
Senator Neal	Mr Tony Smith
Senator O'Chee	Mr Truss
	Mr Tuckey

For inquiry into and report on:

Australia-Indonesia Maritime Delimitation Treaty.

WITNESSES

JOINT STANDING COMMITTEE ON TREATIES

Australia-Indonesia Maritime Delimitation Treaty

CANBERRA

Tuesday, 2 September 1997

Present

Mr Taylor (Chairman)

Senator Abetz	Mr Bartlett
	Mr Laurie Ferguson
	Mr McClelland
	Mr Tony Smith

The committee met at 8.56 a.m.

Mr Taylor took the chair

MURPHY, Mr Brian, Manager, Maritime Boundaries Program, Australian Surveying and Land Information Group, Scrivener Building, Dunlop Court, Fern Hill Park, Bruce, Australian Capital Territory

SYMONDS, Mr Philip Alexander, Principal Research Scientist, Petroleum and Marine Division, Project Manager, Law of the Sea Project, Australian Geological Survey Organisation, GPO Box 378, Canberra, Australian Capital Territory

CAMPBELL, Mr William McFadyen, First Assistant Secretary, Office of International Law, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory

BIGGS, Mr Ian David Grainge, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade, Casey Building, John McEwen Crescent, Barton, Australian Capital Territory

BIRD, Ms Gillian Elizabeth, First Assistant Secretary, International Organisations and Legal Division, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen, Crescent, Barton, Australian Capital Territory

COX, Mr Allaster Edward, Director, Indonesia Section, Department of Foreign Affairs and Trade, John McEwen Crescent, Barton, Australian Capital Territory

POLSON, Mr Gregory, Director, Sea Law and Ocean Policy Group, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory

SERDY, Mr Andrew Leslie, Desk Officer, Sea Law and Ocean Policy Group, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory

SMITH, Mr Peter Roley, Director, Legislation and Environment Section, Exploration and Development Branch, Petroleum and Fisheries Division, Department of Primary Industries and Energy, Edmund Barton Building, Kings Avenue, Barton, Australian Capital Territory

WARNER, Commander Robin Margaret Fraser, Director of International Law, Department of Defence, Russell Offices, Australian Capital Territory

GLEESON, Mr Leonard Matthew, Senior Operations Officer, Monitoring and Compliance Section, Australian Fisheries Management Authority, 28 National Circuit, Forrest, Australian Capital Territory

ROHAN, Mr Geoffrey Vincent, General Manager Operations, Australian Fisheries Management Authority, 28 National Circuit, Forrest, Australian Capital Territory

NAYLOR, Mr Peter Charles, National Manager, Coastwatch, Australian Customs Service, 5 Constitution Avenue, Canberra, Australian Capital Territory

VAN WANROOY, Mr Michael, Assistant Director, Border Legislation, Border Management Division, Australian Customs Service, 5 Constitution Avenue, Canberra, Australian Capital Territory

CHAIRMAN—The committee welcomes the opportunity to take evidence on this Australia-Indonesia Maritime Delimitation Treaty. The inquiry was advertised last weekend in the *Weekend Australian*, the *West Australian* and the *Northern Territory News*. At this stage, we plan to take evidence in Perth for half a day on 15 September and in Darwin on 8 October. The next Canberra hearing is scheduled for Monday, 22 September. Further hearings will depend on the level of interest in the treaty. We did have one predictable comment this morning—I just digress slightly—from an East Timor group. No doubt we will cover some of that this morning.

I have written to the Minister for Foreign Affairs and the Attorney-General indicating that we will not meet the 15 sitting day rule in relation to this. It is the only one of the treaties tabled on 26 August for which that will not be possible—for obvious reasons.We intend to report on this agreement at the end of November. We will be interested to hear how that links in with the proposed Indonesian ratification of the treaty. Gillian, would you like to make an opening statement?

Ms Bird—Thank you, Mr Chairman. This treaty is obviously a very important document marking the successful culmination of over 25 years of negotiations which began in the late 1960s. It is evidence of the good relations that we have fostered with one of our most important neighbours. It highlights the importance the government attaches to its relations with Indonesia and exemplifies the way in which we are able to work together to resolve issues of common interest and achieve productive outcomes.

The treaty finalises the maritime boundaries between our two countries in those areas which were not covered by existing treaties. The three boundaries finalised by the treaty are, firstly, the exclusive economic zone—EEZ—and seabed boundary between Christmas Island and Java; secondly, the western extension of the seabed boundary between continental Australia and Indonesia; and, finally, the EEZ boundary between continental Australia and Indonesia. The boundaries delimitated by this treaty stretch over approximately 3,000 kilometres.

The treaty is of great significance to Australia for two reasons. Firstly, it provides economic benefits both to us and to Indonesia. It settles the seabed jurisdiction between our countries, thereby providing a firm basis for the exploration and exploitation of the natural resources of the seabed in a climate of confidence and certainty. Similarly, the

finalisation of the EEZ water column boundary between our two countries provides a clear foundation for the future management of fisheries resources. The settlement of both boundaries also provides a basis for protection of the marine environment.

Secondly, this treaty is a further boost to our broader bilateral relations. The cooperative approach we have both taken to resolve these issues of common interest and to achieve productive outcomes demonstrates the strength of our relationship with Indonesia. In addition, the finalisation of our maritime boundaries with Indonesia eliminates uncertainty with respect to sovereign rights over these areas and thereby contributes to the security of our broader region.

The boundaries in the treaty were negotiated as a package and represent a very good outcome for Australia. This has been welcomed by the resources industry and the relevant state and territory governments whose interests were represented in the negotiations by the Western Australian Solicitor-General.

I would like to make the following specific brief comments in respect of each of the three boundaries. Firstly, with regard to the Java-Christmas Island boundary, the boundary between Christmas Island and Java is a weighted median boundary, reflecting in part the different coastal lengths of the two islands.

Secondly, with regard to the EEZ water column boundary between Indonesia and continental Australia, the EEZ boundary follows the provisional fisheries surveillance and enforcement line, PFSEL, which was agreed to in 1981. Given that this agreement has been in place for this period, it would have been difficult, if not impossible, to get Indonesia to agree to adjust this boundary. However, Australia sought two important changes in its favour before it would accept the PFSEL as the water column boundary.

We obtained a 24 nautical mile boundary around Ashmore Islands in place of the 12 nautical mile boundary in the PFSEL. We also obtained an extension of the EEZ boundary westwards to the point where the Australian and Indonesian EEZ claims meet the high seas; that is, Indonesia recognises as being under Australian water column jurisdiction an area which it formerly maintained was part of the high seas. This is set out in map 3, annexed to the treaty.

Thirdly, I refer to the extension of the seabed boundary west of the 1972 boundary. The fact that a separate seabed boundary was negotiated is in Australia's interest, since any combined boundary could only have been further south.

The treaty does not prejudice Australia's position with regard to the Timor Gap Treaty, which is to last 40 years, and any negotiation of a final seabed boundary in the Timor Gap.

To bring the committee fully up to date with the latest developments, I should also

note that since the tabling of the treaty, the Portuguese Embassy in Canberra has lodged a protest note against Australia's signature of it in so far as it establishes an exclusive economic zone boundary in the Timor Gap, arguing that Indonesia has no right to make treaties in respect of East Timor because Portugal remains the administering power. We have not yet replied formally to the note, but we have told the Portuguese charge that Australia does not accept the arguments put forward in it.

CHAIRMAN—In terms of Indonesian ratification, you mentioned a strengthening of the bilateral relationship. Is there likely to be any opposition within the Indonesian parliamentary setting to this treaty?

Ms Bird—I perhaps could start by giving a bit of information that we have about the Indonesian ratification process, and then maybe seek some additional comment. The Indonesian parliament must approve the treaty before it is ratified, and the new Indonesian parliament will not assume office until October. We understand from Indonesian officials that the treaty is likely to be submitted to the new Indonesian parliament around February-March next year—that is the information we have at this stage—and it is likely to take at least six months in the parliament. That is the information on where the ratification process is at.

CHAIRMAN—So our proposal at this stage to table the appropriate report at the end of November is going to be somewhat in advance of the suggested ratification by the Indonesians.

Ms Bird—Yes, that is right.

Resolved:

That the letter from the East Timor Relief Association dated 1 September 1997 be accepted into evidence.

CHAIRMAN—I want to read into the evidence part of the letter from the East Timor Relief Association dated 1 September. I quote:

A brief perusal of the papers suggests that the Marine Delimitation Treaty does indeed hold consequences for East Timor. At the core of our future submission will be the argument that Australia has no legal right to make treaties with Indonesia over the maritime rights of East Timor.

That point was made by Gillian. The letter continues:

We remind the Joint Standing Committee that East Timor remains a United Nations scheduled Non-Self Governing Territory, due for decolonisation. The United Nations has repeatedly condemned Indonesia's invasion of East Timor and its continued illegal military occupation of the territory. The Maritime Delimitation Treaty apparently purports to operate according to international law; we urge the Joint Standing Committee to consider the contradiction between this position and signing treaties with the illegal occupier of East Timor to divide up rights it does not have.

Bill, did you want to make a short comment on that?

Mr Campbell—I did actually want to make an opening statement myself, but perhaps I will answer the question which you have raised first. As you may know, we have held a number of consultations with interested groups between the signing of the treaty and the tabling of the treaty. Among the interested groups with which we held consultations were the East Timorese interest groups in Darwin. I am not sure whether the group you have referred to was represented there.

CHAIRMAN—This address is Fairfield in New South Wales.

Mr Campbell—The same points were made there. In response, we would state that Australia recognises Indonesia as the sovereign power over East Timor, albeit that it did state in the case before the International Court of Justice that it still recognised that there was a right of self-determination by the East Timorese people.

In that particular case that went before the International Court of Justice, the court also noted that the fact that it was a non-self-governing territory under a United Nations mandate did not mean that other countries could not deal with Indonesia or make treaties with Indonesia in relation to various matters. The court also noted that not only Australia had made treaties with Indonesia; other countries had done so, and they had not specifically precluded the application of those treaties to East Timor.

In short, the Australian government would say that we have every right to make this treaty with Indonesia, as we did with the Timor Gap Treaty, and that is fundamentally the response that we have made.

CHAIRMAN—Okay. Would you like to make your opening statement? Does any other department want to make an opening statement?

Mr Campbell—I have one more point about the East Timorese comment. As a practical matter, the boundary, which is negotiated under this treaty between East Timor and Australia, unlike the Timor Gap Treaty, is located at the point of equidistance between East Timor and Australia. It is not located to the north of the equidistance line. I think that would be a relevant factor in any sort of subsequent challenge to the treaty.

The Attorney-General's Department, as with some other organisations, was represented at each round of the negotiations or consultations which led to the treaty. There was a need perceived by both countries for this treaty to be negotiated against the background of the relevant international legal principles, as reflected in the decisions of international courts and tribunals and also the practice of countries in delimiting their boundaries.

In this respect, both Australia and Indonesia are parties to the 1982 United Nations

Convention on the Law of the Sea. Articles 74 and 83 of UNCLOS provide for the delimitation of maritime boundaries, both in relation to the exclusive economic zone and, in particular, the water column aspects of that zone and the continental shelf. They provide that the delimitation 'shall be affected 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'. In our view, those principles have been applied in the negotiation of this treaty and the solution which is achieved is one which is equitable for both parties. However, this is something which I am sure the committee will make its own judgment on.

This treaty carries on the tradition in Australian maritime boundary delimitation of providing innovative solutions in order to reach an agreed boundary. Other treaties in this tradition are the Torres Strait treaty with Papua New Guinea and the previous Timor Gap Treaty with Indonesia. The innovative aspect in this treaty is the creation of areas of overlapping jurisdiction. These are areas in which Australia will exercise seabed jurisdiction, including jurisdiction over oil and gas reserves and Indonesia will exercise jurisdiction in the water column, including jurisdiction over the fisheries resources.

There is at least one precedent for these areas of overlapping jurisdiction and that is the area known as the Top Hat, close to the Papua New Guinea coastline under the Torres Strait treaty. But the areas of overlapping jurisdiction under this treaty are far more extensive. Also, as pointed out by Dr Stuart Kaye in a recent article published in the May-June edition of *Maritime Studies*, on page 28, while unusual in international practice, the adoption of different boundaries for the seabed and water column in the same area is contemplated by the International Court of Justice in the Gulf of Maine case. That case is reported at 1984 ICJ reports—the International Court of Justice reports—at page 246.

I should also add that there was almost an inevitability to the adoption of areas of overlapping jurisdiction, at least in those areas adjacent to the 1971 and 1972 seabed boundaries with Indonesia. The 1971 and 1972 seabed agreements were negotiated at a time when the concept of an exclusive economic zone was unknown at international law. They were negotiated on the basis of a country's continental shelf extending to the natural prolongation of its land area.

On this basis, Australia achieved a continental shelf boundary which was relatively close to the Indonesian coastline. On the other hand, the exclusive economic zone, which became accepted in international law in the late 1970s to early 1980s, is based on a distance criterion. That is a maximum of 200 nautical miles and not on natural prolongation. Therefore, Indonesia would not have accepted the 1971 and 1972 boundaries for the purposes of the delimitation of the water column nor was it in Australia's interests to move the existing 1971 and 1972 seabed lines south in order to achieve a single boundary for the seabed and water column, as this would have lost significant areas of seabed jurisdiction. This meant, almost of necessity, that the boundaries would be different for the seabed and water column and that there would be an area of overlapping

jurisdiction.

Article 7 of the treaty sets out certain principles for dealing with those areas of overlapping jurisdiction. Under that article, Australia will have sovereign rights to the resources of the seabed and Indonesia will have sovereign rights to the resources of the water column.

However, there has been some criticism that the areas of overlap have not been dealt with adequately in the treaty. That criticism is contained in a draft article—I am not sure whether the committee has a copy of it or not—by Mr Max Herriman and Professor Martin Tsamenyi, both of whom at the time were located at the Centre for Maritime Policy at the University of Wollongong. Since the draft that I saw was written, Professor Tsamenyi has moved to the Forum Fisheries Agency in Honiara. In their view, the treaty will allow Indonesia to have some degree of control over petroleum and gas installations in the water column being used by Australia for the purposes of exploring and exploiting the oil and gas reserves on the continental shelf in the areas of overlap.

We have considered the arguments put forward by the authors and had a meeting with them, courtesy of the Australian Petroleum Production and Exploration Association. At the meeting it would be fair to say that we disagreed with the view put forward by Mr Herriman and Professor Tsamenyi, and that we continue to do so. Without going into our response in detail, the treaty requires both parties to give due notice of the placement of installations in the area of overlap. However, it is a requirement of notice, it is not a requirement for permission. That is, Australia will be required to give due notice to Indonesia of the placement of petroleum installations in the area of overlap, but it will not require the permission of Indonesia for the placement of those installations.

There may well be occasions when, by reason of Indonesian concerns over, for example, fisheries rights, it will seek consultation with Australia about the placement of an installation. If there is a problem, then this could be resolved in those consultations. However, in the end the exploitation of seabed resources of the continental shelf in the area of overlap will be a matter for Australia to decide.

Consultations were held with interested parties after the treaty was signed and before it was tabled in the parliament. Those consultations were partly in the nature of information sessions, but also to receive criticisms and comments. They were held in Melbourne, Canberra, Perth and Darwin. Some of the comments that were made in the course of those consultations undoubtedly will be raised during the committee's hearings in Perth and Darwin and here in Canberra.

A number of queries were made about how the areas of overlapping jurisdiction would operate in practice. Concerns were expressed by the fishing industry about illegal Indonesian fishing, though it must be said that this treaty was not intended to deal with this issue. The fishing industry also mentioned the question of access in terms of fishing

to areas north of the PFSEL. The East Timorese interest groups objected to the treaty as a whole on the basis that it was negotiated with Indonesia and not with the East Timorese people. Furthermore, some concerns were expressed in Perth with the location of the boundary between Christmas Island and Java.

In closing, I would not like to leave you with the impression that the comments received in the course of the consultations were all negative. Many positive comments were made about the treaty and the benefits it will bring to Australia. I would like to end where I began by saying that in our view the treaty is an equitable solution for both parties.

CHAIRMAN—Just on the consultation process, you have talked about the normal SCOT procedures. The governments concerned are principally Western Australia and the Northern Territory, and to a lesser extent Queensland which is at the eastern end of it. What about some of the non-government organisations? You talked about the petroleum producers association. Even at a departmental level, there are some ramifications for the Department of the Environment, aren't there?

Mr Campbell—It has ramifications because as a consequence of this treaty there will be petroleum exploration and exploitation, and there are environmental aspects to that. Also, the Department of the Environment is very interested in the area surrounding the Ashmore Islands because the Ashmore Islands are a nature reserve. I also mention the issue of Hibernia Reef, which is to the north-east of Ashmore Islands, where we previously only had seabed jurisdiction, but under this treaty we will have both seabed and water column jurisdiction which will enhance the environmental protection of Hibernia Reef.

But, in terms of the consultations I was talking about, a wide range of groups were invited to each of the consultations. My understanding is that at least some of the consultations included environmental groups, including major groups like the Australian Conservation Foundation and other ones. Whether they actually turned up or not is another question, but certainly there was an invitation to a wide range of groups to come along to these consultations.

CHAIRMAN—Did those NGO consultations include the more political ones, like the East Timorese group?

Mr Campbell—Absolutely, Mr Chairman.

CHAIRMAN—So they were invited.

Mr Campbell—Particularly in Darwin. We had a separate meeting with the East Timorese interest groups in Darwin, and that was set up before we actually went there. I cannot say that we came away ad idem out of that meeting. I do not think I would be

stretching it to say that I think they appreciated having the information which we gave them about the treaty, but they still disagreed with Indonesia's right to negotiate the treaty.

CHAIRMAN—It is basically the colonialisation thing.

Mr BARTLETT—Ms Bird, in your introductory comments you said that this represented a very good outcome for Australia. Was that unanimous from the point of view of the other bodies—the fishing industry, resource and petroleum companies and so on? Were there any that did not agree that it was a very good outcome?

Ms Bird—We have had some general feedback from a number of organisations. The Department of Primary Industries and Energy has been in particularly close touch with APPEA, the Australian petroleum association. Feedback, I understand, has generally been positive. Greg, are there any specific comments you would like to relay from the feedback?

Mr Polson—No. Bill and I were together in Darwin and Perth at the consultations. With the exception of the East Timor groups, of course, we were impressed with the very generally positive nature of returns. In some cases the fishermen had their own particular concerns, not related directly to the treaty, but about illegal fishing.

The petroleum industry were well represented in both Perth and Darwin and they gave very positive reaction to that. Peter Smith from DPIE would say we were struck by the fact that industry groups were generally positive.

Mr BARTLETT—Were there any indications when they might begin exploration or exploiting resources as a result of this treaty?

Mr Campbell—Peter Smith might know. Some of the areas of seabed that were negotiated under the 1971-72 treaty, where we have now negotiated a water column over that seabed, were already being exploited and are being exploited.

Mr Smith—All the areas to the east of Ashmore Islands are already permitted for exploration. The Laminaria development, which is very much in the area of overlap and is very close to the seabed boundary, is expected to be producing oil within 12 months. We will be actively considering release of areas further to the west of that after ratification of the treaty, but we would not propose to do it before ratification. There is exploration taking place south of the water column boundary to the west of Ashmore.

Mr TONY SMITH—First of all, I picked up a comment, but I have not read the full report, by a Western Australian cartographer who described the treaty as overgenerous to the Indonesians. I have no particulars.

Mr Campbell—I think the Western Australian geographer you are referring to is

Vivian Forbes, who is now at the University of Western Australia. I think I mentioned in my opening remarks that there had been some criticism of the location of the boundary between Christmas Island and Java. That was his principal point. He felt that the boundary between Christmas Island and Java was located too close to Christmas Island and should have been more towards the midpoint between Christmas Island and Java.

He mentioned that, in his view, there was a distinct seabed feature there, located more towards the midpoint. It was our view that there was no distinct seabed feature that could actually be used as a justification for extending the boundary outwards. He may disagree with this, but I am not sure that he was taking into account all of the international law on the issue. As I have mentioned, the international law on the issue is that where you have a very small island of one country located next to the much longer coastline of another country, if the issue went to a court or tribunal the line would be drawn much closer to the smaller island. In my judgment, had we gone to an international court or tribunal I am not sure that we would have achieved a line any better than that that was achieved under the agreement with Indonesia. Others may differ on that.

We have had other indications from people that they regard that boundary as being reasonable. Quite early on, Professor Victor Prescott, the geographer, thought that boundary was quite reasonable. He went on to speculate in an article as to why it was located at that particular point and he noted that, basically, Australia received one-third of the relevant area and Indonesia received two-thirds of the relevant area, and I think he thought that was a fair thing, given the geographic circumstances.

Mr TONY SMITH—Is there an article by Victor Prescott or just some evidence?

Mr Campbell—There is a draft article by Professor Prescott, but I am not sure that it has been published yet. The committee might well want to contact Professor Prescott.

Mr TONY SMITH—There was a comment you made before, Bill, that I may have misunderstood. I think you said—and it was a point I was trying to get to myself—that the boundary was in effect equidistant between Timor and Australia, so that if one was to put us back before 1975, and assume all other things being equal, it is the best that we could do.

Mr Campbell—The boundary in question is the water column exclusive economic zone boundary between that part of Indonesia which is the province of East Timor and Australia. I have to say that in 1975, if the date you are referring to is the Indonesian takeover of East Timor, there was no such thing at that time as an exclusive economic zone known in international law.

Mr TONY SMITH—Sure.

Mr Campbell—What I am saying is that if a negotiation had been held with a country other than Indonesia, or with other interest groups, they could not have expected to achieve a better boundary than was achieved in this treaty, because in that particular area it is the point of equidistance between the two land masses.

Mr TONY SMITH—You actually said, I thought, 'not north'. Do you mean south?

Mr Campbell—I am saying that Australian jurisdiction does not extend north of that line in terms of equidistance. This is slightly different from the Timor Gap Treaty which provided for a joint development zone in area A, which is the larger area in the middle to the north of that point of equidistance. I suppose what I am saying is that there would be even less reason for a challenge to be made against this treaty than there would be for the other treaty, because the other treaty gave Australia a say in the development of the seabed to the north of that point of equidistance.

Mr TONY SMITH—You mentioned the East Timor groups that you had discussions with not being terribly happy. First of all, did you have a discussion with Mr Horta?

Mr Campbell—I can only speak for my department, but I was not involved in any discussions with Mr Horta about this treaty.

Mr TONY SMITH—You say East Timor 'groups'. How do you determine the representation?

Mr Campbell—I have got to say that my understanding is that there are different groups in relation to representing East Timorese interests. As has been pointed out to me, there are groups in Sydney, there are groups in Melbourne, there are groups in Darwin. Maybe I can ask Mr Polson to comment on this, but when we went to Darwin—which is the centre for East Timorese groups, in one sense—we invited the relevant groups along. Perhaps Mr Polson would like to comment.

Mr Polson—I might flick it on to Mr Cox. We used the Darwin office of DFAT, who are in good contact with the relevant groups. As I understand, there were two distinct groups invited, one headed by Mr Rob Wesley-Smith and one by Dr Juan Federer. Perhaps Allaster can clarify that one. They were both invited.

Mr Cox—There is a large number of East Timor support groups throughout Australia, particularly in Darwin, Melbourne and Sydney. I think our approach was to put out information that the team was going to seek their views through those places, particularly in Darwin, and they were invited to put their views to us. So we were not prescriptive about which people representing East Timor should come to us; we invited them to put their views. At no time have we been prescriptive about whom we should pick

to discuss this treaty with. There are a number of East Timor groups and we have gone out, particularly in Darwin, to invite their views.

Mr TONY SMITH—Have you had discussions with any representatives of the Portuguese government?

Mr Campbell—Not over the negotiation of this treaty, other than on Friday when they presented the protest note. But, to be honest, they could not be expected to agree with the views.

Mr TONY SMITH—Can you give me any details as to why Australia has not accepted the Portuguese government's argument? I think you summarised their argument. Are there any details as to why Australia has not accepted it?

Mr Campbell—The details of the arguments of the Australian government are, I suppose, summarised in the submissions which it made in the case before the International Court of Justice. The simple fact of the matter is that Australia recognises the sovereignty of the Indonesian government over East Timor. Therefore, it recognises that that is the country which it should negotiate a maritime boundary treaty with. Likewise, as I said, in the case before the International Court of Justice it accepted that the East Timorese people had a right to self-determination.

CHAIRMAN—Who appeared before the ICJ on Australia's behalf?

Mr Campbell—In this particular case the team was led by the Solicitor-General, Dr Gavan Griffith. It included Henry Burmester, Chief General Counsel in the Attorney-General's Department; Professor Crawford, Professor of International Law at the University of Cambridge; Professor Bowett, a very eminent international—

CHAIRMAN—My question perhaps would be: do you think it is appropriate or desirable that this committee talks at least to the Solicitor-General on this one, given that background? The Portuguese counterclaim has obviously got to feature in our report, I would think, in terms of some of the issues.

Mr Campbell—In relation to this issue of the counterclaim by Portugal: firstly, the counterclaim is not accepted by the Australian government; secondly, we certainly do not believe that, were Portugal to take a case to the International Court of Justice, it would be any more likely to succeed in that case than it was in the other case. In fact, it would probably be less likely. The fundamental reason is that, in the case which was taken before, the court held that it could not hear the Portuguese arguments in the absence of an essential party to the case, which was Indonesia. Indonesia did not accept the jurisdiction of the court and it still does not accept the jurisdiction of the court.

CHAIRMAN—At the very least, is it possible to have a copy of the Australian

submission?

Mr Campbell—Absolutely.

CHAIRMAN—At least a summary.

Mr Campbell—The submissions of both sides are summarised by the court in their actual judgment. They do quite a good summary.

CHAIRMAN—Do we have a copy of that?

Mr Campbell—I can get you a copy of the case. But that summarises the position of both parties. If you wanted to discuss the issue in more detail, I am happy to raise it with the Solicitor-General or another person who would be equally available, which would be Henry Burmester, who appeared in the case as well.

Mr Polson—Mr Chairman, I was present when the Portuguese Charge called on Friday. They did indicate that they were going to circulate their protest to the United Nations Secretary-General with the request that it be distributed to all member states. We, of course, will be preparing a considered and detailed reply to the Portuguese, also for circulation within the United Nations system. I am sure both those documents would be able to be passed across for the committee's consideration.

Ms Bird—It is a fairly standard procedure to have documents circulated at the UN.

CHAIRMAN—In terms of the shaded area in map 5—a question for Defence and Customs—does that have any additional patrol requirements or any cost implications, budgetary implications for either or both departments?

Mr Naylor—The short answer is 'marginal'. The shaded area to the west of the Ashmore Islands may, at the behest of our clients, in the main of AFMA, require us to patrol with our aircraft in that area more frequently than we currently do. There will be a marginal increase in the consumption of fuel and time. In terms of response, I think the ADF are here.

Cmdr Warner—I would probably have to take that on notice, because it is an operational question. But I certainly will find out.

CHAIRMAN—Okay. The other question is a technical one—and, of course, I am not a lawyer. We hear this term 'hot pursuit'. Can 'hot pursuit' be pursued in the shaded area?

Mr Campbell—You are asking whether there can be hot pursuit in that area?

CHAIRMAN—Yes.

Mr Campbell—In respect of when we exercise continental shelf jurisdiction, if somebody breached a law that we had in place there relating to our continental shelf jurisdiction, we could 'hot pursue' them over that area.

CHAIRMAN—Into that shaded area?

Mr Campbell—Sorry, hot pursue into the shaded area, yes.

CHAIRMAN—Bill, I think we had better get on the record some of what you said in the briefing in terms of the Hedberg Line and the unique situation for determining this. You made some reference in your opening statement; perhaps we had better get a bit more detail on the record at this point.

Mr Campbell—Under international law, a country is entitled, under the 1982 United Nations Convention on the Law of the Sea, to claim a continental shelf out to a distance of at least 200 nautical miles. That is irrespective of whether it has a physical continental shelf beyond that point or up to that point or not. But beyond that point, if it has a physical or geomorphological shelf which extends beyond the 200 nautical mile limit, it can claim an extended continental shelf beyond 200 nautical miles.

There is quite a complex formula under article 76 of the Law of the Sea Convention about how far that claim to beyond 200 nautical miles can extend. But in relation to the treaty negotiated with Indonesia it was most relevant to the westernmost part of the western extension of the seabed boundary between points A82 and A79. The line between those two points represents, under the Law of the Sea Convention, what is known as the Hedberg Line, which is a point to which Australia is allowed to extend. The Hedberg Line is a line which, under the Law of the Sea Convention, is drawn 60 nautical miles beyond the foot of the continental slope, which is a physical point on the continental shelf. I do not know whether you wish me to take that any further.

CHAIRMAN—I think that is enough at this stage. We have got those, anyhow. We might, depending on what we hear from other witnesses, have to come back to you—even if we get a written exposition on this.

Mr Campbell—I think there are some existing diagrams which might assist the committee on this, which Mr Phil Symonds from AGSO, the Australian Geological Survey Organisation, might be able to provide to the committee. The diagram is about the Hedberg Line.

Mr Symonds—I can show you diagrams that show the geomorphological situation and where the foot-of-slope points lie, from which the 60 nautical mile Hedberg line was measured.

CHAIRMAN—Perhaps you could take that on notice and give it to us. We will have a look at it and, depending on what is in it, we might have to take some further evidence on that. At this stage, that is about all we can really do.

One thing that I was not aware of this morning is that maybe we do not have to press the accelerator quite as much as I originally thought—bearing in mind the Indonesian side of the ratification. I would like to get it into the parliament certainly before we get up for Christmas. But bearing in mind that I am likely to be away on 22 and 26 September, which is when we had two dates tentatively planned for the Indonesian hearings, we might need to talk about that.

I do not want to hold up people unduly this morning. I apologise for cutting it off. What we might do, unless anybody has any pressing questions this morning, is adjourn the committee until a date to be determined later in the month. We might ask you to come back again. If we could have some of these follow-up pieces of paper from Defence, et cetera, it might give us a better steer for where we are heading here in Canberra.

We did have a spare day on Friday, 26 September. That was a spare day for Sydney-Melbourne, wasn't it? We might have to look at that. I do not know what other submissions we have had from East Timorese groups. I think that was the only one we have had from them. There was a general complaint in that, which I did not read out, that we have not given them enough time. We have to give them time. We can correct that misconception once we meet with them. But we do need to make quite sure that, in our consultation process, we give them every possibility to give evidence and make their points, et cetera. So I think we might adjourn.

Resolved (on motion by Mr Tony Smith):

That this committee authorises publication of the evidence given before it at public hearing this day.

Committee adjourned at 9.44 a.m.