COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

(Subcommittee)

Reference: Australia-Indonesia Maritime Delimitation Treaty

PERTH

Monday, 15 September 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

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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

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JOINT STANDING COMMITTEE ON TREATIES

(Subcommittee)

Australia-Indonesia Maritime Delimitation Treaty

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Monday, 15 September 1997

Present

Mr Taylor (Chairman)

Mr McClelland Mr Tony Smith

The subcommittee met at 12.31 p.m.

Mr Taylor took the chair.

MEADOWS, Mr Robert John, QC, Solicitor General, Government of Western Australia, Level 14, Westralia Square, 141 St Georges Terrace, Perth, Western Australia 6000

CHAIRMAN—I declare open this Joint Standing Committee on Treaties, and welcome Mr Robert Meadows. We do not have a written submission from you, but in a moment I will ask you to make an opening statement. Before I do that, I would like to put on the record that this is a very important agreement for both countries. It has taken a long time to get to the stage that it has with signature, and it is one of a series of treaties that were tabled in the House the week before last.

I have already indicated to both the Attorney-General and the Minister for Foreign Affairs that we would not meet the 15 sitting day rule in terms of our report to the parliament, and that is generally accepted from time to time. This is one where we need to move out and listen to what people are saying about it. It does, and I suspect will, generate some emotion in some quarters. We nevertheless intend to report to the parliament later this year, and the Minister for Foreign Affairs has indicated that the government would not move to formal ratification until such time as this committee reports.

We understand that the Indonesian parliament, bearing in mind that there is an election in the offing, will not be considering the ratification process from their end until some time next year. We do have a little bit of time but, nevertheless, our intention is to report to the parliament before it gets up for Christmas.

This is the first hearing outside of Canberra. We have had some preliminary hearings with departmental officials, and next month we will be travelling to Darwin. It is yet to be confirmed, but we may be going to Christmas Island for a quick visit and to explore some of the issues around that area. We will also need to hold a further hearing of officials and non-government organisations in Canberra before we finally wrap up, draft the report and report to the parliament.

We appreciate the attendance today of a number of people, not the least Mr Meadows, and we look forward to taking evidence from all of you in the lead-up to our recommendations to the parliament. With that short opening statement, Mr Meadows, would you like to make some comments.

Mr Meadows—Thank you for allowing me to appear before the committee today. Essentially my involvement, and the involvement of the Solicitor General of Western Australia, in the Australian delegation was to represent the interests of the states and territories. Of course, in the context of these negotiations, that meant Western Australia and the Northern Territory. Initially, that representation was provided by my predecessor, Mr Kevin Parker QC, who is now Mr Justice Parker of the Supreme Court of Western Australia. He was appointed to the bench in December 1994, and I have filled the position

on the delegation since that time.

As I understand it, the reason for having the Solicitor General of the state as the representative was the complex legal issues which were involved in the negotiations. I am pleased to say that an appropriate level of consultation on the part of the Commonwealth existed at all times during the negotiations, and I was fully informed and involved in the negotiation process.

As I have indicated, my role was principally to provide some legal input into the negotiations. However, it was also part of my function to consult with relevant departments and agencies of the state regarding the progress of the negotiations. As part of that process, I reported on a confidential basis to the Ministry of the Premier and Cabinet, the Department of Minerals and Energy, the Fisheries Department and others following each round of the negotiations. When necessary, I also sought the advice of those departments prior to attending meetings of the delegation, and prior to the meetings of the negotiating teams.

The new seabed boundary will require some minor amendments to the Seas (Submerged Lands) Act and the division of administrative responsibilities under that act amongst the states and territories. As to the latter, this will involve an adjustment to what is known as the 'WA Adjacent Area' under which WA will lose an area but will be compensated by gaining another area which has been secured as a result of the negotiations. The Northern Territory will also lose part of its adjacent area.

However, these changes do not have any significant implications for either Western Australia or the Northern Territory. In my view, there is no reason for them to be unhappy with the outcome. Indeed, as I think the committee will be aware, the state government has supported the reaching of this agreement, and the signing ceremony took place in the Premier's suite last November.

Having regard to the United Nations Convention on the Law of the Sea and the relevant principles of international law which were applicable, in my view, the outcome of the negotiations as embodied in the treaty is an equitable one and a very satisfactory one for Australia.

No doubt the committee has been briefed on the resources implications flowing from the treaty. In that context, it needs to be remembered that, whilst those implications were an important consideration, they could not take precedence over the convention or the relevant principles of international law which governed the negotiations. Nevertheless, it is my understanding that, in terms of prospectivity, the outcome which was reached is one with which Australia should be well pleased.

In conclusion, I would like to pay particular tribute to Mr Tony Vincent, who was the leader of the delegation in the important and final phases. There is no doubt in my

mind that his diplomacy and negotiating skills were a major factor in achieving such a satisfactory outcome for Australia.

CHAIRMAN—Thank you very much. On the issue of the resource implications, we will not be getting into that today. As you quite rightly point out—and implicit in what you were saying—a lot of that is commercial-in-confidence. Yes, the committee does have some background information on that, but we will not be exploring it in any detail today.

I suppose the first question we should ask you is whether you feel that the negotiations that took place involving state and territory organisations and your experience in WA with non-government organisations were satisfactory. Was the situation optimal, satisfactory or less than satisfactory?

Mr Meadows—Vis-a-vis the Commonwealth and the members of the negotiating team, I think they were highly satisfactory. I thought that the people who represented the Commonwealth on the negotiating team were all very high calibre people and particularly knowledgeable in their area. They were very helpful to me and, as I think I indicated in my opening statement, I regarded myself as a fully fledged member of the negotiating team, fully informed and fully involved. As for non-government organisations, I did not see it as part of my function as the representative of the states and the territories to play a particular role in ascertaining their views. I saw myself there as representing the states and territories' interests.

CHAIRMAN—This is groundbreaking stuff within the UNCLOS umbrella. Did you foresee any difficulties in relation to the seabed-cum-water situation—the overlapping areas?

Mr Meadows—Obviously during the negotiations that was a matter of some interest to us. Speaking for myself, the provisions of the treaty do provide a mechanism for dealing with those situations as they arise. I do not envisage any real difficulty in that area in practical terms. It is easy enough to think of some theoretical problems that might arise but, in practical terms, it is unlikely to lead to any difficulty.

CHAIRMAN—Going back to your comments about your role as the coordinator of state and territory views in this, is that extended to indigenous rights in terms of fishing and all the rest of it? On that particular one, are you satisfied that they were picked up satisfactorily?

Mr Meadows—Certainly through the Commonwealth; the Commonwealth was fully apprised of all of the various claims to traditional fishing rights in the area and they were certainly in the minds of everybody during those negotiations.

Mr McCLELLAND—My question is a general one: what is the major benefit to Australia of the treaty and what will be the consequences for Australia if the treaty is not

ratified and things are left as they are?

Mr Meadows—The major benefit is certainty in that the boundaries are now delineated. That means that, in areas which were previously areas of uncertainty as to who had the rights in the area, that uncertainty has been resolved. In oil and gas exploration, for example, there are large areas of the seabed which have not been touched because of the uncertainty and now those areas can be opened up for exploration and development if some resources are found there.

Mr McCLELLAND—I suppose, if Australia does not ratify the treaty, those areas of uncertainty, potential conflict and perhaps inaction would remain. Is that the case?

Mr Meadows—That is so. Many areas of potential development would be left idle. In terms of fisheries, what we have seen largely is a confirmation of the arrangements that have been in place but not formalised for a number of years.

Mr TONY SMITH—Were there any representatives from East Timor involved in the discussions?

Mr Meadows—It is possible that a member of the Indonesian party had a connection with East Timor, but not so far as I am aware.

Mr TONY SMITH—At all material times I take it that it was accepted, in relation to the negotiations, that Indonesia was speaking for the indigenous East Timorese with respect to any delineation of boundary off Timor?

Mr Meadows—Quite frankly, because the area of the seabed that was being discussed was quite some distance from Timor, the issue did not really present itself so far as the seabed boundary was concerned. With the confirmation of the water column boundary, I suppose East Timor did become a consideration but, given the location of that line, it really would not have mattered what sovereignty was negotiating that line because, basically, that is where it had to be.

CHAIRMAN—Going back to the Timor Gap element of the boundary, ratifying this treaty still leaves that gap to be looked at in the future, doesn't it?

Mr Meadows—The Timor Gap Treaty was effectively confirmed in the preamble to this treaty.

CHAIRMAN—In terms of Christmas Island and the initial claims by Indonesia of the 200 nautical miles—the EEZ approach which would have brought it back to about 12 nautical miles—how do you see the compromise working? What was the discussion on that one with the Indonesians? They took the predictable line I suppose to start off with and they came back, but did they come back quickly or did it take some—

Mr Meadows—That was the last matter negotiated, and it was quite a complex negotiation, particularly from a legal standpoint. As you have rightly observed, the initial position taken by the Indonesians was that there should be simply a 12 mile radius. It took some persuading to bring them around to accepting that we should have something other than that. The median type approach, which was ultimately adopted, was achieved as a result of some pretty tough negotiation.

As for the point on the line, where initially you would have to say the Indonesians were quite intractable, it was only as a result of developing arguments based on the Jan Mayen case that we were able to persuade the Indonesians that an outcome such as that which was finally reached was an appropriate one under international law.

CHAIRMAN—What about the national reef and the traditional fishing area? Is that one that is still to be tested?

Mr Meadows—You are talking about the memorandum of understanding. The treaty effectively confirms the continuance of the memorandum of understanding, but that clearly is an area that is going to have to be the subject of further negotiations over time. People from our Fisheries Department will say something about what they believe should happen in the future about coordinating arrangements between the two countries.

It is fair to say that persuading the Indonesians that the Ashmore Islands were significant islands in terms of international law was a major achievement of the Australian negotiating team. Until a visit was made to the island by the Indonesian delegation—

CHAIRMAN—They did not accept that.

Mr Meadows—No, and I would say that without that visit we would still be negotiating today.

CHAIRMAN—But it all came down to water on one of the islands.

Mr Meadows—An acceptance by the Indonesians that one of the islands was habitable.

Mr McCLELLAND—It had a golf course, didn't it?

Mr Meadows—I do not think it has grass greens though.

CHAIRMAN—Going back to Tony Smith's question about East Timor—in fact we have got a copy of the International Court of Justice judgment on that—when we get to Darwin we will predictably find a view of some elements of the East Timorese community in Darwin. Is that something that is very clear to you? Is that judgment unequivocal?

Mr Meadows—Yes.

CHAIRMAN—I have one other technical question. I am not a lawyer but the other two are. It gets into the area of hot pursuit. With respect to that shaded area—the new overlapping area—in international law is Australia, with its patrolling mechanisms, able to go into that shaded area in hot pursuit?

Mr Meadows—Yes, unquestionably. If you were in hot pursuit, there would be no question about it.

CHAIRMAN—I think that is about it. As there are no further questions, thank you very much for appearing before us today. Before we start with the next witness, is there anybody here who wants to appear as a private witness at the end? We left a segment at the end for that purpose. If there is anyone, could the committee secretary be made aware of that. We are scheduled to hear from other interested individuals at 3 p.m.

[12.53 p.m.]

LOOBY, Mr John, Manager, Central Support Services, Fisheries Department of Western Australia, 168-170 St Georges Terrace, Perth, Western Australia 6000

SARTI, Mr Neil, Manager, Compliance Programs, Fisheries Department of Western Australia, 7 Ellam Street, Victoria Park, Western Australia 6100

MASON, Mr William Frederick, Manager, Legislation and Titles, Petroleum Operations Division, Department of Minerals and Energy, 100 Plain Street, Perth, Western Australia 6000

TEEDE, Mr Allan Richard, Manager, Policy Branch, Department of Minerals and Energy, 100 Plain Street, East Perth, Western Australia 6004

CHAIRMAN—Welcome. Would you like to make an opening statement?

Mr Looby—Mr Sarti and I represent the Fisheries Department of Western Australia. We come here from two key aspects. We are the service providers for the Australian Fisheries Management Authority in respect to surveillance, monitoring and control activities for fisheries in the Australian AFZ. We operate a budget of approximately $1 million, but we have overexpended by about $½ million for the last three years. We maintain a specialist group of eight Fisheries officers—three in Broome and five in Fremantle—for operations in the Australian AFZ.

We are basically a compliance service. However, we also operate across the North West Shelf, Christmas Island, Cocos Island, out of Fremantle, Tasmania and on the east coast of New South Wales. Our prime functions are incursions by Indonesian fishing boats into the North West Shelf and management of Japanese southern bluefin tuna fishing. We are averaging approximately 40 to 60 apprehensions of foreign fishing boats per year. There is seasonal activity, and they go up and down with various peaks.

We have been active since 1972. We have considerable experience from the implementation of the AFZ right through to the current day. Part of our input into this group would be some comments about Australia undertaking international treaty obligations under UNCLOS and, indeed, the resourcing and planning for those.

The second point is that Western Australia, under the OCS arrangements, has basic responsibility out to the edge of the 200-mile fishing zone for most fin fish and crustaceans. The only areas left under Commonwealth responsibility are foreign fishing, southern bluefin tuna, some northern shark and northern deepwater fishing and some northern prawn fishing.

Western Australian fishing boats are now operating on the Indonesian-Australian

borders. We have trap boats operating from Broome and also boats licensed in Western Australia coming out of Darwin and operating right into those border areas. Of course, the Commonwealth still retains responsibility for foreign fishing. As a compliance group, we would support the clarification of these boundaries, so our position is that we support the ratification.

CHAIRMAN—Mr Sarti, did you not appear before the inquiry on the convention on southern bluefin tuna?

Mr Sarti—No, I did not.

CHAIRMAN—I thought your face was familiar. I was wrong. Would anyone else like to make an opening statement? Would you like to make a separate one?

Mr Teede—Yes, there is a separate one.

CHAIRMAN—Go ahead, and we will do the two opening statements.

Mr Teede—From the Department of Minerals and Energy's point of view, we were involved throughout the negotiation process of the treaty through consultation with the Solicitor General on any points that may have impacted on our area of operations. From our perspective, we are part of a joint authority with the Commonwealth which administers the Commonwealth offshore areas from Western Australia's petroleum and mineral resources. We perform the administration of these areas on behalf of the joint authority. Any dealings between the joint authority and Indonesia are the responsibility of the Commonwealth. Western Australia is not involved, but we are informed through the joint authority.

Administration of our responsibility has not varied significantly through the treaty. The requirement to inform Indonesia of the issuing of titles is not expected to create delays as it should be able to occur in parallel with existing titles processes. There are a couple of areas—special prospecting authorities and scientific investigation authorities—which have the potential to be affected, depending on circumstances. These authorities can be required at short notice to take account of any expedient availability of ships, et cetera. The requirement for a three-month notification might cause some delay, but we would expect it to be infrequent.

Industry has been advised of all the changes to the requirements and should be able to make any necessary arrangements. All existing operators will continue to operate through the current processes of the joint authority, which continues to have exclusive rights to regulate the areas. So, basically, we are very happy with both the way the negotiations have been relayed to the department and the outcome.

CHAIRMAN—What about the consultation with non-government organisations in

each of the two areas? I suppose the Department of Minerals and Energy has covered that, but what about the Fisheries Department?

Mr Sarti—In terms of Fisheries, we have had some contact with Indonesian non-government organisations. We are regularly in contact with a group called Operation Wallacea. This is a non-government arrangement in the eastern archipelago, south-east Sulawesi, which is funded by some Asian banks. They are trying to develop some marine park options and to set up some value added fisheries back in Indonesia in order to try to deter Indonesian fishermen coming down to the Australian zone. That would have the effect of reducing some of the fishing pressure in the area of overlap and on either side. But that is the only Indonesian group that we have had any contact with.

CHAIRMAN—What about Australian groups?

Mr Sarti—With respect to Australian groups, through our actual management process in Western Australia, we have management advisory committees on which commercial fishing industry members sit and into which they have input. I believe that those groups have been made aware of the ongoing negotiations with respect to this issue. Again, I know of no broadscale involvement of, say, recreational fishermen across the community because the overlap, of course, is well offshore generally and that is not an area where they would be specifically affected.

CHAIRMAN—Has Minerals and Energy had consultations with Australian NGOs or both?

Mr Mason—No, it has only been with Australian operators. The department has a liaison group with industry and they were briefed on the treaty negotiations as they occurred from time to time.

CHAIRMAN—Both departments have seen no problems? There are no problems as a result of what is proposed?

Mr Sarti—I think, in terms of the Fisheries Department of Western Australia, that this treaty has added jurisdictional clarity to the situation, and that is obviously a significant advantage. We each know where we stand in terms of lines on the water. The other broader issues of what happens in the overlap area need to be negotiated into the future.

CHAIRMAN—As you go along. Perhaps what we should do is very quickly address each of the six areas—just talk to them very briefly—to make the points that you want to about that summary.

Mr Sarti—Picking up on the point of jurisdictional clarity, as I said, we see that as being a positive. It really formalises what was in place before with the provisional

fisheries surveillance and enforcement line. The MOU area is still in place, so nothing has changed there.

Under an offshore constitutional settlement arrangement we have with the Commonwealth, basically Western Australia is responsible for most of the fisheries management in that part of the world. As John Looby alluded to earlier, there are a number of fisheries which are still under full Commonwealth management. But, for those that are under state management, it clarifies for the Western Australian government its management responsibilities now that that line has been settled. However, it also brings up the point, with respect to the overlap, that there clearly needs to be a good degree of cooperation not only between Australia and Indonesia in relation to the management resources but also between the Northern Territory government and the Western Australia government and that former group because at the end of the day you have got a lot of lines on the water and fishermen sometimes do not recognise those lines.

CHAIRMAN—So you are saying with that one that Indonesia, Australia, Western Australia and the Northern Territory, as participants, are going to have to sit down as a group and work your way through the zone of fisheries cooperation. Is that what you are saying?

Mr Sarti—Yes. Already there is the overarching treaty and we have a fisheries cooperation agreement between Indonesia and Australia. But, practically, when you are talking about individual stocks of fish, we have to get down to that kind of level and have some good cooperative discussion on how we manage those stocks.

It also brings up the point of the MOU area, which falls within our management of the fisheries' stocks regime in Western Australia. We are responsible for managing the stock, but we have a situation with the MOU area where we have unconstrained effort occurring. We have no control over the number of fishermen that may come to that area and the extent of their fishing operations. So it makes it quite difficult to manage the stock under that scenario. So, again, I believe that there needs to be some further negotiation between Australia and Indonesia over how we manage the stocks in the MOU area, and that is something that I think will occur in the future.

I suppose nothing much has changed except for formalisation of the line, and the threats from unconstrained fishing will continue. I believe Indonesian fishermen will continue to come down into the Australian sector to fish. That is a problem which is not going to go away and, in fact, it may very well increase. Australia needs to be mindful of that and ensure that the resources we have are adequate to control that activity. We have been quite fortunate to contain it to the extent that we have so far. We are not just talking about fisheries of course; we are talking about quarantinable diseases, health aspects, immigration, drug interdiction—a whole range of issues. We need to be mindful that we have the resources to deal with those issues.

Mr Looby—The next two are my hobbyhorses and are probably a bit broader than this inquiry. We see Australia entering into a whole range of maritime treaties under UNCLOS: we have the Indian Ocean Treaty, CCAMLR and so on. At a high management level, the question is: when we enter into these treaties, is the planning and resourcing being adequately thought about in terms of the implementation and what sits behind them?

The first point I will talk to is the type of budgeting. The department has continually found that it is on a short-term budget of an annual contract. We are expending probably $1.6 million a year. We maintain a very specialised and highly trained staff, yet we find that each year we are battling to understand whether to continue the service or not. In a state where the departments are on a very tight cost recovery budget, it is a problem and a challenge for us to project ahead and maintain staff interest in an area when they do not know from year to year whether they are going to continue their employment.

We would say that the budget situation needs to be addressed if Western Australia is to continue to provide this service into the AFZ which, of course, is actually the implementation of these treaties. There are now demands in the Indian Ocean treaty in straddling stocks and in CCAMLR in the Antarctic waters for us to pick up our involvement there. The current arrangements are not suitable for us to continue.

CHAIRMAN—On that point, no doubt you are making strong representations to Premier Court, are you?

Mr Looby—We have been making representations through our minister and through the Commonwealth minister.

CHAIRMAN—It is a state-Commonwealth thing.

Mr Looby—Yes. But I think it is an important issue in terms of treaties that, if you are going to have these offshore treaties protecting the marine environment, you must have the people to do it. I am not sure that maintaining expertise and developing the level you need can continue under the present arrangements.

The other issue which is of particular concern to us in regard to international offshore obligations is the phasing out of the Fremantle class patrol boats, which are really at the end of their lives. They are on an upkeep program at the moment. They are phasing out the number of available sea days to actually apprehend incursions into the Australian fishing zone. There seems to be no planning to replace these vessels with something that will continue to do the job. It will create a significant gap in us providing the service in the future.

That is the opposite to what has happened with the Coastwatch arrangement where we now have very highly sophisticated aircraft that can detect incursions. The question is:

how are we going to respond in the future to actually apprehend those vessels?

CHAIRMAN—I guess it depends on the final capability of OPV. It may well be that its capability enhances what the Fremantle class boats already have.

Mr Looby—We would say that that is definitely not the case. We would say that the issue is not of a bigger but a smaller number of boats—a more efficient warfare vessel as opposed to smaller patrol vessels.

CHAIRMAN—If it is not OPVs, maybe a heli—

Mr Looby—It is not the heli capacity we need; it is the capacity to actually apprehend and bring the boats to port. Coastwatch is already providing adequate aerial detection. Apprehending and processing of the vessels is going to be the problem. I suppose it brings us down to the fact that Australia needs to think about having some 200-mile offshore patrol capability. Maybe we need to think about whether they need to be fully equipped vessels for warfare or, slightly back from that, not necessarily having the same watertight integrity, communications and weapons systems. We are now seeing more sophisticated, larger vessels coming in to fish in the Australian fishing zone.

As fishing stocks decline around the world, more pressure will come onto us. To respond to that appropriately, we will probably need patrol craft that can service that need. I would say that we would be looking in the order of 20 or so. A small OPC program will not match that, plus the navy will actually want to use those in warfare exercises and will not necessarily be available.

We do note that the Australian Customs Service is looking at building some patrol boats around 30 metres. Our preferred option would be that slightly bigger vessels be built and that they be commissioned into the navy. The navy has a command control structure and, indeed, the expertise because they are already doing the work for us with the Fremantles. The vessels probably do not need to be fully equipped as fighting ships, and this would go a long way to addressing the shortfall in this area.

CHAIRMAN—Thank you for expanding on that.

Mr McCLELLAND—Aside from the resourcing views, will the treaty actually enhance or detract from Australia's surveillance and compliance capabilities?

Mr Sarti—I do not think it will substantially change things. Again, we still have this problem in the middle with the overlap, which is a real, practical problem from our point of view in patrolling the area, because you are talking about a water column situation versus a sedentary seabed situation. You have really got to determine what the person is fishing for, and that can be fairly difficult unless you actually get on board, as to whose jurisdiction is it. And that has not changed from having the old PFSEL lines. So

not much has really changed in that context.

Mr McCLELLAND—Are there any other leftover issues that are still to be negotiated or which can be continued or furthered as part of this treaty arrangement?

Mr Sarti—With respect to Christmas Island, there has been a significant advantage there, because it has clearly delineated the line and it is probably more policeable from our point of view. I think the only unresolved areas will be the MOU area and getting a much more negotiated arrangement in terms of practical, day-to-day fisheries management and allocation of resources within the overlap zone.

Mr TONY SMITH—Is there a credible argument supporting any suggestion that the treaty will give comfort to Indonesian fishermen who wish to flout, transgress and incur?

Mr Sarti—Again, I do not think anything has substantially changed. If we did not have the treaty you would be faced with the same kinds of problems in the future anyhow. Indonesian fishermen are grasping new technologies and increasing their fishing capability. Indonesia, in its own right, is pushing more fisheries development. So there is going to be an increase in activity by Indonesian fishermen. The lines have not substantially changed; their status has been made more clear. So I do not really see that much has changed from a fisheries compliance point of view.

Mr TONY SMITH—The Fremantle class patrol boats are not that old, are they?

Mr Sarti—I think the oldest one is 15 to 20 years old, so they are getting on in terms of their serviceable life.

Mr TONY SMITH—But the Attack patrol boats were built in 1967—I went out on sea trials on the first one—so allowing 15 years for those and 15 years for Fremantle—

Mr Sarti—They are a different kind of vessel. With respect to the A boats—the Attack class patrol boats—they have been pushed well beyond their use-by date.

Mr TONY SMITH—They are smaller than the Fremantle, aren't they?

Mr Sarti—Yes.

Mr TONY SMITH—Your comments on that really concern me. Have patrols wound down already because of this mothballing?

Mr Looby—The position is that there is about 1,800 days of patrol boat time in the program. Of course, as they get older, there is wear and tear, they break down more often and they are less frequently available. But what you are seeing is an increase in

Indonesian fishing technology and a different class of boat. From the early 1970s, they were generally just traditional sailing boats. Come the late 1970s-early 1980s, we started to see a few motorised boats but mainly still traditional class boats with low fishing power. If you look at, say, the last lot of vessels that got taken into Darwin just recently, they are fully-fledged commercial fishing boats as, indeed, any commercial fisherman in Western Australia would understand a commercial operation.

We are seeing a change of boat. We are not seeing any decline in traditional activity. We are actually seeing an increase in demand on our resources, and I think we will see them everywhere rather than just on the North West Shelf. As better vessels become available, you will probably start seeing them appearing off Exmouth and other parts of Australia as well. It is an issue that we are particularly concerned with. The viability of these boats will become less, and there seems to be nothing on the horizon to replace them. It is of particular concern to us that, another five years down the road, there will be a serious shortfall in the gap. We will be able to cover the aerial surveillance, but actually apprehending and bringing them back will be a concern.

One of the big problems, of course, is the expense of arresting a boat on a two-hundred mile fishing zone boundary and bringing it back. You need adequate resources to do that. But we also have problems to address with respect to Cocos and Christmas Islands which are significant problems in their own right in arresting and bringing vessels back from there.

Mr TONY SMITH—I suppose it lessens the deterrent aspect too if you cannot seize these boats and have them forfeited to the Crown.

Mr Looby—That is our precise experience. In the early 1970s we found that, with the trochus fishery into King Sound where there were Indonesian boats, for every one that got away it probably generated another 10 because a year's income could probably be derived from one trip. They were highly expeditionary in their nature, but if they got away with it they were highly successful.

Mr TONY SMITH—While the treaty is recognised as quite important to Australia, do you see it very much resting on a foundation that it will work well provided that there is goodwill on both sides?

Mr Sarti—Now that the treaty has been established, I think it gives you firmer ground to argue the line of, 'Look, we can't do this by ourselves and you have certain responsibilities and we have certain responsibilities.' It gives you that, and maybe that was a bit unclear before.

Mr TONY SMITH—Lastly, in relation to the seabed resources and so forth, will the certainty that has been created by the treaty allow greater exploration capacity in undertakings to be furthered?

Mr Sarti—From Fisheries' perspective, it probably does not change.

Mr Mason—From the petroleum exploration point of view, it certainly will, because these areas are released by way of an invitation. We have not been inviting applications for petroleum titles in these areas simply because the seabed boundary was uncertain. We had a situation prior to the zone of cooperation being established where titles were granted in the area and they had to be retracted over a period of time. So this gives us a lot of certainty and the ability to grant titles in that area.

CHAIRMAN—How soon after the ratification would we see something substantive?

Mr Mason—It really depends upon the circumstance. There is quite an increase in the number of titles being granted each year. It depends a lot on prospectivity. We do not release areas that we do not consider are going to attract any bids. So it depends upon the information that we have available at the time and a broad mix around the country of what exploration areas are available. We do not necessarily think that releasing a whole lot of areas at the one time is perhaps the best way to go because it detracts from individual areas. Over a period of time it would be more of a structured approach. I do not think that we would be going out as soon as the treaty is ratified and saying, 'Yes, we are going to advertise these areas.'

CHAIRMAN—What about the environmental implications of all that? Are there new procedures which have got to be put in place in terms of the environmental dimension to the new areas?

Mr Mason—I should put it on record that petroleum exploration and development operations are extremely environmentally friendly. You did not see the tongue in my cheek, did you?

CHAIRMAN—I saw that. As I said before, we do not want to, nor should we, get into resource potential on the open record. But we are getting some background papers to that to give us a better feel for what it all really means in the national interest.

Mr Mason—The Scott Reef discovery is continuing to be explored, and that is in fairly close proximity to the boundary. Perhaps further exploration in that area will indicate that area should be released nearer the border.

CHAIRMAN—There being no further questions, thank you very much.

[1.27 p.m.]

FORBES, Mr Vivian Louis, c/- Department of Geography, University of Western Australia, Nedlands, Western Australia 6907

CHAIRMAN—Welcome. We have received a couple of submissions from you, but the latest one should be received as evidence and authorised for publication. Is it the wish of the committee that the document be incorporated in the transcript of evidence? There being no objection, it is so ordered.

The submission read as follows—

CHAIRMAN—Mr Forbes, are you going to talk to that latest submission or are you going to make a general opening statement?

Mr Forbes—I will make an opening statement and then talk to it.

CHAIRMAN—Please do that.

Mr Forbes—There is conjecture as to whether the 1997 treaty best suits Australia's national interest. Could Australia have gained more space? Did Australia give away too much? Is it too late to reconsider the terms of the agreement? Could overlapping jurisdiction to water column and seabed resources coexist?

In my submission I state that the determination of a maritime boundary evolves over three key concepts. These are geographical reality, international law and political expediency. I then go on to list some of the key considerations to the concept of geographical reality. I will not elaborate on these, but perhaps we could talk to them later.

With respect to international law, international customary and conventional law offer solutions to disputants for the determination of maritime boundaries which cannot be easily settled. There are several case studies that reveal what the adjudicators will have deliberated on to hand down a decision. In regard to political expediency, some boundary agreements may be considered to be politically derived in order to get the settlement off the ground. At that point, I think I will leave it.

CHAIRMAN—Would you agree with the view that perhaps in all international relationships there is a degree of political expediency and that, under UNCLOS arrangements, where two states can come to mutual agreement, that is still consistent with customary international law?

Mr Forbes—Yes, I agree that there will be a certain amount of political expediency in any boundary agreement. But I do suggest that, before such agreements are reached, greater consultation could be taken into account.

CHAIRMAN—Consultation with whom?

Mr Forbes—With industry researchers, maybe, if there was any doubt that something either could be given away or was not in the best interests of the state.

CHAIRMAN—Do you still stick to your reported views that Australia has sold its birthright?

Mr Forbes—To a certain extent, yes, I believe so. Because on maps, drawings, and calculations that I have worked upon, if I were brought up believing that a median line boundary is what I should expect north of Christmas Island, and if I were to find that

the final line runs some 38 nautical miles north of the island, then I would get the perception that I have lost something. I have lost something to the tune of 50,000 square kilometres, if I look at it that way. However, if the median line was a line there just for the fun of it then, no, I have not lost anything. I would probably have gained by believing that I was being given not 12 or 24 miles but 38 miles north of the island, and I would see that as a nice point.

But I have seen many an Indonesian map that shows the EEZ boundary running south of Christmas Island. To that point, I would suggest that that should not have been the case, and that we should have sat for the median line to start with and then, perhaps, have worked down. But it seems to me that Indonesia worked on the principle of 'we will give you 12' and then gradually build up to whatever it was.

I have tried to determine how that 38.75 miles was worked out. I am told that it is a package deal, and it is not going to be made known. So that leaves doubt in my mind: why 38.75?

Mr McCLELLAND—I suppose that is an important issue, isn't it? You are looking at one particular aspect of it. But looking at the treaty overall, do you think Australia should or should not ratify it? It has not been ratified and, if you are right, Australia could refrain from ratifying it. Do you think we should adopt that course of action and, if so, why?

Mr Forbes—I believe that we should have further discussion on this before ratifying it.

Mr McCLELLAND—Further discussion with whom? Between us and the Indonesians, or between the government and interested parties such as we are doing now?

Mr Forbes—As we are doing in this first instance—

Mr McCLELLAND—We are doing that but, in terms of getting communities' views as to whether the government should ratify or not, what is your view?

Mr Forbes—If we believe that it is the only way we are going to get a settled agreement, and that we are not going to have infringements from Indonesians, or we are not going to have drug running, or we are not going to have boat people landing our shores, then so be it—we have to sign it. The 50,000 square kilometres that I quoted was just for the Christmas Island area. To the north of Western Australia, once again, I believe that there is something in the vicinity of, perhaps, 75,000 square kilometres of seabed or water column, or whatever it is, that we may have lost in the agreement.

Mr TONY SMITH—Just looking at map 2, you are saying that that line should be a median line between Java and Christmas Island. Are you saying it should be halfway

between them?

Mr Forbes—More than halfway, I would say.

Mr TONY SMITH—Why do you say more than halfway?

Mr Forbes—If we look at my map, the median line on it has been taken off one of the hydrographic charts produced by the Australian Navy. That line has been on that chart since about 1979 or 1980. I have redrawn this map showing the lines for the 12 nautical mile, the 24 nautical mile and the 38.75 nautical mile. At one stage, I believe, we may even have been given up to 50 nautical miles. But that was not the case. I have given to the committee an article, which I have written recently, on Indonesia's maritime space. So, yes, that was the median line. The 38.75 line is not drawn there because this map was drawn before the treaty was signed, so I could not say that that was exactly the point.

I have a seabed boundary profile of Christmas Island and, clearly, we have the Java Trench. I would have thought that, if anything, we could have got up to the bathymetric axis of the Java Trench, which is slightly more than 38.75—less than 50. I will show you the 12, 24 and 50 nautical—

CHAIRMAN—What is the depth of water in the Java Trench?

Mr Forbes—It is about 6,000 metres, which is fairly deep. Some would argue that there are no resources there, so it can be given away. If that is the case, then there may not be any resources south of Christmas Island. Would you accept that Indonesia shows on all its maps the 200 nautical miles south of it?

Mr TONY SMITH—What is the actual distance between—

Mr Forbes—It is 187.5 nautical miles between the northern point of Christmas Island and the southern point of Java. The midpoint should be somewhere around 95.75.

Mr TONY SMITH—Do you know what the arguments are as to why the midpoint was not adopted?

Mr Forbes—Stories came out that the Indonesians looked upon the Jan Mayen case as best suiting their argument for Christmas Island. I would argue against that quite thoroughly if I had the time. There a number of case studies which show that proportionality would not necessarily have played a big part in this. If Christmas Island were a sovereign state, Christmas Island would have been entitled to the territorial sea limit, the contiguous zone and a full economic zone. But Christmas Island, unfortunately, is not a sovereign state, so it has lost this.

Mr TONY SMITH—The argument is in terms of averaging out, isn't it—because

of the size of the Java coastline? That is probably the argument because Christmas Island has such a tiny adjacent coastline compared with Java?

Mr Forbes—That is an argument which has been used. The argument also has been used on the population size. Java has something like 70 million people; Christmas Island has 1,200. So, if we take that proportionality, Christmas Island would get nothing out of it. It has been demonstrated that Christmas Island is habitable. It had an economic life and probably still has, so why couldn't it have got more?

Mr TONY SMITH—When you use that term 'sold its birthright' are you specifically referring to that line there or are you speaking about that and other matters?

Mr Forbes—That and other matters. I think you might have a coloured version of the map; I have a black and white one which I have drawn. Again, it is the overlap area between the seabed and the water column boundary, as they call it now. If we have rights to the seabed but not rights to the water column, I find that very strange. Why couldn't we also have rights to the water column? That is what I have argued.

Mr TONY SMITH—What is the argument against that, to your knowledge?

Mr Forbes—The argument against that is the fact that we negotiated in 1971-72 a seabed boundary with Indonesia. That seabed boundary ran very close to, if not directly above, the edge of the Continental Shelf. The Continental Shelf is, to all intents and purposes, a natural prolongation of the continental landmass. The Timor trough stops us from claiming any more. If Indonesia had argued that the equidistant principle was not correct for Christmas Island, then I would ask: why did it argue that an equidistant line was acceptable for the provisional fisheries line and also for the southern boundary of area A, because that is what Australia and Indonesia have agreed upon, on the median line principle?

CHAIRMAN—In your conclusion you said, in part:

> Whilst recognising that the Treaty is complex, it begs the question if a more complete Treaty could have been negotiated and one that would have anticipated such questions and answered them convincingly. The Treaty has left itself open to differing interpretation.

Don't you think that the negotiating stages had reached a point where neither side was prepared to go any further, and isn't that what negotiation is all about?

Mr Forbes—Yes. After eight rounds of negotiation over a period of time, I think both sides would have said 'enough is enough'. However, I wonder whether enough consideration was given to, for argument's sake, the case of marine scientific research in the overlapping zone. If Australians wanted to carry out research on the seabed which lies in Indonesia's EEZ, can Indonesia not tell us, 'No, sorry, mates. You're not allowed

there'. That is part of our waters, we have to get through there. There have been instances where Indonesia has not given permission to Australian ships to transit through the straits, or to carry out research north of Christmas Island and perhaps other areas—I am not fully aware of this. My comment on that point is: did we anticipate such questions coming up from a wider field and not from just a narrow field of fisheries resources offshore?

CHAIRMAN—So you do not agree what the WA government has said, particularly fisheries people, that a large degree of certainty has now been injected into the equation that did not exist before?

Mr Forbes—I found that very strange because only a couple of days ago we have had Indonesian fishermen apprehended off our coastline and some other fishermen—I believe Thai fishermen, but I am not sure fully of my facts. I have on record the number of fishing boats that have been apprehended in an eight-year period off our Western Australian coastline.

Last year, at some stage in Malaysia, I listened to an admiral from Australia talking about how effective the Australian Navy has been around the coastline and I choked up and said, 'But how come we are getting a lot of these fishermen still entering close to our territorial waters?' and the man turned around to me and made me feel very ashamed of myself, and he said, 'I'm sorry, the navy is not involved in that. You should ask coastal surveillance.' But the navy is apprehending the boats.

Mr McCLELLAND—In fairness to the previous witnesses, they did not say that this treaty was going to prevent incursions occurring. They said it gave some certainty to what the boundaries were, which, in that sense, clarified where vessels could and could not be apprehended.

Mr TONY SMITH—Did you say you had some figures on apprehensions of boats?

Mr Forbes—I do have some figures that I have written down. The fisheries department would have it. I have figures which I have kept from newspaper clippings. I believe Indonesian fishermen are given a map which shows them where they can fish and where they are not allowed to fish. I have shown this map and others in the past. This map is dated 1994; I am sure many an Australian has never seen this map, but it is given to the Indonesians. I wonder whether everybody is getting the full story out of all these cases that are taking place. Because the treaty is a package deal and we cannot get much more information out of it, I have to ask the question: how was this derived?

CHAIRMAN—That is the rationale of this committee. We need to review some of these dimensions in between signature and formal ratification. We would like to think that we are doing that. That is why it is important we get views like yours, which may not necessarily accord with the government or bureaucratic view. They are all important in

terms of the overall communication process. Thank you very much.

[1.47 p.m.]

GRAY, Mr Edward Gray, Private Capacity, Western Australia

CHAIRMAN—Welcome. For the *Hansard* record, could you please state the capacity in which you appear before the committee.

Mr Gray—My name is Edward Gray and I am a private citizen. My interest in this matter comes from research I undertook last year in the final year of my law degree.

CHAIRMAN—We have received your written submission, the article from the March-April 1997 edition of *Maritime Studies*. Did you want to make an opening statement or table any additional documentation?

Mr Gray—I can present you with a summary and some references at a later date if you wish.

CHAIRMAN—Would you like to make some opening comments?

Mr Gray—Yes. There are two matters that I would like to discuss: firstly, Ashmore Island; and, secondly, aspects of the treaty in relation to the sustainable use of marine resources. Unlike the WA government representatives, I have some problems with the terms of the treaty. The general concept is good, but I do not think that having an agreement for the sake of it is necessarily to Australia's advantage because a number of aspects of the finer points of the treaty and the workings of it through seem to have been left very open.

If we look to Ashmore Island, one of the problems I have there is that Indonesia has made much about distinguishing between continental shelf and EEZ zones. Whichever way you measure the new border from Ashmore from A25 would place you at a distance further than the 24 nautical miles that now scribes around Ashmore. To my mind, the westward extension of Ashmore from A25 should have gone out to the west. At the moment it comes south, straight down to Ashmore.

I think that causes a major problem because it has effectively brought the whole fence forward, closer to the Australian coastline and the atolls, reefs and islands of the North West Shelf; and they are the main areas where the fishermen want to come anyway. In doing that, we are now going to place extra pressure on those areas—be it Ashmore or Scott Reef. Scott Reef, in particular, is going to suffer a lot more activity. I have a newspaper article here where fishermen were apprehended 100 nautical miles south-east of Scott Reef. So they now have this capacity to come much further in.

As far as the marine resources go, the treaty says that they want to promote sustainable development of marine resources and enhance the protection and preservation

of the marine environment. But I do not know that that has necessarily been done or how it is going to occur. As I said before, the border has now been brought much closer, so incursions can be made quite quickly into the fishing areas or out, if they are spotted, before vessels can actually get there and apprehend them and, if they disperse, they have a greater chance of moving back over the maritime border.

In my paper I discuss that it seems that, although Indonesia has a good deal of regulation in terms of fisheries, overfishing still is a problem in Indonesia; and from the history of Ashmore, the same has occurred there. So it is most likely that that is going to be an ongoing problem for the atoll regions of the North West Shelf. We are going to get a lot more activity, and I would be interested to see the statistics and to see how that stacks up.

I have recently had a look at a book by Hasjim Djalal called, *Indonesia and the Law of the Sea*. It is published by the Centre for Strategic and International Studies in Jakarta. He suggests that their approach is that they do not want to follow the Western 5M method of enforcement—money, men, material, methods and management. Instead, they want to settle boundary problems, develop cooperation in environmental protection and use existing available enforcement agencies. So, basically, they are going to take a revenue neutral approach. There is nothing wrong with that in itself, but I suspect that what is going to happen is that Australia is actually going to pick up the cost of that. If they are not going to control their fishermen or if they do not put those kinds of resources to their fishing effort and what is taken, then maybe Australia will have to work harder at it.

Another area—and this gets back to the point of sustainable development—is that, as I understand, Australian scientific research vessels have had difficulty in gaining access to Indonesian waters. There is nothing in the treaty that actually states how this mechanism of controlling the marine source is going to occur. With respect to Australia's own effort, in my research I found very little mention. A Mr Berry from the museum has published some faunal surveys of those islands, but there is very little data available as to the marine resources that we have.

Similarly, there seem to be real problems with the overlap area. Effectively, Indonesia has a veto on Australia entering that water. By having the seabed, we effectively also have ownership of the sedentary resources. Provided that they are at a depth that they can be taken, it is hard to see how we are ever going to stop anyone from taking the sedentary resources of that entire overlap area, since we have to give notice for any times that we go into the area.

Further, Indonesia does license the vessels of other states. If they are, for instance, licensed to operate in those waters, too, we have to be able to negotiate with Indonesia as to what resources are taken and in what quantities. There is not a rabbit-proof fence. The stocks are going to move from one area to the other. I think that cooperation has to be very vigorous. There have to be steps that we can take and they can take rather than it

being a purely negotiated thing all the time. I do not think these aspects can just be negotiated. There is probably a greater need for detail.

CHAIRMAN—Mr Gray, did I understand you to say earlier, 'More to the west of Ashmore Island'?

Mr Gray—Yes.

CHAIRMAN—Referring to colour map No. 5, does that mean that the area of overlap should in fact be increased to extend to the top of the existing overlap area to the west?

Mr Gray—As A25 is at the hip of the black dotted line, as I understand the measurement, an equidistant measurement would bring it out over and above the red line, and it would then move down this way to meet up here. So the Australian line would be above the overlap line, and it would certainly bring the border well away from Scott Reef and Ashmore Island.

CHAIRMAN—But not up to the intersection of the top of the overlap line to the west?

Mr Gray—That is an area which I am not familiar with. I would defer to Viv Forbes on that.

Mr McCLELLAND—In the area around Scott Reef which is, I think, in the Memorandum of Understanding area, is there going to be a problem determining what are and what are not traditional Indonesian fishing vessels and techniques?

Mr Gray—That has always been a problem. Today I heard two conflicting comments. Firstly, if I heard him correctly, the state solicitor, Mr Meadows, said that the MOU does not apply any more and, secondly, Mr Sarti said that it does. I may have misheard things.

Mr Meadows—I did not say that.

Mr Gray—I have been corrected there. Therefore, I understand that it still applies.

Mr McCLELLAND—But that has always been a situation that was ambiguous, even before the treaty: just what is traditional Indonesian fishing in that area.

Mr Gray—Yes. The way it operates now is that any adventurer puts down their money, gets the boat and heads south to fish. There are traditional fishermen, and I believe there are also motorised vessels, and some with hooker equipment as well. Recently, I believe, there have been larger ice boats. So the actual mechanism that is

being used is changing. I think any adventurer going down there to take marine resources is not going to be bothered simply because Scott Reef is in the MOU.

CHAIRMAN—Mr Meadows, we had better have you back on the record to clarify that point on the MOU.

Mr Meadows—I said that the treaty acknowledged the continued existence of the MOU.

CHAIRMAN—That was my understanding. Thank you.

Mr McCLELLAND—Granted that, particularly in this area of negotiation, it is not a perfect world—in other words, it is not like a Christmas shopping list for a child where the child is going to get everything he asks for if the family can afford it; it is a situation where there must, of necessity, be negotiation and compromise—are you saying that Australia should just pull down the shutters and say, 'We can't reach an agreement,' and walk away? Or do we accept what we believe from the negotiators is the best outcome that can be achieved, or do we continue to try to push beyond what our professional negotiators believe can be achieved?

Mr Gray—Yes. Often you hear the phrase 'win-win', meaning the outcome of the ideal negotiation. I think if it is a win-loss situation, maybe it is worth thinking about walking away and bolstering some aspects of it.

Mr McCLELLAND—What are your views on this; is it a win-loss situation?

Mr Gray—There is the structure—the general goals of an agreement—and if that is what is ended up with, so be it. But, unfortunately, there is so little detail in it. There are very broad goals and the best of intentions but, even as far as resolving differences, there is nothing in place and there is no mechanism where they must, say, go to independent arbitrators to settle it. The attitude is, 'Oh, well, we will negotiate this out.' I guess in those circumstances you are talking about the executive and political mechanisms of resolving those problems, whereas maybe they are something that the International Court of Justice could deal with.

Mr McCLELLAND—But is it a starting point? I mean, traditionally, these things are worked out on heads of agreement which are very broad and then they are narrowed down from there. This is more specific than merely heads of agreement, but it is a fact that some of these areas of specific detail need to be worked through as the treaty is applied. Is that fact something that says you should not enter into a treaty which albeit is quite broadly expressed?

Mr Gray—I do not think there is any reason not to enter into agreements to settle maritime borders. I just think that it is like saying, 'Well, okay, we've signed you up; you

have the finance,' and then you start reading the fine print. It is one of those situations.

Mr McCLELLAND—But I thought your criticism is that there is a lack of fine print here. So, perhaps it is not one of those situations.

Mr Gray—Well, no, it has not been—

Mr McCLELLAND—Your criticism is that there is lack of fine print, isn't it?

Mr Gray—Yes.

Mr McCLELLAND—Granted, the fine print has to be worked through as the agreement has life to it, assuming it is ratified.

Mr Gray—If that happens prior to ratification, well and good. I do not know the procedure that is going to be taken with it.

Mr TONY SMITH—What is your point about Ashmore Island and the reefs there in relation to, I think you said, the greater propensity for incursions? You cited a recent example of an apprehension south of Scott Reef. What is your point there, having regard to the fact that the MOU has been there since 1974? In the context of this argument now, I am just not quite sure what your point is.

Mr Gray—In the past you had an extra buffer zone and now you can actually come closer to the target area before you make your incursion to do your fishing. By bringing the border closer it is going to be harder, I would imagine, before vessels are detected, to apprehend them.

Mr TONY SMITH—Are you talking about the provisional fisheries surveillance and enforcement line? Let us look at the map because I am a little bit confused. Under map 1, are you talking about the red line or the yellow line?

Mr Gray—The red line.

Mr TONY SMITH—Okay. Now I understand it.

CHAIRMAN—But you do not go to the extent of Mr Forbes' assertion that, as a result of all of this, Australia has sold its birthright, do you?

Mr Gray—If you read the article that I have written, I take a fairly literalist view of UNCLOS in that I will try to read the most out of its terms. I think if you approach it in that way you can get more objective measurements of where maritime borders operate. In any maritime delimitation there are subjective elements. So, if following through UNCLOS and you then scribe certain areas but then, through political negotiation, you

concede large tracts of water column and seabed then, yes, the Australian states' rightful due has been deferred.

Mr TONY SMITH—Deferred or—

Mr Gray—Yes, you have given it away, you have handed it over, you have paid it to someone else.

CHAIRMAN—Did you want to make any other points before you left us?

Mr Gray—Yes, maybe a couple of small points. I think that we have to spend more time and more personnel doing the necessary maritime research so that we have the data. We are working within an EEZ, but to use that effectively we have to have the scientific resources and information to make determinations about what fisheries should be taken. In the types of vessels, maybe research and patrol vessels could combine tasks or things like that. Having a presence does make a difference in that area. As I mentioned earlier, we need to have more specific details as to how the fisheries should take place.

CHAIRMAN—As we have no further questions, thank you very much indeed. Mr Meadows, could you come back to the table for a moment.

[2.09 p.m.]

MEADOWS, Mr Robert John, QC, Solicitor General, Government of Western Australia, Level 14, Westralia Square, 141 St Georges Terrace, Perth, Western Australia 6000

Mr TONY SMITH—Mr Meadows, I just wanted to hear your comments in relation to what was said by Mr Forbes about Christmas Island and where the line came in there and what factors operated upon you and the negotiating team in relation to the fixing of 38.75.

Mr Meadows—A number of factors have already been mentioned. One is the comparative length of coastline; another is the population factor and the differences between the respective population numbers. But, taking into account legal precedent, I think that is where Mr Forbes really has not laid enough emphasis in his approach to it. He has gone down the path of the geographic features whereas, following the adoption of UNCLOS, it is quite apparent that that is just one of the factors—and probably not a particularly important factor any more. When you take into account the Jan Mayen case in particular, the outcome that has been achieved is in accordance with the principles that were found in that case.

Mr McCLELLAND—The Jan Mayen case concerned an island off Finland, didn't it?

Mr Meadows—No, Greenland. You had a similar situation there with a very large land mass—Greenland, I think, being the largest island in the world—and a small island relatively adjacent. There are quite interesting parallels between the two situations. As for the distance, that is a negotiated distance—let us be quite clear about that, there is no science involved in it—but when you looked at the principles that you can draw from that case and other legal precedents, it was seen as being an equitable outcome.

Mr TONY SMITH—It was at 40 but came down in 0.25s, didn't it?

Mr Meadows—I really should not go into where it started and where it finished, but that is where it finished.

Mr TONY SMITH—I understand.

CHAIRMAN—Rather than use the term 'political expediency', which is what Mr Forbes has done, it would be fair to say that what has emerged has been the result of realistic compromise.

Mr Meadows—I take some exception to the suggestion that there was any political expediency involved at all, in that the members of the negotiating team are all at officer

level. Politics did not play any part in the negotiation whatsoever.

CHAIRMAN—A compromise is part of any relationship and it was a realistic, acceptable compromise between two parties.

Mr Meadows—Certainly, in our eyes.

Mr TONY SMITH—What does the case you referred to effectively say?

Mr Meadows—It is a decision in resolution of a dispute as to where the boundaries should be.

Mr TONY SMITH—Some principles emerged from it.

Mr Meadows—Certainly. One of the issues is—as Mr Forbes has rightly pointed out—that one also looks at the geographic location, both in terms of the seabed and the distance between the two countries and the coastline. These are all factors. But in the end, when you have got quite a minor island in close relationship to a major land mass, some allowance has to be made. Mr Forbes is quite right; if Christmas Island was a separate sovereign state, then things might have been quite different. Even then, the same factors would have come into play.

Mr TONY SMITH—When you say 'separate sovereign state', you are not speaking about a state of the Commonwealth, are you?

Mr Meadows—No, I am talking about a separate nation.

CHAIRMAN—Thank you again for that revision. Is there any other person here today, who has come along with the purpose of giving evidence and would like to give evidence now? No.

Resolved (on motion by **Mr Tony Smith**):

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

CHAIRMAN—Today's hearing will now adjourn. Thanks to all involved.

Subcommittee adjourned at 2.15 p.m.