COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: Australia-Indonesia maritime delimitation treaty

CANBERRA

Tuesday, 28 October 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	Ms Jeanes
Senator Neal	Mr McGauran
Senator O'Chee	Mr Tony Smith

For inquiry into and report on:

Australia-Indonesia maritime delimitation treaty.

WITNESSES

JOINT STANDING COMMITTEE ON TREATIES

Australia-Indonesia maritime delimitation treaty

CANBERRA

Tuesday, 28 October 1997

Present

Mr Taylor (Chairman)

Senator Coonan	Mr Bartlett
Senator Murphy	Mr Laurie Ferguson
	Mr Hardgrave
	Mr McClelland
	Mr McGauran
	Mr Tony Smith

The committee met at 8.02 a.m.

Mr Taylor took the chair.

CHAIRMAN—Ladies and gentlemen, welcome to what I hope will be the final public hearing on the Australia-Indonesia maritime delimitation treaty. Since the first hearing into this treaty on 2 September, the committee has travelled to Perth, to Darwin, to Christmas Island, and most recently last week took further evidence here in Canberra. This hearing is aimed at clarifying a few issues that have been raised in hearings outside of Canberra, specifically in Darwin and Christmas Island.

Following the completion of today's hearing we will draft our report which we are hopeful of tabling in the parliament during that now additional sitting week, the first week in December. As the foreign minister knows, we have not met the 15 sitting day rule on this one, for understandable reasons. Nevertheless, we hope to get it finished as quickly as possible and to make the appropriate recommendations to the parliament and to the executive.

I understand that a number of departments want to make opening statements. If you could, please keep those opening statements as short as possible because we want to optimise the time for questions. Seeing he just walked in, I particularly welcome our new member, Mr McGauran.

[8.05 a.m.]

BIGGS, Mr Ian David Grainge, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade, Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

BIRD, Ms Gillian Elizabeth, First Assistant Secretary, International Organisations and Legal Division, Department of Foreign Affairs and Trade, Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

COX, Mr Allaster Edward, Director, Indonesia Section, Maritime South-East Asia Branch, Department of Foreign Affairs and Trade, Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

ROWE, Mr Richard Anthony, Legal Adviser, Department of Foreign Affairs and Trade, Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

SERDY, Mr Andrew Leslie, Acting Deputy Legal Adviser, Sea Law and Ocean Policy Group, Department of Foreign Affairs and Trade, Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

CAMPBELL, Mr William McFadyen, First Assistant Secretary, Office of International Law, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

MOFFITT, Captain Rowan Carlisle, Chief Staff Officer, Operations, Royal Australian Navy, Maritime Headquarters Australia, Wylde Street, Potts Point, New South Wales 2011

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 2600

MURPHY, Mr Brian Anthony, Manager, Maritime Boundaries Program, Australian Surveying and Land Information Group, Department of Industry, Science and Tourism, Scrivener Building, Dunlop Court, Fern Hill Park, Bruce, Australian Capital Territory 2617

SYMONDS, Mr Philip Alexander, Principal Research Scientist, Petroleum and Marine Australian Geological Survey Organisation, GPO Box 378, Canberra, Australian Capital Territory 2601

HUNT, Mr John Graham, Assistant Director, ACT Liaison Unit, Territories Office, Department of Transport and Regional Development, GPO Box 594, Canberra, Australian Capital Territory 2601

TURNER, Dr Andrew, Assistant Secretary, Territories Office, Territories and Local Government Division, Department of Transport and Regional Development, GPO Box 594, Canberra, Australian Capital Territory 2601

STEVENS, Mr Richard Andrew, Managing Director, Australian Fisheries Management Authority, 28 National Circuit, Forrest, Australian Capital Territory 2603

VENSLOVAS, Mr Peter Ernest, Manager, Compliance and Monitoring, Australian Fisheries Management Authority, 28 National Circuit, Forrest, Australian Capital Territory 2603

STONE, Mr Rodney John, Director, Surveillance Operations, Australian Customs Service, Coastwatch Branch, 5 Constitution Avenue, Canberra City, Australian Capital Territory 2601

GILES, Mr Graham Robert, Director, Marine Acquisition, Australian Customs Service, 5 Constitution Avenue, Canberra, Australian Capital Territory 2601

HOWARD, Mr John, Acting National Manager, Border Operations, Australian Customs Service, 5 Constitution Avenue, Canberra, Australian Capital Territory 2601

VAN WANROOY, Mr Michael, Assistant Director, Border Legislation, Border Management Division, Australian Customs Service, 5 Constitution Avenue, Canberra, Australian Capital Territory 2601

SMART, Mr Anthony John, Assistant Director, Strategic Policy and Coordination, Department of Environment, Environment Australia, Biodiversity Group, GPO Box 636, Canberra, Australian Capital Territory 2601

CHAIRMAN—After the opening statements, we will open for questions. Which departments are wanting to make opening statements—DFAT, DPIE and A-G's? Welcome. Gillian, would you like to open for DFAT?

Ms Bird—Thank you, Mr Chairman and committee members, for the opportunity to appear before the committee once again to assist your inquiry into the maritime delimitation agreement with Indonesia.

As you know, the government regards this settlement of great stretches of our

boundaries with Indonesia as a vital step in promoting our relations with that neighbour. It is a necessary element in the responsible management of the maritime areas that Australia claims under the Law of the Sea and a potentially valuable encouragement to the development of offshore resources between the countries.

Officials from several other departments and agencies are here and are better able to respond to your questions arising from much of the detail of other submissions you have received, but there are a couple of points I would like to make in response to some of the concerns raised with you in recent hearings. One is that Australian policy towards East Timor should not be a major consideration for the progress of this treaty.

The Timor Gap Treaty is a separate instrument and sets up a joint regime for management of that area, of a sort that the present treaty does not envisage. The only boundary between Australia and Timor set in the present treaty is a water column line determined on principles of sea law and jurisprudence.

The International Court of Justice refused an application by Portugal that the court declare Australia's entry into a delimitation agreement with Indonesia relating to East Timor illegal. Australia recognises Indonesia's sovereignty over East Timor and therefore that Indonesia is the appropriate government with which to negotiate the extent of our seas. While we are aware of the issues raised by a number of community groups from whom you have heard, that policy of both the present and the previous government is not under review.

The second point is to reiterate that the treaty draws the lines, but is not intended to manage the area thus delineated. Separate instruments, such as the fisheries cooperation agreement with Indonesia, and institutions and regimes govern the bilateral effort in matters like fisheries, illegal immigration, protection of the environment and so forth. While the concerns raised on Christmas Island and elsewhere are legitimate, they miss the basic point that defined lines simplify the policing of the areas, but do not purport to solve all the problems.

Finally, the government is confident that this treaty was negotiated with the active and practical involvement of state and territory representatives and a range of agencies and non-government bodies. It was announced publicly as soon as it could be, immediately after initialling in September 1996. It was canvassed extensively in consultative forums in Canberra, Melbourne, Perth and Darwin, and then was tabled in parliament to facilitate the wide community consultation the government is committed to in treaty making. We regard this treaty as an excellent outcome in the national interest, and the means of achieving it as entirely appropriate.

Mr Chairman, represented here are the negotiating delegation, the geographical desk from the department, the sea law and ocean policy group from the department and most of the agencies involved in the management of the zones in question. We look

forward to assisting with any of the issues that remain outstanding.

Mr Campbell—Representatives of the Attorney-General's Department also welcome the opportunity to appear before the committee again. We note that the committee has taken a substantial amount of evidence since the last time we were here on 2 September. I do not intend to address all of the issues raised in the evidence given to you, but there were a few issues to which I should make a short response.

Evidence was given to the committee that the boundary between Christmas Island and Java was located too far to the south and failed to take sufficient account of the location of the seabed feature known as the Java or Sunda Trench. We have already stated in evidence previously that, had the issue of the boundary between Christmas Island and Java been taken to international adjudication, we could not have expected a better result than that achieved in this treaty. It is in line with international jurisprudence such as that found in the Anglo-French arbitration, more recently in the St Pierre and Micquelon arbitration, and the ICJ case between Denmark and Norway over the island of Jan Mayen adjacent to the coast of Greenland. Many of those cases were canvassed in the course of the negotiations.

A number of other issues raised in evidence on Christmas Island included: illegal Indonesian fishing, illegal immigration, environmental issues and piracy. Environmental issues and illegal fishing were also raised in Darwin. Like my colleague from Foreign Affairs, I also make the point that the 1997 delimitation agreement was not intended to resolve all maritime related concerns in the areas subject to delimitation. Some of those issues—for example, illegal immigration—are not capable of being resolved by an agreement such as this. In relation to other issues, there are existing fora and agreements such as the 1992 fisheries cooperation agreement between the two countries, which has already been mentioned.

I also note evidence before the committee that would suggest that the treaty does not deal adequately with the areas where the water column jurisdiction of Indonesia overlaps the seabed jurisdiction of Australia. We have already stated in evidence before the committee that the areas of overlap were, in our view, inevitable. Nor do we believe that the provisions of the treaty dealing with those areas of overlap are inadequate or, as has been suggested, give Indonesia some form of authority over the exploration and exploitation of the seabed resources in the area of overlap.

In that area there are two coastal states: Indonesia is the coastal state with respect to the exploitation of the resources of the water column and Australia is the coastal state with respect to the exploration and exploitation of the resources of the seabed. While provisions of article 7 of the treaty require Australia to give notice of certain seabed activities to Indonesia, it is just that. It is a requirement of notice and not a requirement to obtain the permission of Indonesia. The only seabed activity which would require the permission of Indonesia in the area of overlap is the construction of an artificial island.

Artificial islands are carefully defined in the treaty to avoid any known type of oil or gas installation.

There will be occasions when Australia's exercise of seabed jurisdiction might interfere with Indonesia's exercise of fisheries jurisdiction in the area of overlap, and vice versa. That issue exists now, before the entry into this treaty. However, such issues are resolved by consultation between the two countries.

Finally, I would like to make a point about a different aspect of consultation. I was involved in the round of consultations which took place after signature of the treaty. As mentioned, they were held in a number of places in Australia. At each of those meetings I gave an explanation of the treaty and then there was time for questions and comments. I stated in evidence on 2 September before this committee that we did receive comments which were both favourable and adverse to the treaty in the course of those consultations. Many of the comments made in those consultations were again made to the committee in its hearing.

Also, there is no doubt that the committee was able to gain views which had not been expressed earlier to officials. This is not surprising, given the committee has a standing and powers which are not available to officials when they are holding consultations. That said, I can say that there was a genuine effort by the officials to hold genuine consultations.

Mr Smith—On behalf of DPIE, I would like to clarify some aspects of the administration of petroleum exploration and development activities in the areas of overlapping jurisdictions that have been raised in Perth and Darwin. Australia will exercise exclusive sovereign rights and jurisdiction in relation to the exploration and exploitation of the seabed. No approvals for any aspects of this activity in the areas are required from Indonesia. This includes exclusive control of safety, including exclusion zones around structures; environment; taxation; and communication matters.

Indonesia will be given three months notice of the proposed grant of all petroleum titles. For exploration permits, this will be done at the time of advertising areas and will be accommodated in the normal period of lodging applications, which is not less than six months. For retention leases, production and, for that matter, pipeline licences, this will be done on receipt of a substantive application and will be accommodated within the normal period for processing these applications. Quite often these take 12 months to process. Indonesia will be given due notice of the construction of installations and structures. This will be done concurrently with notices required under international regimes, such as those established by the International Maritime Organisation.

In practice, title holders in the areas of concern should not expect any different arrangements in these areas compared to areas south of the EEZ boundary. All operational consents and day-to-day approvals required from the relevant designated authority will be

handled in the established ways. This includes approvals for conducting seismic surveys carried out under exploration permits or access authorities.

Special prospecting authorities are a slightly different case. They are granted for only areas that are not covered by an exploration permit, retention lease or production licence. These are usually speculative surveys undertaken by seismic contractors hoping to sell the data to interested clients, perhaps when the area becomes available for exploration. Three months notice of the proposed grant of a special prospecting authority will be given to Indonesia and it will be necessary for applicants to take this notice period into account when planning their proposed operations.

CHAIRMAN—Thank you very much. There being no further opening comments, I will just deal with a domestic item.

Resolved (on motion by Senator Murphy):

That the committee authorises the publication of submissions No. 5A from Mr Forbes, No. 8A from the East Timor Relief Association, No. 19 from Australian Geological Survey Organisation, and No. 20 from Customs.

CHAIRMAN—Let me make a couple of comments before we get into questioning. Gillian, you have raised three issues there: first of all, the East Timor situation and Indonesian sovereignty. There will be some in this committee who will have other views, but I personally think that we should try to divorce that from the issue. Nevertheless, I think it is reasonable that we are to expect some comment from witnesses. Indeed, on that particular point, it was quite predictable that the Free East Timor Movement representative in Darwin should make a point, which nobody else shared, in terms of not ratifying this treaty. So my view is that we do need to divorce one from the other, but I cannot speak for all of my committee colleagues.

The second point is in relation to the separate instruments. That is the fundamental issue that emerged from the hearings. In other words, as I say, with the exception of the East Timor groups, most were not suggesting anything other than ratification. However, what came up over and over again was the need for instruments, MOUs, administrative arrangements, to make sure that the resource implications and all other territorial implications were satisfactorily addressed and, of course, were covered in appropriate fashion. That is the main point that really we need to pursue this morning.

The third one is in relation to the states and territories consultation. I have to point something out to the departments, and perhaps I do not need to do this to other departments because they know from this committee over the last 12 months exactly where we stand. But, as I indicated in the parliament last Monday morning in tabling the 10th report, there are particularly some non-government organisations who take a view, quite wrongly, that this committee is simply a mouthpiece of government, and, secondly,

that we are simply a ratification rubber stamp.

We are neither of those, as I indicated in the parliament, and I think that all of my colleagues would share those views. What we are concerned about in particular, and this has been repeated in a number of reports, most recently in that 10th report—and undoubtedly, without getting into the detail of what we may or may not recommend with this one, it will have to be raised again—is the word 'consultation'. The foreign minister quite appropriately, quite rightly, made the point, when he made the first statement in the House in May last year in the formation of this committee and the treaties council and all the new machinery, that consultation was important, was critical.

This committee takes a view that it is not simply a word, it is a meaningful process. What we are finding, regrettably, is that consultation has not been satisfactory in a number of areas. Irrespective of what was said about consultation with states and territories on this occasion, on the *Hansard* evidential record it is quite clear that they are not the perceptions out there, and we have to address those and investigate them a little further.

Perhaps I should open the questioning by asking, particularly in relation to Christmas Island, and I suppose this comes back to the department of territories, as to when the island was involved in the whole process of consultation. Can I make one other point? In terms of consultation, it has been suggested on the *Hansard* record that there was not appropriate consultation before signature. I think some of those people misunderstand. There will always be things that are done by ministers and officials in advance of any consultation, and of course our committee has been set up with, in the extreme, the secrecy provision that must inevitably occur on some occasions.

However, what I am getting at is the consultation after that signature, in this case between the foreign minister and Foreign Minister Alatas. It is the consultative mechanism and the detail of the consultation that, in this committee's view, did not take place appropriately in the lead-up, particularly of the national interest analysis. So let me just ask the Territories Office when was—

Ms Bird—Mr Chairman, could I make just a general comment on the consultation process before we turn to the various departments. It is an issue, as you rightly point out, that is critical to the treaties process and it is one that the government takes extremely seriously, and that is why we are here today. We are proud of our record on this treaty, as with others, and we are here to explain what we have done on that consultation process. But I want to make just a few general points because, as you said, it is such a critical issue.

All major stakeholders were involved in the crucial negotiations. As you said, the consultation process proper took place by and large after the signature and involved a number of different, well attended public seminars, as well as consultation with specific

stakeholders and interested groups. But we were even, as we have done on a number of treaties, able to push the envelope a bit before signature, so that in fact major stakeholders were involved in the process right through the time of negotiation, through signature and after signature. But, as I said, it is an issue we take extremely seriously, so we are very happy to explain what happened at each stage of the process.

Senator MURPHY—Why don't you start by telling us how many meetings were held and who was there?

CHAIRMAN—Let us just start with—

Senator MURPHY—Mr Chairman, I would like to see if there were any minutes. I previously asked in the Territory if there were minutes from those meetings and any decisions that were taken, including the issues that were raised.

CHAIRMAN—Gillian, I think we really need to address Christmas Island first. We had the WA Solicitor-General representing the states and territories. It was not until we got to Christmas Island that in fact it was apparent to us—correct us if we are wrong, and we would need some hard evidence on this—that Christmas Island was completely, to put it in the vernacular, out in the Indian Ocean; I mean, left there with no knowledge of a lot of these things. If that is incorrect, this committee needs to know. So perhaps the Territories Office—.

Dr Turner—Thank you, Mr Chairman. To some degree it depends on what we mean by 'the island'. Certainly the Commonwealth senior officer on the island was aware of the negotiation process whilst it was under way. Indeed, as you may have heard, there were some discussions during mid-1996 when there were plans to hold one of the negotiating sessions on the island. So the senior officers of the Commonwealth were aware that negotiations were under way.

Mr TONY SMITH—Which ones?

Dr Turner—The senior officers?

Mr TONY SMITH—Which senior officer?

Dr Turner—The acting administrator. At the time the acting administrator was Ms Merrilyn Chilvers.

Mr TONY SMITH—You have said senior officers—what other officer?

Dr Turner—I assume that Ms Chilvers may well have had discussions with her staff.

Mr TONY SMITH—But you do not know that.

Dr Turner—No, I was not there.

CHAIRMAN—Just to get this into perspective, how many administrators and acting administrators have there been in the last two years on Christmas Island?

Dr Turner—Ms Chilvers was acting administrator for a period of in excess of a year, up until the end of April of this year. Mr Graham Nicholls took up the position of acting administrator at the end of April of this year. Mr Ron Harvey took up the position as administrator with effect from 1 October but did not arrive on the island until I think—

CHAIRMAN—Last week.

Dr Turner—Saturday of this past week. So in fact many of the events that we are talking about here occurred at a time of the changeover of the two administrators.

Mr HARDGRAVE—Why did you not then go the Christmas Island Shire Council, which is elected, and represents the 2,500 Australians who live on Christmas Island? They knew nothing about this. So, when you ask a question like, 'What do you mean by an island?', I mean a hunk of rock sitting in the middle of an ocean with people living on it who have a viewpoint, and they were not consulted.

Dr Turner—If I can continue to clarify my answer, the Commonwealth officials were aware that the negotiations were talking place. However, as is usual practice in these circumstances, as far as we were concerned, that officer was not, in any sense, negotiating with members of the community. They were acting on the awareness of the Commonwealth that there may well be a negotiating session on the island. So in that sense the officer was not negotiating with the community.

The island community became aware of the press coverage around signature in February and March. I am not aware that there was much coverage of the press release in September of last year that some people on the island may have been aware. In early May of this year, we received a note from the island administration saying that they had received requests from people in the community asking for information on the treaty, and asking our opinion about publication of the information package, which the Department of Foreign Affairs and Trade had provided the island. We sought clearance with the department and that information was published in the *Islander*—

CHAIRMAN—That is right, in May of this year.

Dr Turner—That is a publication arranged by and funded by the shire council. The details of exactly who said what to whom in the subsequent weeks, I cannot be fully aware of but I would be surprised if people on the island did not read the *Islander*. It is

well-known. So in terms of the publication of formal information, that is, as far as I am aware, the only formal publication on the island. We have subsequently been told that Mr Smolders, who is the shire president, was included in the invitation list to attend the meeting in Perth, along with Mr David Murray, who is an officer of the Department of the Environment. The department of territories was not formally involved in that invitation process.

Mr McCLELLAND—When was the invitation?

Dr Turner—June, I understand. As I said, the department was involved in the negotiating process in the sense that we were represented on an interdepartmental committee. Mr Hunt, my colleague here, was the officer who attended most of those meetings.

Senator MURPHY—How many meetings were there, and I am not just talking about on Christmas Island? Were there minutes from those meetings that would have gone to the questions that may have been raised? Also, who was at the meetings? I think that would certainly help me clarify some of the things that have been raised with this committee by people who said that there were no meetings and that, if there were meetings, they were more from the point of view of people being told, 'This is the situation and too bad if you don't like it'—maybe not told that but that was the interpretation they placed on the meeting.

CHAIRMAN—It seems to the committee that there are two avenues of communication here. One was because the Western Australian Solicitor-General was dealing on behalf of the states and territories and the other one is the link with Commonwealth departments, whether it be the administrator of Christmas Island with territories or whatever. It seems to us that neither has closed the loop. I cannot recollect the Solicitor-General making the comment but it seems to the committee that a lot of these issues were not even discussed by the Solicitor-General for Western Australia. We do not know it so it is important that we understand, as Senator Murphy has said, what record there is of conversations, of communications, at both levels, both from the Commonwealth and from the Western Australian Solicitor-General.

Senator MURPHY—I would also like to know who was at the meetings so that I can try to work out where there was a breakdown, and whether it was a breakdown in the case of the two states and the territory primarily affected. Was there a lack of consultation at that level? Who talked to the Western Australian attorney? As I understand it, the attorney was the representative for the three principal parties, at least that was my understanding of what was conveyed to the committee in Darwin. I would like to know when you had these consultative meetings, who was at them, and whether there are any minutes arising from them that we might be able to have a look at that would indicate to us, and provide us with information so that we can say, 'There were these meetings.' We know that the territory's minister for primary industry had involvement because their

department indicated—I think it was their first assistant secretary—that there had been little or no consultation in so far as they were concerned, even though they may not have been raising the right issues. Nevertheless, that would appear to be the case. So, to enable me to try to establish what happened and to establish who said what to whom, the provision of that information would be very handy.

CHAIRMAN—Bill, did you want to comment?

Mr Campbell—I was involved in a number of consultations which were held after the signing of the treaty and which were organised by the Department of Foreign Affairs and Trade, principally at the offices of the Department of Foreign Affairs and Trade in a number of capital cities. There were consultations held in Canberra, Melbourne, Perth and Darwin.

CHAIRMAN—Was that between March and August, March when the signature took place and August when it was tabled?

Mr Campbell—They were between March and August when the documents were tabled. To answer directly the question you asked about minutes, I am not aware that minutes of the meetings were taken. The nature of each of those meetings was that I gave a precis of what the treaty was about and explained the treaty to each of the meetings that was held, in much the same way as I gave a short presentation to this committee prior to its first hearing on the matter.

I note the comments in Darwin by somebody from a resource company that the presentation was in the nature of a lecture. I disagree with that. All I was trying to do was impart some information about the treaty so that they could ask questions about it and make comments about it afterwards. At each of those meetings there was time given for people to make comments and for people to ask questions and for people to raise concerns about the treaty.

Before I get onto those issues of concern that were raised, I can say that the Department of Foreign Affairs and Trade has lists of the people who were invited to the consultations and, in most cases, a list of those who actually came to the consultations. Those lists can be provided to the committee. I should say that—

CHAIRMAN—Was Andrew Smolders on that list?

Mr Campbell—Andrew Smolders was invited to the consultation which was held in Darwin, as was the conservator on Christmas Island. That invitation would have gone out in mid to late June, but he did not attend the consultation.

In relation to the interests of Christmas Island, they were brought up in the consultation which was held in Perth. Some of the concern about Christmas Island was

raised by Senator Margetts who attended those consultations in Perth. They were also raised by Dr Vivian Forbes, particularly in relation to the issue of the location of the boundary between Christmas Island and Java.

As to the issues that were raised in the consultations which were held in Melbourne, there was very little criticism of the treaty but there were questions asked about how it would operate, particularly in the areas of overlapping jurisdiction.

In Canberra the particular issue which was raised was concern over fisheries jurisdiction and the manner in which that would be exercised after the treaty entered into force. There were very few people at the Canberra seminar. As I said, the main issue that was raised there was the issue of fisheries jurisdiction. I must say that the issue of fisheries jurisdiction which was raised there already exists under the existing arrangements let alone the arrangements that will be put in place by this treaty.

CHAIRMAN—Were the East Timorese groups included in those invitations?

Mr Campbell—Certainly, in relation to Darwin, invitations went to East Timorese groups. I was going to get around to the consultations in Darwin. Could I just deal with Perth first? I am going in the sequence in which we went, actually. Throughout the consultations, an issue of concern that was raised was the lack of consultation which had taken place prior to the signature of the treaties. We endeavoured to explain that, by reason of the practice of states in the negotiation of treaties, it was not open to us to hold extensive consultations prior to entry into a treaty. Nevertheless, that was a concern which was raised.

I have got to say that that practice can differ in the case of some treaties, depending on the nature of the treaty you are dealing with and also the country that you are actually dealing with, but—

Mr McCLELLAND—Is that because of a fear of confidentiality and weakening your negotiating position—

Mr Campbell—It is fear of confidentiality of and weakening the negotiating position. By its very nature, a maritime delimitation agreement is not the sort of agreement where you can go out after each round of consultation and say where you have got to with the other party and say what lies behind it.

In Perth, the issue of the distance between Christmas Island and Java was raised, particularly by Vivian Forbes. Fisheries issues were again raised: about where fishing could take place under this agreement and also illegal Indonesian fishing. In relation to Christmas Island, Senator Margetts mentioned a number of issues, including one conservation issue and the issue of illegal immigration, and also the question of search and rescue in relation to fishermen on the island.

CHAIRMAN—Was Senator Margetts speaking as a Green senator or was she speaking as a land-holder on Christmas Island?

Mr Campbell—Mr Chairman, you would have to ask Senator Margetts that question. What I can say is that she did raise a number of issues concerning Christmas Island—the ones I mentioned.

In Darwin, conservation issues were raised, principally around Ashmore and Cartier Islands, and what would happen around Ashmore and Cartier. There were issues raised, particularly, which were addressed by Peter Smith this morning, about the manner in which the treaty would operate in relation to special prospecting authorities.

In Darwin, we had one meeting with general invitees and then there was a separate meeting with East Timorese groups. I would have to check on this, but I think there might have been two groups that were represented there in Darwin. As I said in evidence on 2 September, we had a forthright discussion with the East Timorese groups in Darwin. As we did with everybody else, we explained the operation of the treaty. But I cannot say that we came away agreeing about whether we should be entering into a treaty with Indonesia over the area between East Timor and Australia. That is where the consultations were held. We can provide the lists of who was invited and who actually attended.

Just in relation to Christmas Island, I suppose there is one allied issue that might have been mentioned already and that is the information kit which was given to most of the people who participated in the meetings which we held. That kit was sent to Christmas Island and published in the local newspaper. I see from the *Hansard* that there was an issue of whether it should have been printed in a local language and not just in English, and I take that point.

CHAIRMAN—It was only in English.

Mr Campbell—But, as I said before, from our perspective we did make a genuine attempt at consultations. Maybe Foreign Affairs could speak to this issue, but they did attempt to identify those people who would be interested and the interest groups in the treaty. We did not try to avoid meetings with what might be seen as difficult opponents of the treaty, otherwise we would not have met with the East Timorese groups in Darwin.

CHAIRMAN—This committee, as I said in the opening comments, whilst it takes evidence on the basis of what people think—and some of them made the points, as you know, on the *Hansard* record about consultation prior to signature, and that is something that we note—is concerned with the consultation post-signature and indeed post-NIA. The important thing about what you said is that all of that happened in that time envelope between March, the signature, and August, the tabling in the parliament. That is right, is it not?

Mr Campbell—All of those consultations took place in that time. I should also mention, to the extent that it might be seen as relevant, that I did give a couple of lectures on the issue. One was to a group at ANU and one to a group at the University of Melbourne. I should also say that all of those consultations were completed by the time the national interest analysis was actually drafted.

Mr McCLELLAND—Just on that issue: I suppose if the authority to negotiate is delegated to the Western Australian Attorney-General that is appropriate, and in many ways it is probably the responsibility of the Western Australian Attorney-General to ensure that those upon whose behalf he is negotiating are informed of the progress, but that would seem to me to necessitate the Commonwealth government advising, for instance, Christmas Island as a territory that the Western Australian Attorney-General was negotiating on its behalf. Do you know if that was ever done?

Mr Campbell—I personally do not know whether that was done. Could I make a point about the representation of the states and territories? The practice that was adopted in this case, in the sense of having a representative of the states and territories and not a representative of each state and territory, is consistent with the practice which is adopted in relation to treaties in general. I can say that certainly the Solicitor-General for Western Australia was deeply involved in the negotiation of the treaty. Both of them were.

Mr McCLELLAND—That may be something to crosscheck to ensure that those persons on whose behalf the negotiator is negotiating are aware that he or she is negotiating on their behalf. It may be necessary to crosscheck whether it was or was not done.

Mr TONY SMITH—Would you agree with the general proposition that the group of Australians most directly affected by this treaty are the Christmas Islanders because of the way the boundary is closer to that group of Australians than to any other group?

Mr Campbell—I do not think I would agree with that. There is equally a boundary between the Northern Territory and Western Australia and other parts of Indonesia. It so happens that Christmas Island is relatively isolated from the mainland of Australia and is also relatively close—186 nautical miles—to the coast of Java. I do not see that that gives them a higher interest than people in the Northern Territory and Western Australia.

Mr TONY SMITH—In terms of Indonesia's aggressive intent over a good number of years, you could accept surely that it would be reasonable for Christmas Islanders to be concerned about their security more so than any other group of Australians because of its proximity to Indonesia as a general proposition?

Mr Campbell—I must say I do not accept the premise about the aggressive intention of Indonesia for a start. The second issue is that Indonesia would not have

negotiated with Australia on a maritime boundary between Christmas Island and Java had it not recognised Australian sovereignty over Christmas Island.

Mr TONY SMITH—All right. I understand where you are coming from. In our National Interest Analysis, it is stated:

> The interests of the States and Territories were represented throughout the negotiations by the Solicitor-General of Western Australia, who was a member of the Australian delegation.

Is that intended to convey that the Solicitor-General of Western Australia was representing the Territory of Christmas Island?

Mr Campbell—I think it is intended to convey that, yes.

Mr TONY SMITH—What instructions did the Solicitor-General of Western Australia have from the Commonwealth in relation to Christmas Island?

Mr Campbell—I am not aware that he had any particular instructions, although he was involved in the negotiations and knew the issues, just as every other member of the delegation did.

CHAIRMAN—Were there any instructions from territories in relation to that?

Dr Turner—Not that I am aware of, Mr Chairman.

Mr TONY SMITH—In relation to the comment in the National Interest Analysis about consultations being held in Canberra et cetera, and mentioning 'relevant agencies from state and territory governments', was that at all intended to convey that the Christmas Island Territory was involved in those consultations?

Mr Campbell—As I stated earlier, the president of the Christmas Island shire was invited to the consultations in Perth, as was—

Mr TONY SMITH—Just in relation to that, have you got the letter of invitation?

Mr Campbell—I do not have the letter.

Mr TONY SMITH—Can that be produced? There is a real issue of credit on this. The Christmas Island shire president denies any consultations whatsoever, and this was specifically put to him; so we need to have some evidence which would support the assertion that he was invited, before we can decide what we will do about that issue of credit.

CHAIRMAN—That is an important point—because, as you would have read on

the *Hansard* record, he was specifically asked and he said he had no recollection of anything.

Mr Biggs—We can produce—

CHAIRMAN—If you could, that would be helpful.

Mr Biggs—I am not sure whether we have a copy of the specific letter.

Mr TONY SMITH—Also, it was said that we could not have expected a better result had it been taken to court. If I may gently suggest this to you, that really is not the evidence from the Solicitor-General in Western Australia in relation to the figure of 38.75 nautical miles. The evidence from the Solicitor-General suggests a knock-down figure. In other words, we asked him how he arrived at that figure, and it was a question of to-ing and fro-ing and going backwards and forwards to come to that figure, so it could hardly be suggested that that figure could not have been arrived at better than if it had been taken to court.

Mr Campbell—Maybe I did not make my point precisely. Leaving aside how the figure of 38.75 nautical miles was arrived at, I do not think that we could have achieved a better result if the issue had been taken to some form of international court or arbitration. One needs to look at a bit of background on that issue. At the commencement of the negotiations, the position prior to the entry into force of this treaty was, as is the position at this point in time, that the Indonesian exclusive economic zone in fact encircled—

CHAIRMAN—Went beyond.

Mr Campbell—It is in a radial shape around Christmas Island, 12 nautical miles from Christmas Island. Australia claims an exclusive economic zone to the point of the median line. There is an overlap there, which was sought to be resolved in this treaty. As well as the point of 38.75 nautical miles, you also have to look at the shape that was achieved in the negotiation of that boundary. It is not merely a radial shape. It is an adjusted median line which in itself gives to Australia a much greater maritime area than the radial position which was put by Indonesia in the first place.

If I am looking for support for my statement that I do not think that we could have achieved a better result in a maritime delimitation, I would look particularly to that case which I mentioned earlier, which is the case between Norway and Denmark in relation to Jan Mayen Island and Greenland. It is certainly of a similar shape, but I am not quite sure about the distances involved. It certainly is a precedent which would suggest that, had that matter gone before an international court or tribunal, we would not have got something better than that which was achieved.

Mr TONY SMITH—Can you comment on how that 38.75 figure was arrived at?

Mr Campbell—I can comment by saying that it was arrived at in a process of negotiation between the two parties. I can also say that, in the course of the negotiations, the cases which I have just mentioned and issues concerning the status of islands in maritime delimitation in international law were canvassed in a great deal of detail.

Mr HARDGRAVE—I am left staggered as to why there was no follow-up with Shire Chairman Smolders, if in fact he was invited and he did not come, when we were clearly negotiating something that would be of great interest to him. Why was there was no attempt to go to him to encourage his participation?

Mr Campbell—I am not able to answer that question.

Mr HARDGRAVE—How did the negotiating team come up with a position on Christmas Island, if you were not talking to people from Christmas Island?

Mr Campbell—We discussed issues with the department responsible for the territories.

Mr HARDGRAVE—These are Canberra based people?

Mr Campbell—Yes. There are also issues there concerning fishing and petroleum, which were discussed with the relevant departments in Canberra. But, as I noted earlier, there were issues of confidentiality involved in the negotiations with the bilateral treaty with Indonesia.

CHAIRMAN—Was the administrator aware at that stage?

Mr Campbell—I do not know the answer to that question.

Dr Turner—The administrator was aware of the general nature of the negotiations but was not in any sense a party to the negotiations.

Mr McCLELLAND—This is pre-signature.

CHAIRMAN—Pre-signature. When was the administrator aware of what was being negotiated, in general terms?

Dr Turner—In general terms; in the same way that the rest of us were, I suppose.

CHAIRMAN—Just roughly, in time terms.

Dr Turner—Without going back and checking the records, I am aware of correspondence going backwards and forwards in early April 1997. In 1996 we would have been—

CHAIRMAN—But April is after the signature. I am talking about prior to signature.

Dr Turner—Only in the most general terms: it was the negotiation about the maritime delimitation treaty, certainly in mid-1996 when we were talking about the possibility of a meeting being held on Christmas Island. But that would not have gone—as far as I am aware—to the details of the particular provisions or location of the—

Mr HARDGRAVE—Mr Campbell, my interpretation would have been that the consultation would have been pre-signature, but I will accept the excuse that keeps permeating constantly that we cannot talk about some of these things before we sign; although I must say that I am still bewildered about why you cannot, in this particular case, talk to people on Christmas Island in particular about their concerns—even if they are only perceived concerns—about what this treaty now offers them. Why was this not pursued? Why were the people of Christmas Island not pursued for an opinion?

Ms Bird—Can I make a few general points about the consultation process? We are very happy to provide for the committee the list of those that we invited to the various public seminars that we held, and I think you will see from the list that we made a fair effort to involve all those who had an interest in the treaty, even known opponents of that treaty, for example, East Timor groups. Obviously included in that list were representatives of the Christmas Island group. There are some limits to which we can go, so we put together these lists and send out the invitations. In the case of Christmas Island, we also ensured that a package of material was put in a local paper which would presumably get a fairly wide distribution amongst Christmas Islanders.

Mr HARDGRAVE—But that was after the signature.

Ms Bird—We are talking after the signature here of the consultation process and before the tabling of the NIA. We made every effort that we could to identify interested groups and to invite them to public consultations. We cannot oblige people to turn up to consultation processes. All we can do is offer the opportunity, make it available and make it known.

Mr HARDGRAVE—There surely must be some pervading logic. Ms Bird, you told us earlier this morning that you are very proud of the negotiating and consultation process that you have embarked on. I have a feeling that somewhere between now and the end of the hearing today you may regret that statement. It strikes me as illogical that, in a process of negotiation and consultation with Australian citizens who are affected by something that you have come up with as a treaty, they were not even asked for an opinion. Not only that, they had some very solid concerns in the national interest to be considered, and they were not even asked.

Ms Bird—As I explained, we identified the list of interested parties, which

included Christmas Island. Information was disseminated and they were invited to public hearings.

Mr HARDGRAVE—But there was no follow-up. If you say they were invited, then we must believe you, and we are looking forward to the proof of that invitation. But why weren't they followed up? Surely, to get the credibility of this process completely nailed down, sealed off and watertight when you face this committee and we ask you these sorts of questions, you can produce proof that you went out of your way not just to look like you were drawing up a list and consulting but actually to come up with some real rock solid consultation with people directly affected by this treaty. You did not do it.

Ms Bird—As I said, we conducted our series of consultations, inviting those with a known interest. Our NIA reflected the concerns and information we got from those hearings. Of course, this committee's process is also a very important part of the consultation process. You can get out further into the community sometimes than we can. Your advice will obviously also be an important part of the eventual decision on this treaty. This is all part of the consultation process.

Mr HARDGRAVE—I would have thought that, if you had gone and spoken to people on Christmas Island, you would have found out matters relating to concerns with customs, illegal aliens, management of fishing stocks which directly affect Australian businesses, and environmental concerns where our environmental management techniques are quite supreme compared to the Indonesians. All are things that we have managed to glean without too much difficulty by pursuing the people from Christmas Island. I do not believe you would have missed them if they had been pursued as well.

Ms Bird—I think I mentioned in my opening remarks that there are also issues which had been raised in a number of hearings by people to do with issues—fisheries, illegal immigration and other issues. As I also indicated, this treaty was not designed to resolve those issues, although having a clear maritime delimitation is an important aspect of managing those issues. There are a series of other processes available to handle fisheries, immigration, customs and other affairs.

CHAIRMAN—It could be argued, and quite strongly—and we can all be wise with hindsight—that the NIA was produced too quickly. As to the Indonesians, my understanding is that it will not go to the Indonesian parliament for ratification until about the middle of next year because of the elections.

Ms Bird—Yes.

CHAIRMAN—Why the rush? What Mr Hardgrave is saying is reflected in a lot of the evidence that perhaps we could have got with further consultation prior to the preparation of the NIA. Perhaps some of the issues that are being raised today, and that have been raised in Darwin and Christmas Island, would not have needed to be raised.

Mr Biggs—If I could just inject something before Mr Campbell speaks on that, which is that the maritime delimitation with Indonesia is an event of national significance. Parliament is by far the best forum that we have for bringing these issues to the concern of the Australian public at large. The government regards it as most appropriate to put this treaty, and similar treaties, into that most public of forums, the parliament, and before your committee at the earliest opportunity to give the maximum opportunity for general consultation with the community.

Mr HARDGRAVE—I have one last question—

CHAIRMAN—Gary, let me just make one point before we move on. If you say that, Ian, then surely you should not be surprised if this committee is critical of the consultative process. Ministers should not be surprised if in fact, as I think all of us involved have found, the consultation was not satisfactory.

Mr Biggs—Ministers regard the operation of the new treaties process and of the committee's inquiries as an integral part of the determination of the national interest in a treaty before it is finalised. They consider the working of your inquiries to be a crucial part of the whole consultative process. I do not believe that the government would accept that this process is falling down in this case.

Mr HARDGRAVE—Before Mr McGauran asks his maiden question at this committee, I have a last question. Is Christmas Island, the people of Christmas Island, a major stakeholder in this particular treaty? Who is going to answer that?

Mr Campbell—I will answer that question and say yes.

Mr HARDGRAVE—Okay. It was said earlier today that all major stakeholders were asked and consulted, and obviously this major—

Mr Campbell—They were asked and they were given information.

Mr HARDGRAVE—But they were not consulted.

Senator McGAURAN—Is anybody from DFAT or A-G's or DIST, on reflection, having heard committee members' views, prepared to concede that the Christmas Island consultation process could have been better handled and that something of a lesson has been learned in regard to chasing out Australians who feel themselves to be, or in fact are, more directly involved in a treaty issue than others? Start with DFAT.

Ms Bird—I think the process reinforces the importance of ensuring that those with an interest in treaties are consulted. As I said, we make every effort to identify those with an interest and to ensure that they are consulted, and will continue to do so.

Senator McGAURAN—Can I ask A-G's: you do not think there is a lesson to be learnt?

Mr Campbell—Bearing in mind my experience before the committee on this issue, I have got to say I do not agree with all of the comments that have been made about it, but if I had my time again I would visit Christmas Island.

Senator COONAN—It is a lovely place.

CHAIRMAN—Territories?

Dr Turner—Obviously we bring a different perspective rather than just the treaty negotiations. Consulting with Christmas Island is my bread and butter, so no day goes by when I do not learn something about consultation—

Senator McGAURAN—Sure. But in regard to this issue, do you think you could have done it better?

Dr Turner—I am really commenting on the activities of another Commonwealth department. The Department of Foreign Affairs and Trade have carriage of the issue, so I really do not think—

CHAIRMAN—But was the change of administrator a factor that perhaps did not help the process?

Dr Turner—As far as I am aware the change of administrator has not in any sense inhibited the flow of information backwards and forwards to Christmas Island. In terms of the contact on the island between the community and the administrator, I really cannot comment. But my impression is no, that that has had no substantive—

CHAIRMAN—Okay.

Senator COONAN—I am referring to page 18 of the NIA in our booklet. It is page 6 of the NIA. There seems to be a distinction being made in the document between invitations that were issued and consultations that were actually carried out. Is that right? I am looking at about point 5 on the page. It says 'invitations to the consultations were based—' Is that correct, that the document attempts to make a distinction between invitations issued and consultations actually carried out?

Mr Campbell—I do not think it was written with that in mind.

Senator COONAN—But in fact that is the case as it turns out, that invitations were made to relevant groups that were not, in your view, taken up?

Mr Campbell—There were a number of invitations made to relevant groups and

individuals who did not attend the meeting. On the other hand, there were also people who did not receive invitations who did attend meetings.

Senator COONAN—Is there any impediment in appending to a national interest statement such as this a list of invitees and a list of people consulted, or are there some sensitivities that you would say would militate against that?

Mr Campbell—I do not see any sensitivities that would militate against that, but there is the issue about how long NIAs are going to be. I would certainly see it as appropriate in the course of the hearing or in tabling a document in the course of the hearing.

Senator COONAN—It just seems to me that there has been a lot of angst over what form of consultation took place and whether people were included or not included. As we have said, there is an issue that a particularly relevant person on Christmas Island has said he was not consulted. It may be, in fact, that an invitation was issued. We need to resolve that.

The other point I also wanted to take up in the NIA is that I gather from that statement at about point 5 that where you refer to state and territory government agencies you would include in that the council of Christmas Island. It would be a relevant body that would be encapsulated in that statement?

Mr Campbell—To be honest, I am not sure. It would be comprehended, I suppose, in the phrase 'territory government agencies' but as to whether that was intended there I just cannot answer that.

Senator COONAN—What was intended then by the statement?

Mr Campbell—It certainly included Northern Territory and Western Australian agencies. But it would in its terminology, I think, pick up the Christmas Island shire.

Senator COONAN—There are a couple of other aspects I want to take up. Ms Bird pointed out that the treaty draws the line but does not deal with management or operational aspects. What are the arrangements? Will there be any further negotiations with Indonesia or any MOUs about some of the aspects of management that do not appear to have been dealt with? The field has not been covered for some of the problems. For instance, on Christmas Island some of the problems with illegal immigrants and things of that nature have really been a matter of great concern to the people there and just do not appear to be addressed anywhere; they are left in a vacuum.

Mr Campbell—I am not sure whether the department of immigration is here but—

Senator COONAN—I am just picking it out as an example.

Mr Campbell—Can I just make the point that in negotiating this treaty, I do not know about other members of the delegation but certainly I was aware that there had been a number of vessels with illegal immigrants landed on Christmas Island. I have to say, again, that that issue of illegal immigrants is not something that is intended to be dealt with by this treaty.

Senator COONAN—No, but it can be exacerbated by it if it is not otherwise dealt with.

Mr Campbell—If one is talking about maritime zones and dealing with immigration issues, the zone which is relevant to that is a contiguous zone which is a 24-nautical mile zone at the outer limit, which is well within the boundary that is being negotiated. I cannot say whether there is another forum in place at the moment to deal with this issue with Indonesia because it does not fall within the realms of my portfolio.

Senator COONAN—There appear to be a lot of areas left at large. Would you agree with that? I understand that it might not be part of drawing the line in the treaty process, but for the people who are affected there appear to be a lot of areas of their daily lives on this island that are affected that are not otherwise dealt with.

Mr Campbell—But they were not intended to be dealt with in this treaty.

Senator COONAN—But they may have been exacerbated. There are difficulties, they say. They gave evidence that they anticipate that their problems in dealing with illegal immigrants will be made worse by the way in which this delimitation of the line is drawn.

Mr Campbell—But, at this very moment, the Indonesians have an exclusive economic zone that goes within 12 nautical miles of Christmas Island. This will push that zone back so that the closest point will be 38.75 nautical miles back. If the position is that immigrants are coming in on Indonesian fishing vessels, then, in reality, this pushes the line back.

Mr TONY SMITH—That is not the perception.

Mr Campbell—It may not be the perception, but I am just saying that it is what actually happens in terms of Indonesia's actual claim and where Indonesia would say that its fishing vessels can go. Regarding issues like piracy that were mentioned, again, piracy is not intended to be covered by this treaty. Piracy is one of the only acts—if not the only act—over which countries have universal jurisdiction, and that is looked on as a general law of the sea.

CHAIRMAN—Allaster, do you want to make a comment?

Mr Cox—I just thought that I might be able to add to what Bill has said. We have regular consultations with Indonesia on a range of matters. Most recently Mr Ruddock was up in Indonesia on a bilateral visit and he raised a range of issues, including illegal immigrants into Australia passing through the waters between Indonesia and Australia, including Christmas Island. There is an ongoing attempt to try and engage the Indonesians, the armed forces, their intelligence operations, and their local authorities to try and give us forewarning of this sort of movement of people. So it does not preclude any work—in fact I think that it gives us a stronger basis for trying to work on MOUs, or other sorts of formal or informal arrangements to try and improve the situation in monitoring illegal immigrants.

It also applies to fishing. Actually having a firm boundary there provides us with both a confidence building measure with the Indonesians, and a basis for saying to them that we need to improve management frameworks in that sort of area. There is a 1992 fisheries agreement, so in the fisheries area there are ongoing fisheries talks. During the negotiations of the agreement there were fisheries talks at that time. There are continuing to be fisheries discussions on a regular basis between Australia and Indonesia. Probably you can say that this treaty does not preclude and, in fact, probably strengthens the capacity to have this sort of dialogue with Indonesia across a range of the management issues on the border.

Senator COONAN—Yes. That was the basis of my question—whether there had been some ongoing negotiations about some of the management issues.

Mr Cox—Yes, of course. That is part of the framework of our bilateral relationships.

Senator COONAN—Thanks. And I am just intrigued about this: if the rules for delimitation or maritime boundaries are reasonably clear cut as to how you draw a maritime boundary, how negotiable was the treaty line anyway if the jurisprudential basis for it was well established in precedent?

Mr Campbell—The primary mechanism set out in the Law of the Sea Convention is that countries are to negotiate their boundaries by agreement, taking into account the relevant principles of international law as set out in the statute to the International Court of Justice with a view to reaching an equitable solution. That in itself does not provide, I suppose, a very good guide as to how you actually do it, but it does say that you do take into account the principles of international law when you are negotiating a boundary. But it is a factor which was taken into account in the negotiations. I think both Indonesia and Australia wanted the agreement to be seen as consistent with the international law and the practice and the jurisprudence of the court, but nevertheless, in the final analysis, it is something done by agreement between two countries. I suppose what I am saying in short is that it was done by agreement and that international law was seen as a relevant factor in negotiating that.

Senator COONAN—So, in other words, there was quite a degree of—forgive the expression—latitude in how it was negotiated. I mean there was a lot of—

Mr Campbell—There was a lot of longitude.

Senator MURPHY—To go to the consultative process, I know you said—in fact I think everyone has said—that this is not designed to resolve all of the issues, but I suppose, for the people, and particularly, for the territories and states involved in either negotiations directly with, say, Indonesia, about fishing and/or mineral exploration rights—whatever the case might be—that treaties of this nature have some impact on those negotiations.

I am still curious about—at the end of the day, if the WA Solicitor-General were the person involved—what feedback there was because I think Dr Nunn, the Director of Energy in the Northern Territory Department of Mines and Energy, said that there was no consultation with his department. I assume then that that also means his minister. That may not be a fault of the Commonwealth; it may be a fault of the person then representing him.

I think it is important to resolve this problem of consultation that seems to exist as to who is responsible for advising whom about what. I wonder whether there might arise out of this hearing some effort to get a better process in place or at least give responsibility to the Solicitor-General in WA, if he or she is the person involved, to advise these people on these things so that at least every time we have a hearing about some treaty we are not bombarded with complaints about consultation. I do not think we know, Mr Chairman, who is responsible for what and when.

Mr Smith, I want to ask you about the exploration matters raised by Mr Jones and Mr Wood. Although they would seem to me to be not a problem in so far as this treaty is concerned, there were some questions raised about the three months notice and that, if they decided to include another area, it then becomes six months notice, et cetera. That problem seems to be more related to that rather than to the development or signature of the treaty.

Mr Smith—I would like to clarify a bit in the first place. All the exploration for petroleum and minerals more than three nautical miles from the territorial sea baseline and/or in the territory of Ashmore and Cartier Island is under Commonwealth jurisdiction. The states do not negotiate in any way with Indonesia. In fact, we do not negotiate with Indonesia in the areas that are under our jurisdiction. It is totally under Commonwealth legislation. The two states share some administrative arrangements with us; there is a joint administrative regime there.

In terms of the consultation with the states, I cannot speak directly on what was done between the WA Solicitor-General and the Northern Territory people, but I can say

that on, I think, 2 February this year I personally spoke to Dr Eric Nunn on this treaty. ANZMEC, the Australian and New Zealand Minerals and Energy Council, has a subcommittee on petroleum legislation. That committee, of which Eric Nunn is a member, was aware of this treaty being negotiated.

At a subcommittee meeting in, I think, April a specific paper was presented on the outcomes of this treaty negotiation. I am not sure whether Dr Nunn was there because he was on extended leave during the period, but certainly Dr Nunn was aware, and in February he raised the issue of this overlapping jurisdiction. He did not like it. None of us likes it, but it is something that we have got, unfortunately. It was either that or lose the seabed completely. We did our best in the treaty to set the arrangements so that we could actually manage that area correctly.

In terms of the issue raised by PGS Exploration in Darwin about special prospecting authorities, they seem to say that, once they were given the authority, if they wanted to change their mind and put more areas in it, they had to go back. I would think from an administrative point of view that they would still have their authority to undertake what they wanted to undertake and that, if they wanted to extend that area into an area which was currently not the subject of an exploration permit, retention lease or production licence, then that addition to a survey would require three months notice.

Senator MURPHY—Is that just to the Commonwealth?

Mr Smith—Three months notice to Indonesia.

Senator MURPHY—Which arises out of the treaty?

Mr Smith—Yes, which arises out of the treaty. But if they are extending the survey within a currently permitted leased or licensed area, we do not have to go back to Indonesia at all. In fact, if they are undertaking a multi-client survey under an access authority which relates to existing permits, licences and leases, then there is no need to give notice to Indonesia at all. It is only in relation to areas which are currently not licensed.

Senator MURPHY—I do not think that was what the evidence was.

Mr Smith—I have read their evidence and it is not clear to me what they had in mind. Certainly we have gone back to PGS Exploration and back to the NT to clarify with them, to make it quite clear that it is only in relation to areas without permits.

Senator MURPHY—I think that would be very helpful.

Mr Smith—I also point out in relation to the consultation with the petroleum industry, the Australia-wide association—the Australian Petroleum Production and

Exploration Association—was aware of this treaty negotiation in general terms. Immediately prior to the signing of the treaty, we had a meeting with them to brief them in confidence about what the outcome was going to be in general terms. We also had a meeting with Woodside and the Western Australian Department of Minerals and Energy in Perth before the treaty was signed.

After the treaty was signed Bill Campbell, an officer from DFAT and I spoke to APPEA in Canberra, along with a representative of BHPP and the University of Wollongong, to discuss the issues, particularly in relation to this overlapping area. We also arranged an invitation to be put into the APPEA journal—which went to all its members including PGS—about the various consultation meetings around Australia. A number of companies did take advantage of that.

CHAIRMAN—After the Darwin hearing we had a communication from Santos indicating that the APPEA communication was inadequate. That was the issue I recall raising myself—how satisfactory was the peak body? They took that on notice and they have come back and said obviously they were aware, but they did not let the industry groups know.

Mr Smith—The interesting point about that is I that personally spoke to a representative of the operator of every licence or title in the area of overlap before the treaty was signed and advised them that the treaty would be signed and in general terms what it would be covering. One problem with all these things is that there have been lots of changes of personnel in the petroleum industry over time. We find it always a problem that we might tell our appropriate contact in the industry, who might be at a relatively senior level in the organisation, but the operator down on the boat obviously does not know it in any detail and it is news to him. We often get that problem.

Senator MURPHY—I have a question to do with the East Timor situation. I understand that the treaty does not necessarily have anything to do with it, but there were questions that particularly went to the UN position raised by the East Timor Relief Association by or another group. They claimed—not that I accept this—that Australia was jeopardising international progress with regards to East Timor. I am curious about those claims. I think it might be appropriate, if possible, that some response be put to that so far as our progress in signing treaties is concerned. As I said, I accept that it does not necessarily have a great deal to do with it, but of course there is a concern that it does.

There had been negotiations at an international level. They were saying that the UN may well move to enhance the existing UN resolutions in respect to East Timor and that they had a view that Australia, by proceeding just to agree and to sign agreements or treaties which, in fact, covered some area that might otherwise be a jurisdiction of the East Timorese, was, in fact, jeopardising the progress of what might happen at an international level. You might like to respond to that.

Mr Campbell—I am not in a position to respond to the suggestion that Australia's action, in negotiating this treaty, is jeopardising current UN initiatives that they employ. What I can do is point out a couple of paragraphs in the actual East Timor judgment which was given by the International Court of Justice on the issue. I think in evidence last week it was said that Australia was in breach of various UN Security Council and General Assembly resolutions.

CHAIRMAN—That was a view expressed.

Mr Campbell—That was a view expressed. I do not know whether it is worth reading it out, but paragraph 31 of the judgment of the court says:

> The court notes that the argument of Portugal under consideration rests on the premise that United Nations resolutions and in particular those of the Security Council, can be read as imposing an obligation on states not to recognise any authority on the part of Indonesia over the territory and where the latter is concerned, to deal only with Portugal. The court is not persuaded, however, that the relevant resolution went so far.

That is one issue they stated. Secondly, paragraph 32 states:

> The court finds that it cannot be inferred from the sole fact that the abovementioned resolutions of the General Assembly and the Security Council refer to Portugal as the administering power of East Timor, that they intended to establish an obligation on third states to treat, that is to deal with, exclusively with Portugal as regards to the Continental Shelf of East Timor. The court notes furthermore, that several states have concluded with Indonesia treaties capable of application to East Timor, but which do not include any reservation in regard to that territory.

The simple point I am making is that the court, in that case, did not decide that, by reason of those UN resolutions, it was not open to Australia to deal with Indonesia over the continental shelf.

CHAIRMAN—That is the point that I made in Darwin to Mr Wesley-Smith and last week in terms of the Sydney group as well. It is clearly not as open and shut as their ideology would put it to be.

Mr Cox—All I was going to add was that, apart from the legal position, I think that Australia has actively supported the UN process between Portugal and Indonesia and whatever outcome that process brings about we will happily work with. Mr Downer, in his many meetings with Mr Alatas, both internationally in New York, in Jakarta or elsewhere in Perth when they met to sign this treaty, in fact, discussed this issue, as the previous minister did, encouraging this process to come to some workable conclusion between Portugal and Indonesia.

We have also funded, three times, the all inclusive East Timorese dialogue process,

which is a process underneath the UN tripartite umbrella. While those groups may have that view, nothing that we have done legally or politically, I think, has done anything to undermine the UN processes. In fact, quite the contrary, I think we have done a lot to encourage them to work effectively. That is where we see the resolution ultimately, ideally coming.

CHAIRMAN—Thank you.

Senator MURPHY—Once you have got the NIA developed, written out, is that then sent out to the parties that may be involved or affected by the treaty?

Mr Biggs—It is cleared firstly through Foreign Affairs and Trade and the Attorney-General's. It is sent out to any of the states and territories that have indicated a significant interest in the treaty in question. It is ultimately a document of the Commonwealth government, which is tabled in parliament for the public scrutiny.

CHAIRMAN—But the non-government organisations are not copied?

Mr Biggs—They are not copied in the drafts of the National Interest Analysis, though their views are normally incorporated.

Senator MURPHY—Do you think it might be a worthwhile exercise to send that out?

Mr Biggs—It is a statement of where the Commonwealth has got to after discussions with interest groups. We see the ultimate form of sending it out for community views to be the tabling. That is when we ask what interest groups think of it, ultimately.

Mr TONY SMITH—I just want to be absolutely clear on this. Is it the case that there was no discussion with Christmas Islanders or the council before the treaty was signed?

Mr Biggs—Not that we are aware of.

Mr TONY SMITH—Lastly, having regard to my need to be careful in how I preface or make presumptions or assumptions in my questions, if Indonesia had not invaded East Timor, would you not be negotiating the water column between Australia and East Timor with Indonesia, but rather with Portugal or an independent East Timor?

Mr Campbell—I am not avoiding the issue. When Australia negotiated the 1971 and 1972 seabed agreements with Indonesia, those very agreements left the Timor Gap there. At that stage, Indonesia did not have sovereignty over East Timor. We would have seen Portugal as the relevant country with which to negotiate a maritime boundary in that

area. But we can only negotiate a maritime boundary with a country. With all due respect, East Timor is not a country with whom we could negotiate a maritime delimitation agreement at any point in time.

Mr TONY SMITH—Because it is not an independent sovereign state.

Mr Campbell—That is right.

Mr TONY SMITH—And the basis for its not being that is because we have now accepted the Indonesian invasion as a sovereignty issue. Is that right?

Mr Campbell—I do not think you can say that we have, in your words, 'accepted the Indonesian invasion.' What we have done is recognise that Indonesia now has sovereignty over East Timor.

Mr Cox—That is right. We accept Indonesian sovereignty over East Timor at present. We do not necessarily accept what was done to achieve that sovereignty.

Mr TONY SMITH—We are prepared to negotiate, notwithstanding our reluctance to accept that we are prepared to negotiate what is arguably somebody else's territory with another country.

Mr Cox—With the sovereignty authority in East Timor.

Mr Campbell—I will just mention one point. On that issue about what Australia might have said at the time it recognised Indonesian sovereignty over East Timor, it was clearly stated in most of the statements that are at least quoted in the judgment of the court, that Australia accepted Indonesian sovereignty. That did not alter the opposition which was expressed regarding the manner of incorporation.

CHAIRMAN—That is right.

Mr HARDGRAVE—I have a couple of wrap-up questions on the consultation front. It is intriguing—maybe it is generous—that those who decided who was going to be consulted and who was not said that the East Timor support groups were mentioned in the NIA as amongst those who were consulted, and yet there is no mention or acknowledgment of Christmas Island Shire. Have you any comment on that, given the discussions we have just had about the East Timor situation?

Mr Campbell—No, I do not have any comment on that.

Mr HARDGRAVE—One question I would like to finish on is that, essentially, the NIA, as presented to us, has got a number of holes in it, as we have established. Surely it is to the point where we have to look at you redoing it—redrafting, renegotiating. What

sort of situation are you in if we delay or do not ratify this—if we go back and renegotiate so that you can better understand what it is Australia is trading off in this treaty?

Senator McGAURAN—Just to finish up with a nice bombshell.

CHAIRMAN—As they say in the vernacular, 'Cop that, young Harry.'

Mr Campbell—I do not agree that Australia was unaware of the primary interests that were under consideration and needed to be taken into account in the negotiation of this treaty. As we have already said, a lot of the issues which were raised in Christmas Island were not ones that were going to be dealt with in this treaty. I do not think it would be in Australia's interest at all to go back and try to renegotiate the treaty.

Ms Bird—I should just add that we think this is a very good outcome for the national interest and it is in that spirit that it has been put in the NIA and tabled in parliament.

CHAIRMAN—Could I just ask Defence, what does this all mean in terms of defence assets and patrol requirements, whether it be Fremantles or P3Rs? What does this mean to Defence and can Defence accommodate the additional requirements?

Capt. Moffitt—It is my understanding, although a relative newcomer to the treaty as it is, that the changes that are being wrought here represent a very small change in the overall size of the Australian exclusive economic zone which we are engaged in patrolling and policing on behalf of a number of agencies in Australia. So, from that perspective, the changes impact on our ability today very little.

Our ability in the future, of course, is still very much in question, more particularly so since the recent announcement in Malaysia that Malaysia will not proceed with the Australian offer for the joint patrol vessel. That has led us to a position where we will now be re-examining our requirement, the capabilities that we need to carry out the government endorsed role. There is no resolution or way ahead as yet. There are a range of options available to us which will be examined through the defence committee process in the very near future. But it is obviously premature for us to—

CHAIRMAN—What you are saying is that the Fremantle replacement issue is now a key issue in this particular treaty follow-up. Is that what you are saying?

Capt. Moffitt—The Fremantle replacement or extension, or a combination of the two, is a key issue but not necessarily any more so because of this treaty.

CHAIRMAN—But if there is no extension or no replacement, it makes it very difficult to pick up the after-effects to follow on to this treaty.

Capt. Moffitt—I will clarify Defence's current position and provide you with some technical information about the Fremantle class. It is impossible for us to envisage a lengthy extension of life of type for the Fremantle class for a number of reasons, not least of which is that the hull structure itself, albeit built to look like a military vessel, is in fact built to a commercial design and standards.

The original envisaged life was 15 years. The oldest of the class is now 17 years old and it would simply be impractical for reasons of stress and degradation in the hull for us to extend over a long period of time. There is scope to extend perhaps some, perhaps all of the vessels for a relatively short period of time, which we would envisage at this stage covering the period of introduction into service of a new capability.

That capability is currently under detailed examination within Defence and will go to the committee process shortly, so it would be premature to say what it is that will replace the Fremantle class. However, there seems to be little doubt, from my consultations within Defence, that we will go forward with a proposal to the committee process that the capability will be replaced once the Fremantle class reaches its end of life.

CHAIRMAN—Just in terms of the practical implications of this treaty, my understanding is that, in the joint areas, the navy will be able to exercise hot pursuit into those new areas.

Capt. Moffitt—I am sorry, can I have the question again?

CHAIRMAN—I think we covered this with Mr Campbell; maybe he is more appropriate to answer the question. You made the point at the first hearing, I think, that hot pursuit could be continued into the joint area.

Mr Campbell—Yes; hot pursuit generally. Australia will be able to exercise jurisdiction in relation to the continental shelf, which conceivably might extend to fisheries if it were sedentary species, and maybe the navy could be involved in that process and hot pursuit could take place. But hot pursuit generally is a means of following a vessel outside your jurisdiction on to the high seas, beyond the EEZ, on the continental shelf, until you get to the territorial sea of another country. This treaty does not affect the ability to do that.

CHAIRMAN—There you are. You came and made a comment anyhow. Are there any more comments from officials?

Mr Biggs—Yes, there is one comment, if I could just interject, Mr Chairman. I am sorry Senator Murphy has left because it bears on one of his questions earlier about the process by which the Western Australian Solicitor-General was commissioned.

CHAIRMAN—There is a Labor caucus meeting.

Mr Biggs—I wanted to refer here to the Standing Committee on Treaties, a body with which you are very familiar through a succession of national interest analyses. This was set up under COAG processes, and its role is currently defined in the principles and procedures on Commonwealth-state consultation in treaty making. The standing committee includes representatives of the premiers' and chief ministers' departments, and four times a year we circulate to them notification of all treaty actions under way or contemplated by the Commonwealth. The opportunity is given to each of the states and territories to nominate those that concern them and about which they wish more information.

This treaty was given through that process over a period of two or three years, up until the point at which I joined the committee and became aware of discussion within that committee. At no stage during that period was concern raised by states and territories about any of the movements that were brought to their attention. It is also through that committee that the opportunity is given to the states and territories to nominate a participant in negotiating delegations that concern them. Through that process, through the premiers' and chief ministers' departments, the Western Australian Solicitor-General acquired his role as a representative of all the states and territories collectively.

Each of those premiers' and chief ministers' representatives circulates the full list of treaty action to their own jurisdiction, to all of the agencies and departments of the state and territory governments, and receives back from the subsidiary agencies the request for further information and for involvement. That is principally how information is circulated down to the operating level in the state and territory administrations. That is also the way that the Western Australian Solicitor-General's role was endorsed.

CHAIRMAN—Can I just finish where I started? That was in relation to consultation. Ian or Bill, you may know, I do not, but next week, with the inaugural treaties council as the COAG adjunct, have you any feedback from states and territories that they may raise the issue of consultation? Is it an issue on the agenda for the treaties council? I have seen nothing—not that I would need to.

Mr Biggs—The states and territories have nominated a list of treaties that they wish to be discussed, and the Commonwealth has agreed to all of these.

CHAIRMAN—Desertification; the usual sort of indigenous—

Mr Biggs—I can say that this particular treaty is not one of the items on the agenda. It was not even on the reserve list as a treaty that concerned the states and territories at the moment. In each case consultation is one of the topics being raised, but I think I could also say that in each case it is not a problem—that is, with the treaties that are being discussed, the level of consultation between the Commonwealth, the states and the territories is very good.

CHAIRMAN—My very final point is in relation to that treaties council. As a

committee, we would appreciate it, if it is appropriate. It is really up to DFAT cum A-G's as to whether it is appropriate. But, perhaps as an information addressee, even after the event, the committee might be given some details of what is to be discussed, or what has been discussed, and some feedback.

Mr Biggs—I would be very happy to do that straight away, but probably in camera given that the agenda papers and so forth have not been set.

Resolved (on motion by Mr Hardgrave):
That this committee authorises publication of the evidence given before it today.

CHAIRMAN—Thank you. The committee stands adjourned.

Committee adjourned at 9.50 a.m.