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JOINT STANDING COMMITTEE ON TREATIES

**Reference: Treaties tabled on 6 December 2006 and 6 February 2007**

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**JOINT STANDING COMMITTEE ON  
TREATIES**

**Monday, 26 February 2007**

**Members:** Dr Southcott (*Chair*), Mr Wilkie (*Deputy Chair*), Senators Bartlett, Carol Brown, McGauran, Mason, Sterle, Trood and Wortley and Mr Adams, Mr Johnson, Mr Keenan, Mr Laming, Mrs May, Mr Ripoll and Mr Bruce Scott

**Members in attendance:** Senators Bartlett, Mason, Trood and Wortley and Mr Adams, Dr Southcott and Mr Wilkie

**Terms of reference for the inquiry:**

To inquire into and report on:

Treaties tabled on 6 December 2006 and 6 February 2007

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**Committee met at 10.03 am**

**CHAIR (Dr Southcott)**—I declare open this meeting of the Joint Standing Committee on Treaties. As part of the committee's ongoing review of Australia's international treaty obligations, the committee will hear evidence on two treaty actions tabled in parliament on 6 December 2006 and 6 February 2007. I understand that witnesses from various departments will be joining us for discussion on the treaties. I thank witnesses for being available for this hearing.

I should also remind witnesses that these proceedings are being televised and broadcast by the Department of Parliamentary Services. Should this present any problems for witnesses, it would be helpful if any issues could be raised at this time.

[10.03 am]

**CAMPBELL, Mr William, First Assistant Secretary, Office of International Law, Attorney-General's Department**

**MORRIS, Federal Agent Tim, National Manager, Border and International Network, Australian Federal Police**

**PEZZULLO, Mr Michael, Deputy Secretary Strategy, Department of Defence**

**BIRD, Ms Gillian, Deputy Secretary, Department of Foreign Affairs and Trade**

**BLISS, Mr Michael, Director, International Law Group and Transnational Crime Section, Department of Foreign Affairs and Trade**

**CHAN, Ms Michelle, Assistant Secretary, South-East Asia (South) and Regional Issues Branch, Department of Foreign Affairs and Trade**

**MASON, Mr David, Executive Director, Treaties Secretariat, International Legal Branch, Department of Foreign Affairs and Trade**

**Agreement between the Republic of Indonesia and Australia on the Framework for Security Cooperation**

**CHAIR**—We will now take evidence on the Agreement between the Republic of Indonesia and Australia on the Framework for Security Cooperation. I welcome representatives from the Attorney-General's Department, the Department of Foreign Affairs and Trade, the Department of Defence and the Australian Federal Police.

Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament.

If you nominate to take any questions on notice, could you please ensure that your written response to questions reaches the committee secretariat within seven working days of your receipt of the transcript of today's proceedings. Would you like to make some introductory remarks before we proceed to questions?

**Ms Bird**—Yes, if I could, please. Thank you, Chair and members of the committee. The Australia-Indonesia agreement on the framework for security cooperation, which Mr Downer signed with his Indonesian counterpart in Lombok on 13 November 2006, is a balanced, forward-looking and practically focused treaty. It aims to deepen and expand bilateral cooperation and exchanges on matters affecting our common security. It will provide a strong legal framework for encouraging enhanced intensive dialogue exchanges and implementation of cooperative security activities, and provides a firm basis for conclusion of separate arrangements

in specific areas of cooperation. In addition, it will strengthen cooperation in defence, law enforcement, counter-terrorism, intelligence, maritime security, aviation safety, counterproliferation of weapons of mass destruction and emergency management response.

This agreement is unique. It is Australia's first security treaty with a regional government focusing on both traditional and non-traditional security threats. It should set a benchmark for the region. It contains a clear undertaking of support for each other's territorial integrity, which is an unambiguous treaty-level statement that Australia does not in any way support separatist causes in Indonesia. Support for Indonesia's territorial integrity has been a longstanding policy of successive Australian governments.

The agreement makes clear that all obligations contained in it are to be read in a manner consistent with domestic and international laws and the UN charter and does not in any way affect the existing rights and obligations of either party under international law. These include obligations under international human rights treaties such as the International Covenant on Civil and Political Rights, which guarantees freedom of expression and association.

Australia strongly supports the development of Papua as a stable and prosperous part of the Republic of Indonesia. This is best done through the full and effective implementation of special autonomy and respect for human rights. We welcomed President Yudhoyono's visit to Papua in July 2006 and his announcement to accelerate the pace of Papua's development. We continue to register with the Indonesian government at the highest levels the importance of upholding its commitment to an open, tolerant and pluralist society and ensuring that the human rights of all Indonesians are respected.

Australia has a strong track record of representations in urging the Indonesian government to investigate alleged human rights abuses. Through its development cooperation program, the Australian government is making a practical contribution through training and technical assistance to strengthen the capacity of the Indonesian government and civil society institutions to promote legal reform and the protection of human rights.

Defence cooperation with Indonesia includes senior-level reciprocal visits, training and postgraduate education focusing on professional development and governance, annual single service staff talks, a defence strategic dialogue and combined exercises. Part of Australia's defence engagement with Indonesia is focused on enhancing the Indonesian military's human rights awareness and accountability. ADF training with TNI seeks to increase professionalism and emphasises adherence to strict rules of engagement based on the laws of armed conflict and respect for human rights.

The AFP works cooperatively with the Indonesian police to combat transnational crime such as terrorism, drug trafficking, people-smuggling and child sex tourism. Together the Indonesian and Australian police have made very significant progress in combating these threats to security. The agreement will allow Australia and Indonesia to expand cooperation in all these important areas to the benefit of both countries.

**Senator TROOD**—Could you perhaps give us a brief account of how this treaty varies in relation to the previous treaty that the Australian government signed with Indonesia in 1993?

**Ms Bird**—1995.

**Senator TROOD**—1995.

**Ms Bird**—Yes, I would be happy to do that. The agreements are actually quite different, as you can tell if you look at the two of them. They are very different instruments, both in their content and in the way in which they are expressed. The 1995 agreement was, as you will recall, a very brief treaty that created an obligation that each party should consult in the event of an external attack on either party—that is, there was a sort of mutual expectation of military support in times of strategic challenge or crisis.

This agreement is quite different. It is a much longer treaty for a start. That is a self-evident point, but actually quite important. It covers a broad range of issues in the bilateral relationship. I would say, in fact, that it adopts a much more modern approach to security issues. It looks at the gamut of traditional and non-traditional security threats and commits the two parties to work together across all of those issues. So, as I said, I would character it as more modern, broader and a fundamentally different kind of treaty.

**Senator TROOD**—Looking at this new treaty, that provision in relation to security seems to be absent from it. Is that a correct interpretation?

**Ms Bird**—As I said, it is a very different treaty. The intent was not to have a military pact, so to speak. It is a different kind of treaty.

**Senator TROOD**—So you could not seek that kind of support for that proposition in this treaty?

**Ms Bird**—It is a very different treaty.

**Senator TROOD**—Article 3 has a long list of areas of cooperation, some of which I am aware are already very much part of the bilateral relationship between the two countries. Are there any new areas of cooperation there that have not hitherto been part of the bilateral relationship?

**Ms Bird**—No, I would not say that there are any new areas. As you said, we have a very broad-ranging relationship. What this does in a sense is record the key areas of our cooperation and commits to intensify and take that further. It is not opening cooperation in any brand new areas per se.

**Senator TROOD**—Will this treaty allow such cooperation as may exist to go further than otherwise would have been possible?

**Ms Bird**—In a sense, that is our hope. This is a framework agreement. The actual activity will take place through various existing and other mechanisms. There are existing MOUs and other forms of cooperation. This gives it an overarching chapeau and overarching encouragement to take that forward as far as we can to mutual benefit.

**Senator TROOD**—So it offers opportunities in relation to, for example, counterterrorism that might not otherwise be there?

**Ms Bird**—As I said, the way to put it is that it gives encouragement to what is going on and takes it further so that we can go as deeply as we can to our mutual benefit in all of those areas.

**Senator TROOD**—You say that it is a unique kind of treaty, and perhaps a model.

**Ms Bird**—Yes.

**Senator TROOD**—Are we to take from that that the government has intentions to seek to negotiate this kind of treaty with other states within the region?

**Ms Bird**—Each case is unique, so we look at each relationship to see what is best suited to encapsulate our cooperation with that country. We are working with Japan at the moment on a security arrangement. That is going to be slightly different to this one. Each and every one will be different. What we are saying here, though, when we talk about it being a benchmark is that as far as we are aware it is fairly unique to have something that is so all encompassing in terms of its reach. But that is possible with a relationship such as that we have with Indonesia, where we do have a broad range of cooperation.

**Senator TROOD**—So the answer to my question is ‘possibly maybe’. Do we have any plans at the moment other than with Japan?

**Ms Bird**—It depends.

**Senator TROOD**—It depends on?

**Ms Bird**—As I said, we are negotiating an arrangement with Japan. It will not be identical to this. Each one will depend on the relationship.

**CHAIR**—You mentioned before the agreement on maintaining security that we had with Indonesia, which was ended by Indonesia in 1999. Who initiated the negotiations for this treaty? Was this an Indonesian initiative or was it an Australian initiative?

**Ms Bird**—We actually set out in some detail in the national interest analysis the path of negotiations on this treaty. Really, I suppose the initiative came from both sides. There was a suggestion—I think it went back to when President Yudhoyono visited back in October 2003—about the value of possibly having a bilateral security treaty. We also took the initiative when Mr Downer was talking with the Indonesian foreign minister about negotiating such a treaty. We had discussions on that following President Yudhoyono’s inauguration as president in October 2004. I should have mentioned that in October 2003 Yudhoyono was then the coordinating minister for security; of course, that was before his inauguration as president. That was followed by ministerial discussions. After those discussions, the two ministers directed their respective ministries to begin discussions on the proposal. We prepared an initial draft of the treaty in late 2004. There was then some to-ing and fro-ing on drafts and then we got together and had two very productive negotiating sessions, one in Jakarta and one here in Canberra. That enabled us to conclude the treaty in time for its signature in Lombok.

**CHAIR**—The Indonesian process—it will be considered by Indonesian Commission 1 and then it will go for parliamentary ratification?

**Ms Bird**—Yes, the Indonesian government will take the treaty to Commission 1; and then parliament's approval is a prerequisite for approval, yes.

**CHAIR**—Can I ask you a question about the language? In the preamble, we talk about noninterference in the internal affairs of one another. As I understand it, that is very much language that is used in ASEAN and ASEAN's treaty of amity and cooperation.

**Ms Bird**—It is also UN charter language. It actually comes straight from the UN charter—article 2, from my recollection.

**CHAIR**—We became members of the ASEAN treaty of amity and cooperation in 2005. Do we have that language in any other treaties?

**Ms Bird**—I am not aware and my colleagues at the table are not aware of any, but, as I said, the antecedents of that sort of language are certainly in the UN charter and it is also, as I said, in the TAC. We are just having a bit of a debate on what exactly is in the UN charter and what is in the TAC. Yes, it is TAC language but it is also consistent with UN charter principles, if I can put it that way.

**CHAIR**—Other than in the treaty of amity and cooperation and this treaty, is it in any other Australian treaties?

**Ms Bird**—Not to our knowledge.

**Senator TROOD**—Mr Pezzullo, perhaps I could ask you a couple of questions. Has the Department of Defence put in a submission in relation to this treaty?

**Mr Pezzullo**—I am sorry—a submission into this inquiry?

**Senator TROOD**—Yes.

**Mr Pezzullo**—No.

**Senator TROOD**—Are you intending to do so?

**Mr Pezzullo**—No. This is a Foreign Affairs lead. It is a treaty. We consult Foreign Affairs very closely. We are not independent and separate agencies; we all work for the government. We have been involved in their submission.

**Senator TROOD**—You will be aware that some anxiety has been expressed in relation to the fact that the treaty offers an intensification of cooperation around defence matters and intelligence, in particular with regard to cooperation with TNI and Kopassus and so on. What can you tell us about the expectations that you might have in developing that kind of cooperation?

**Mr Pezzullo**—I would begin my evidence by referring back to Ms Bird's reference to this codifying a series of cooperative patterns of behaviour and engagement that have been growing over recent years. If I can draw your attention to article 3 that you referred to, to the defence section of that at least—I am just looking here at the subparts of the first section of article 3, and I will paraphrase—it starts with 'regular consultation on defence' and covers promotion of development and capacity building, facilitating cooperation in several fields that are mentioned there at subpoint 3.

In each of those areas, to come back to one of your earlier questions, no new ground is broken in terms of a new field of cooperation. It codifies in a treaty-level framework agreement, putting a chapeau above what we would otherwise do in a bilateral relationship. I guess the different thing that this adds is that, beyond it being a matter of policy or a matter of single agency desire and aspiration, each government for as long as this treaty is in existence will have, if you like, a formal framework in which to think about how to cooperate in those fields.

A government of the day—be it an Australian government or, indeed, an Indonesian government, but of course I would only speak for the Australian side—might decide that, within that framework, they want to do less than rather than more. Another government might come to this framework and say, 'Within that framework, we'd rather do more than less.' So it will always be a matter of policy choice for the government of the day. I guess I could make that reference to all the other agencies as well, but of course I am confining my remarks to Defence.

**Senator TROOD**—Does the defence department have plans to do anything in relation to increasing cooperation with TNI at the moment?

**Mr Pezzullo**—We have plans to provide advice to the government about areas of cooperative endeavour that we might wish to build on. The references there in those three subsections are pretty broad. They go to capacity building, military education and training, exercises, looking at technology and science, having dialogue on strategic concerns. In each of those areas we are constantly engaged. We have representatives in Jakarta. The Indonesian government has representatives here. We have a strong bilateral relationship between our ministry and their ministry, between our armed forces and their armed forces. We certainly have plans to look at how we can build on opportunities in those specified areas but always with the predicate that we would be acting in accordance with the government direction that we receive. As you know, we provide advice to government, the government decides how fast it wants to go and off we go.

**Senator TROOD**—Do any of the plans or programs that you may be contemplating have any particular reference to West Papua, which of course is a very sensitive area, particularly in relation to the treaty?

**Mr Pezzullo**—Do any plans that we have—

**Senator TROOD**—Yes, do they relate in any specific way to West Papua?

**Mr Pezzullo**—In the defence sphere?

**Senator TROOD**—Yes.

**Mr Pezzullo**—Not that I can think of. They are functional areas of cooperation rather than geographically bound ideas around cooperation. It is about having functional cooperation across a series of functional areas with our counterparts in the Indonesian defence and military system.

**Senator TROOD**—That is all I have for the moment.

**Senator BARTLETT**—Flowing on from the defence cooperation areas, firstly—as you have mentioned, article 3 talks about capacity building and defence institutions and law enforcement of both parties including training exercises et cetera. It was not that long ago that we were involved in training Indonesian military, building their capacity, and some of them—it is on the record—who were trained here went back and committed quite serious crimes against humanity, against other people, under the then control of the Indonesian government. How do we prevent that sort of thing happening again? What are the safeguards in this treaty?

**Mr Pezzullo**—If you are asking specifically in the defence area—

**Senator BARTLETT**—Yes.

**Mr Pezzullo**—I will not speak generally to the treaty. Several things are applicable. On the Australian side, whatever we do in terms of cooperative endeavour with Indonesia is bound by government policy that was articulated by Mr Downer in the parliament in August 2003 that we will limit our cooperation to exclude those persons known to have links to violent groups or who have backgrounds of known human rights concern. There is nothing in this treaty that obviates that government direction. That has been a matter of policy since at least the time that the foreign minister articulated that, and as a matter of practice it probably existed prior to that, but I can certainly take you back to August 2003. So whatever we do has to be done within that overriding requisite of government policy.

**Senator BARTLETT**—This may be a better question for the Foreign Affairs people in the lead capacity. Does the Australian government accept that there are regular continuing serious human rights breaches in West Papua?

**Ms Bird**—When there are concerns about human rights issues in Papua, we take those up with the Indonesian government.

**Senator BARTLETT**—I appreciate that; I am simply trying to establish a matter of fact. Does the government Australian government recognise that these abuses occur? I am pleased that you take up the concerns about them; but do you accept that they occur?

**Ms Bird**—As I said, when there are allegations of human rights abuse, we take those up with the Indonesians. We are aware that there are human rights challenges in Papua. The Indonesian government is very committed to an open, tolerant and pluralist society. Therefore, when there are allegations, we certainly take those up with the Indonesians.

**Senator BARTLETT**—It is a simple fact that a significant proportion of the budget of the Indonesian military does not come from the Indonesian government. Is that right?

**Mr Pezzullo**—I think it is a matter of public record that the Indonesian armed forces have a variety of income sources, of which budget funding is not 100 per cent.

**Senator BARTLETT**—I agree with your comments about the Indonesian government. I am on the record a number of times saying how incredible their progress has been in the face of various difficult challenges in democratising that country, but it is still fair to say that some senior parts of the armed forces are not completely under the control of the Indonesian government, isn't it?

**Mr Pezzullo**—I was just waiting for you to add a question at the end there, because there is lots of commentary around about that. But, from the evidence we see, the strides that have been made particularly under this presidency have filtered down to the military. This is essentially a question of course of civilian control over military affairs, which is an established principle in democratic nations. I can report to this committee that the Indonesian ministry, the people that we deal with, are very interested in dealing with us in relation to governance issues—how exactly we run our headquarters; how we manage our relationship with the minister, the government, cabinet, the parliament et cetera; and the role played for instance by white papers and similar sorts of public documents where defence policy is explained. I think there has been quite a considerable effort made, particularly under this presidency, to get to grips with the vexed issue of civilian-military relations, which is a complex issue in democracies that have had centuries of democratic practice and experience. I cannot imagine how difficult it would be in a country with a democracy that is so young.

**Ms Bird**—Perhaps I could just add to that, Senator, because I think you made a very good point about the democratic advances under President Yudhoyono and their perhaps not being as widely recognised as they could be. The Lowy Institute submission to this committee I thought made some very good points on that score; that is worth mentioning.

**Senator BARTLETT**—I acknowledge that and, as I said, I have put that on the record a number of times myself. There is a dilemma certainly that I face and I think many Australians face about this. We support stronger cooperation with Indonesia. If stronger defence cooperation means strengthening the ability of the Indonesian democratically elected government to control the defence forces, we should go for it. If it means skilling up and empowering the military to be able to keep doing things that any number of reports say are still being done, it is a bad thing. Obviously we have history to go by, which is not a particularly good history. Beyond reassurances—which, with respect, do not sound terribly different from the reassurances we got under the Keating government and the Hawke government—what other ways do we have of ensuring that this occurs? Have we been asking for more opportunity for independent monitors to go into West Papua to determine what the situation is on the ground?

**Ms Bird**—Access to Papua we think is an important issue, and it is one that we do raise with the Indonesians. We would like to see access to that area. Certainly we have had embassy access, which we think is important, but certainly that issue of access is one that we do raise.

**Senator BARTLETT**—What response have you had to date when you have been raising it?

**Ms Bird**—Certainly they take on board our views on that. We have had some success in getting embassy officials in there recently, which has been useful. We have also encouraged

access for reputable journalists who have a reason for access. There have been some unfortunate instances there in the recent past, but it is certainly an issue that we continue to raise.

**Senator BARTLETT**—In the principles part, in article 2, in part 3—and I will just pick out bits here—it says, in effect, that, by agreeing to the wording of this, Australia shall not in any manner support activities by any person or entity which constitutes a threat to the stability or other things of Indonesia, ‘including by those who seek to use its territory for encouraging or committing such activities, including’—but not limited to, I presume—‘separatism’. That obviously can be interpreted in a number of ways, but it is not just about people who are promoting separatism. It talks about constituting a threat to the stability of the other party. We all know that last year, when a group of refugees arrived here, that was seen by the Indonesian government as Australia giving support to people who were here to encourage separatism, amongst other things. What is your understanding of what that principle actually means—that the Australian government should not in any manner support activities by any person on our soil that the Indonesians might see as threatening their stability?

**Ms Bird**—In a sense, that principle enshrines a position we put frequently—and I think it is of longstanding principle—that we do not support separatism. It is not in Australia’s interests to see Indonesia break up. We have said that frequently. What we do in this treaty is enshrine in treaty language the fact that we support Indonesia’s territorial integrity.

**Senator BARTLETT**—I appreciate that, and I support it as well. I do not support separatism. My understanding is that a reasonable proportion of indigenous West Papuans do not either, but this does not just say ‘separatism’. It says including separatism but not limited to separatism. I guess on top of that, even if I do not support separatism and the vast majority of West Papuans do not support separatism, as a democracy, what right do we have to stop people advocating it, if it is non-violent, on our soil?

**Ms Bird**—As I said in my opening statement, this treaty does not cut across freedom of expression. What we are talking about here is not giving material active support to a group which is advocating separatism. But, as I mentioned in my opening statement and as is clear in the national interest analysis, it is not cutting across freedom of speech.

**Senator BARTLETT**—As I said, this includes separatism but is not limited to separatism. As a final question: what other sorts of things would be covered by it? I appreciate that this is standard language, but in adopting it you must have some idea of what sorts of things would be covered by it.

**Ms Bird**—It is other threats to territorial integrity—say, a group that was advocating the violent overthrow of the Indonesian government or wanting to invade; that sort of thing. A threat to territorial—

**Senator BARTLETT**—But the Indonesians see anybody who raises concerns about what happens in West Papua as threatening their stability. I understand why they feel that way, but it is no secret that they are fairly sensitive about it. What does it mean by ‘stability’?

**CHAIR**—Senator, we have a number of questions, so we are going to have to move on.

**Mr WILKIE**—Just on article 2, in subsection 3: who would determine whether particular activities or persons or entities constitute a threat?

**Ms Bird**—It would be up to each party.

**Mr WILKIE**—For example, with our involvement in East Timor, if the Indonesians believed that constituted a threat, could that have led to the prevention of our intervention in East Timor?

**Ms Bird**—I am sorry, I missed the end of your question.

**Mr WILKIE**—If the Indonesians, for example, had said that what was going on in East Timor posed a threat and Australia wanted to get in there and intervene to assist, could that have prevented our intervention?

**Ms Bird**—As I said, it is up to each party to interpret what its obligations are. It is for the Australian government to determine what its obligations are in this article as in others. East Timor of course is now a sovereign state.

**Mr WILKIE**—No, I am talking about prior to that. Previously, would Australia have been able to lead the United Nations intervention into East Timor if the agreement had been in place at the time?

**Ms Bird**—As I said, East Timor is a very different situation. There is a whole UN process of self-determination, which we were taking part in.

**Mr WILKIE**—Would the agreement have prevented that?

**Mr Campbell**—Could I perhaps intervene and make a comment about that. The first thing is, of course, that this agreement has been entered into post East Timor; that is the first point. The second point is that you will notice that at the commencement of the article it says ‘consistent with their respective laws and international obligations’. It also says, in paragraph 6:

Nothing in this Agreement shall affect in any way the existing rights and obligations of either Party under international law.

The actual intervention in East Timor was authorised by a UN Security Council resolution under chapter 7 of the charter, and that is a very high obligation and that would come within the principles referred to here.

**Mr WILKIE**—It is just that article 2 subsection 2 provides for the principle of noninterference that will guide the relationship between Australia and Indonesia. How do you see that provision operating in practice?

**Ms Bird**—As it says. We do not normally interfere in internal affairs, although this is all consistent with our obligations under the UN charter and other existing treaties. That is a principle, as we discussed earlier, that is enshrined in the treaty of amity and cooperation and also derives its basics from the UN charter.

**Mr WILKIE**—Something else on a different matter: under article 3 there is a heading ‘Proliferation of weapons of mass destruction’, where subsections 16 and 17 provide for ‘strengthening bilateral nuclear cooperation for peaceful purposes’. How will this provision operate in practice?

**Ms Bird**—Activities to strengthen bilateral nuclear cooperation for peaceful purposes cover a wide range of activities. I might just go through some of those, if you would like. The Australian Safeguards and Non-proliferation Office, ASNO, is working with Indonesia and also with other regional countries on the application of best practice for nuclear safeguards and security. In fact, Australia and Indonesia will co-host an APEC meeting in Sydney in June of this year to discuss establishment of an Asia-Pacific regional association of safeguards authorities. The Australian Nuclear Science and Technology Organisation, ANSTO, works with Indonesia and other regional countries on peaceful nuclear science and technology applications. So they are the kinds of things that are encompassed by that particular provision.

**Mr WILKIE**—Okay. Thank you.

**Senator MASON**—Mr Campbell, I was interested in your comments in relation to Mr Wilkie’s questions. You said that this treaty would not have stopped the Australian or the UN intervention in East Timor when the UN intervened. Is that right?

**Mr Campbell**—I think the first important point I made was that this treaty was entered into after the intervention in East Timor.

**Senator MASON**—Yes, but we are talking about principle and what might happen in the future, and we can learn a little bit about the future from looking at the past, so let us look at the past. What was the sovereign status of East Timor when the UN intervened?

**Mr Campbell**—The status of East Timor was that it was a province of Indonesia.

**Senator MASON**—That is all; thank you.

**CHAIR**—We have some other submissions on this treaty which have related to the death penalty and concerns that there is no mention of Australia’s position on the death penalty. I just want to seek some clarification. We have a mutual assistance treaty with Indonesia which we entered into in 1999, on criminal matters. Is that correct?

**Mr Campbell**—Yes.

**CHAIR**—Is that mutual assistance treaty our standard Australian mutual assistance in criminal matters treaty in that it does set out that we will not provide assistance where it may lead to the death penalty being applied?

**Mr Campbell**—My understanding is that the mutual assistance treaty with Indonesia contains a discretionary exception to us providing assistance to Indonesia or Indonesia providing assistance to us, and that applies where the death penalty is the relevant penalty for the crime in question. I think that is a standard provision in mutual assistance agreements. Then there is the mutual assistance act, which gives effect to our obligations in domestic law. My understanding

of how it is implemented is that, prior to a person being charged with an offence, there is a discretion for the Australian government to approve mutual assistance under the mutual assistance treaty and under the act. But where the person has been charged with an offence the act says that the minister or the Attorney is not to provide assistance except in exceptional circumstances—something like that.

**CHAIR**—We have had other submissions which have raised this as an issue. The central question then is: is the death penalty something that should be mentioned, or is it more appropriate in the bilateral treaty or in the mutual assistance treaty on criminal matters?

**Mr Campbell**—This is a framework treaty. The issue of the assistance provided in death penalty cases is dealt with in more detail in the mutual assistance treaty with Indonesia, and that is the appropriate place to do it.

**CHAIR**—In relation to exchange, does our position on the death penalty apply in relation to exchange of intelligence?

**Mr Campbell**—We are getting into a sort of different realm there. That is not really a mutual assistance request. Mutual assistance requests relate to the formal gathering of evidence and matters like that. That is more a matter of cooperation between law enforcement authorities prior to a formal mutual assistance request being made.

**CHAIR**—Does anyone want to add anything? This is something that we will have to consider, given that we have a number of submissions that have raised this as an issue.

**Federal Agent Morris**—I would, Chair. Normally, what we deem police to police exchange covers intelligence exchange. Mr Campbell is quite correct in that when we move to a more formal exchange where coercive powers may be requested from country to country—such as the execution of search warrants in that jurisdiction—they are matters normally covered by mutual assistance requests under the mutual assistance framework. The day-to-day exchange of intelligence from police is not covered under that framework.

**CHAIR**—Are there any further questions on this? Thank you very much for appearing before the committee today.

[10.44 am]

**KLUGMAN, Dr Kristine Kay, President, Civil Liberties Australia**

**ROWLINGS, Mr William Murray, Chief Executive Officer and Secretary-Treasurer, Civil Liberties Australia**

**VERRIER, Dr June Raye, Director, Civil Liberties Australia**

**CHAIR**—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. If you nominate to take any questions on notice, could you please ensure that your written response to questions reaches the committee secretariat within seven working days of your receipt of the transcript of today's proceedings. Do you wish to make some introductory remarks before we proceed to questions?

**Dr Klugman**—Yes, thank you. Thank you very much for the opportunity to appear. Civil Liberties Australia will cover two aspects—the death penalty, which was raised at the beginning of the last submission, and West Papua. On 8 April 2005, the Australian Federal Police senior liaison officer in Bali, Paul Hunniford, sent a letter, which was translated into Indonesian, to the Indonesian national police in Denpasar, Bali. A part of that letter said, 'The AFP in Australia have received information that a group of persons are allegedly importing a narcotic substance believed to be heroin from Bali to Australia by using eight individual people carrying body packs strapped to their legs and back.' The letter then went on to name the Australians involved, and later a ninth courier was also identified. As a result of this letter, six Australians are today on death row in Bali awaiting state sponsored killing.

The fact is that the treaty under discussion today between Australia and Indonesia is directly linked to the events that I have described. This treaty, the Lombok treaty, is the overarching agreement, described by Minister Downer as the 'benchmark agreement', which comes under the various treaties and documents. Three of these important documents have the effect of the imposition of the death penalty in Indonesia on Australians and others because of the actions of the AFP.

The first document is the *AFP practical guide on international police to police assistance in death penalty charge situations*, which gives the police free rein to hand over intelligence before a charge is laid. That is how the six Australians came to be on death row in Bali. The second important document is the one that was just mentioned—the Mutual Assistance in Criminal Matters (Republic of Indonesia) Regulations 1999, article 4, paragraph 2, which states:

2. Assistance may be refused if:

... ..

(d) the request relates to the prosecution or punishment of a person for an offence in respect of which the death penalty may be imposed or carried out.

CLA says the word ‘may’, as opposed to ‘will’ or ‘shall’, again gives little confidence that the AFP will not continue to export the death penalty for Australians and citizens of other countries. The base document on mutual assistance treaties with other nations is the Mutual Assistance in Criminal Matters Act 1987. Unfortunately, this document does not even mention the death penalty or any form of protection from state killing.

These three unsatisfactory documents I have described are important ones which underpin the treaty before you in relation to the death penalty. This means that the treaty we are discussing—which, again, does not contain any mention of the death penalty—continues the trend of not protecting Australians in Indonesia and nationals of other countries and of Indonesia itself from a form of judicial punishment that this parliament has legislated against. None of the treaties—the Lombok treaty included—prevent the AFP from exporting state sponsored killing, exactly as they have done for the Bali six on their own say-so without even passing reference to any minister or the Attorney-General. CLA asks that you alter this treaty to prevent Australian intelligence being used to kill people by judicial means in direct contradiction to the expressed will of this parliament.

I turn to the West Papua question. Here CLA believes that good things are happening under President Yudhoyono—democratisation, devolution and at least a declaration to put the army genie back in the bottle. Papua is an issue for the governments of Australia and Indonesia that must be managed. Articles 2(3) and 2(4) and elaborating paragraph 19 of the NIA, which clearly referred to the situation in Papua, will need careful, close and routine monitoring.

While both Indonesia and Australia obviously used the Papuan refugee incident recently to achieve the treaty they wanted, there is a potential danger in the fact that the motives of the two parties for entering into this treaty appear to be quite different. Australia wants Indonesia to cooperate closely on a range of police and security measures. Indonesia wants a guarantee that there will not be a repeat of the recent refugee debate. From the Australian government’s point of view, there is an understandable focus in the treaty on strengthening cooperation in the areas of defence, law enforcement, counterterrorism and the like. There is an understandable focus too on the post-tsunami aid efforts being focused on Aceh and those areas most affected by that event.

Neither of these should be at the expense of Papuan interests or human rights. Because of a shared history, Australia needs to be closely monitoring and keeping a watch on the development of the changing culture and the status of rights in Papua. CLA proposes that there be a specific subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade with a brief which includes examining annually the impact of the Indonesian treaty on the province of Papua—with special reference to the delivery of aid and community support to the province—and reporting annually to the parliament on: refugee movement between Papua and Australia, and its outcome; the quality and quantity of assistance to Australia’s armed forces under the treaty; the activities of the Indonesian armed forces, particularly in terms of human rights and particularly in Papua; the flow of aid from eastern Indonesia, particularly to Papua, and comparing before and after the treaty’s signature; and Indonesia’s democratic progression, with special reference to its commitment to autonomy for its provinces and special reference to Papua.

**CHAIR**—Just so the position of Civil Liberties Australia is clear, you support in principle the idea of a framework agreement but you have those two concerns: the death penalty and how the agreement relates to—

**Dr Klugman**—West Papua.

**Mr WILKIE**—Your submission mentions Australia's aid program. Could you provide a little more detail on how the Australian aid program should be affected by the treaty or perhaps how Australia's aid program could increase the effectiveness of the treaty?

**Dr Klugman**—I would defer to Dr June Verrier.

**Dr Verrier**—The Indonesian program of Australia's aid has, for some many years, been focusing on eastern Indonesia, in sectors where we have comparative advantage—agricultural improvement and water improvement. ACIAR, I think, takes a lot of the running in terms of the delivery of those programs. There has been sensitivity in negotiating, if you like, the 'right' to do that. Although this current year Indonesia is our biggest recipient of aid, we are still a relatively small donor in the Indonesian scheme of things. As a result we have tried to focus our impact where we can best make a mark and we have thought that we would do that in areas of greatest need—and that is eastern Indonesia, because those islands are among the poorest areas of Indonesia—because we have a bit of an interest in the stability of those areas nearest to us and because we have a historical relationship of one sort or another with Papua.

So there has been an effort to focus our attention on eastern Indonesia and there has been sensitivity in the past that Indonesia may perceive it as interference if we focus, or try to focus, too heavily on Papua. But there has been a careful amount of diplomacy and a carefully developed program of support in the agricultural and health areas—and HIV-AIDS is an area that has been a focus recently—to assist Papua achieve a better standard of living on the full understanding that we have, and I am sure everybody has, that the better the economic development of that territory, the happier the people may end up being—and we may indeed contribute to easing some of the political tensions.

There is a natural large blip in the aid profile because of Aceh. Naturally, understandably and commendably, we have put a huge amount of money into Aceh. What is happening in Papua and elsewhere in eastern Indonesia as a result is not entirely clear from the public information I have been able to get my hands on. Because of that ongoing sensitivity, I think the Papua thing needs monitoring to make sure that we are not eased out of assisting Papua in areas where we think we can make a contribution, because of political sensitivities or other priorities. So it is an area where we can continue to help get it right for both Indonesia and Australia—which is to develop the area of Papua. And I think we should be monitoring it.

**Mr WILKIE**—Does the organisation have any view on the defence cooperation provisions, article 3, paragraphs 1 to 3? For example, do you have any concerns about the Indonesian army's performance?

**Mr Rowlings**—We have concerns. We note the answers given by the previous people that the TNI gets only some of its funding from the government and the rest from its own resources. It needs to be stated that the funding from the government is about 30 per cent and therefore 70 per

cent of the income of the TNI in West Papua comes from its commercial activities—and I use the word ‘commercial’ fairly loosely, because it has been alleged that the TNI uses standover tactics, bribery, blackmail and such methods as part of its suite of commercial practices. So we should not write off easily that what is happening here is that our system in the ADF and in the police, and possibly in the security services, is being used to train people who will go back to West Papua and the rest of Indonesia and engage in commercial practices which we would not endorse.

**Mr ADAMS**—That would lead to bad governance, wouldn’t it? We are looking at West Papua to come forward in good governance, and this process of TNI being involved in commercial activity cannot lend itself to any good governance processes occurring or building up.

**Mr Rowlings**—I think if you were to design a system that was going to deliver the worst type of governance, that would be close to the system that you would design. Can I just make the point that this treaty is negotiated between Canberra and Jakarta. Between Jakarta and where we are talking about there are about 13,000 islands. It is like us negotiating a treaty in Canberra and applying it in Macquarie Island. It is so far out of the normal purview of people, of the watch, of the monitoring, and that is the problem—that is what is negotiated here is not implemented on the ground in West Papua.

**Mr ADAMS**—I understand. Could we draw on our experience and knowledge from East Timor of how things operated from a monopolistic point of view, of standover tactics et cetera, in the business—

**Mr Rowlings**—I think that you would have to say that that is the template. The way the TNI operated there was to get 70 per cent of its income from these sources and to train and use the militia to implement the worst of the atrocities that the TNI itself would not implement. Obviously, if you take soldiers who are trained in that and you move them into Papua, that becomes the way people operate. So the answer to your question is clearly yes.

**Dr Verrier**—Can I answer that, Mr Adams?

**Mr ADAMS**—Certainly.

**Dr Verrier**—The Indonesian army has been there since 1949, effectively. They have a particular vested interest in West Papua and they have always created a lot of trouble when there has been any suggestion of devolution for West Papua. That is why previous presidents have backed off from trying to fulfil promises of devolution to West Papua. They run it, they feel they own it and they look for postings there.

There was a fascinating article in the *Fin Review* fairly recently about the huge gold and copper mine. Something like \$400 million of gold tailings get flushed down the river annually because such is the income that they can afford to throw that away and it is too costly to recoup that money for the company. The army has set up all sorts of systems whereby they can capture that gold downstream and they are selling off the rights to various people to do that kind of thing. Their hold is right through the society. Quite frankly, they are ugly colonialists. One of the things I have been saying for many years is that there were a proportion of people in Papua who were willing to work with Indonesia and get on with the future. That proportion has been

challenged by the fact that they have found the army so very difficult and insensitive to work with. They are ugly colonisers. They are totally insensitive to the local people and they are compounding the present problem in Papua.

**Mr ADAMS**—Are there still a number of people being resettled in West Papua from other parts?

**Dr Verrier**—‘Transmigrasi’, transmigration, has been a policy of Jakarta for many years. The latest figures I have seen are that something like a third of the people are now—or is it two-thirds?

**Mr Rowlings**—I think it is more. It is about 1.2 million people I think who have been transmigrated into West Papua, which is roughly close to half the population. It is like putting a million people from Queensland into Tasmania. I wonder how the Tasmanians would feel.

**Mr ADAMS**—I just want to come back to the death penalty issue. This is an operational issue. The Federal Police say that, if it is dealing with operational matters, they are quite at liberty to do that and they seem to have carte blanche from the minister to do that, to pass on information, whereas the policy from the minister’s point of view is that we do not pass information on at that level but only if it comes to the police operational level. Is that how you understand it?

**Dr Klugman**—I do not accept that argument, with respect. It is the policy of the Australian government to be opposed to the death penalty. They have signed the second optional protocol and I think it is incumbent upon Australia, when it is dealing with other countries, to say, ‘These are our conditions. We are not telling you how to run your country, but this is where we stand’—and there will not be any information given which will lead to the death penalty being imposed on Australians. It was handed to them on a platter, with the AFP’s actions.

**Mr Rowlings**—Can I just correct something that Mr Campbell said earlier? What he said was that, prior to charges being laid, the Australian government has a discretion whether or not to approve exchange of intelligence. That is not quite accurate, in my opinion. Before charges are laid, it is carte blanche for the Australian Federal Police to pass intelligence. The case of the Bali nine is an illustration of that. There were no charges. They passed the intelligence on without any thought about what would happen to the people. We now have six Australians on death row, sentenced to death in Bali, as a result of that.

The operation of that discretionary power comes in only when the treaty applies. That is when Indonesia requests information from us or we request information equally from them. In the normal day-to-day course of events between the Australian Federal Police and the police in Indonesia, none of those safeguards, if you like, apply. That is the area that we wish to address and that we believe this treaty should address. We do not believe it is appropriate for the Australian Federal Police to pass intelligence on to the Indonesians or to any other government or any other police force where it could result in Australians or the nationals of those countries or of any other countries suffering the death penalty. The reason for that is that we support this parliament. This parliament legislated that the Australian standard would be that the death penalty does not apply, so we should not export that death penalty when our standards of this parliament—

**Mr ADAMS**—I just want to get how it works. If the Indonesian police request information from our Federal Police, will our Federal Police will pass that information on?

**Mr Rowlings**—If there is a formal request under the treaty, there is a discretion basically for the minister. If it is in the normal day-to-day passing of information, the Australian Federal Police can and do pass on information without any safeguards or any ministerial oversight. I could not imagine a more sensitive area of country-to-country relationships than in police passing intelligence that is going to lead to one of our citizens or a citizen of another country suffering the death penalty, yet there is no monitoring or watch on that. That is where we think this treaty should be amended so that we set our human rights standards on it and not some other country's standards.

The reason that we bring this up is that, in a cover letter to this treaty by Mr Downer, it is described as a benchmark treaty—that this is a model or template for the treaties that will operate for Thailand, China and so on into the future. The treaties that we have with Thailand and China, for example, have similar provisions that are underpinned by similar arrangements in relation to the politics. So the answer is that we will shortly most likely be exporting death penalty sentences in Bangkok and Beijing et cetera, because that is the way the police have operated. Going on their track record, that is the future we look forward to.

**Senator WORTLEY**—Thank you for your submission. Civil Liberties Australia, based on what we have read, supports the agreement in principle, but you have the two main concerns, being the issue of the death penalty and concerns regarding the province of Papua. Should the treaty proceed without your concerns being addressed, would you still support it in principle?

**Dr Klugman**—No, I think these are two very crucial matters. I think they are sufficiently important to insist upon.

**Mr WILKIE**—Going back to the issue of the Indonesian military, Australia has been providing training and support to the Indonesian military for years, and obviously that will be strengthened by this treaty. You have talked about how you are worried that that training and cooperation may lead to Indonesian forces inappropriately using that training to either train people who might commit atrocities or to use the equipment we are providing, I would imagine, to commit those atrocities. Do you have any examples of where that might have occurred in the past?

**Mr Rowlings**—I cannot give you chapter and verse on where it has occurred in the past. To slightly correct what you are saying, we have trained in the past, but there was a long period where we had nothing to do with the Indonesian military and it was a government decision that we would not train. In particular, we would have nothing to do with the Kopassus forces, which are the equivalent of our SAS, because of the way they had operated. What we are going back to is full-on training of all these people. I cannot give you chapter and verse without research, and I suggest the Parliamentary Library might be better placed than I am to give you that. But obviously there have been many allegations of the Indonesian army acting entirely inappropriately and entirely counter to human rights. As Mr Adams said, it sort of goes with the territory, where 70 per cent of their income is from sources outside the government.

**Dr Verrier**—If I may add, the treaty for the Indonesians meant that renewal of defence cooperation and it meant the treaty level commitment to the sovereignty issue, both of which they wanted very much. As I think we have said, Australia's motives were more to move them along. Foreign affairs rightly put forward a history of the negotiations, because we had been trying to get Indonesia to the table on a range of matters pertaining to security management and the terrorism management issues for some time. But the trigger was the refugee situation; the trigger was that they want something out of that. We can go in on the back of that. They want the defence arrangements back; they want the sovereignty thing. Okay, we will give them that and in return we will take what we want on the terrorism management monitoring regime of issues.

It is in those two different sets of motives, if you like, for the treaty that I think there is a danger in the thing going wrong and the relationship in fact being put under some degree of strain. There are many examples. Yes, I am sure the Parliamentary Library would be able to provide you with examples of Indonesian army problems or issues where they have behaved in a way that our own Army would certainly not behave and, of course, there are many of those in the context of Timor. But they are known to be pretty brutal and not to uphold the standards that our defence forces naturally uphold.

**CHAIR**—On the issue of the death penalty, would you expect the death penalty to have been in a framework treaty like this?

**Mr Rowlings**—It is a crucial factor between our countries. It is the issue that has most coloured coverage of the two countries over the past couple of years. The Papuan refugees were a blip on the radar. What has been colouring the discussion and the coverage of countries has been the death penalty. It has been ongoing for some years. That is not going to go away. It is going to be the fundamental issue. We said that 'the elephant in the room' is a common phrase; that is what it is. If this is a treaty that is dealing with the issues that we are dealing with on a day-to-day basis, obviously it should be there. The other key thing I said before is that we should not have treaties that allow other people's human rights standards to be imposed on us, and that is the net effect of this treaty, not mentioning the death penalty, and the net effect of not having a system to rein in the activities of the Australian Federal Police.

**CHAIR**—We do have a mutual assistance treaty in criminal matters with Indonesia, we have the mutual assistance acts and we have the Australian Federal Police guidelines, but your position is that is not good enough. You do not support all aspects of the template that we use in mutual assistance in criminal matters with reference to the death penalty.

**Mr Rowlings**—Certainly not, because the system that we use that causes the problem is outside of those treaties on mutual assistance and so on—it sits outside. Nobody is addressing it, our parliament is not addressing it and there is nowhere to grab hold of it. This treaty is a place to grab hold of it. Seeing that in his covering letter to you Mr Downer said this is a benchmark treaty, this is where it should be addressed because the same thing should apply in China, Thailand, Singapore and any other place we have treaties. Mr Nguyen was killed in Singapore. We have six people currently, today, under the sentence of death in Bali. You can see quite clearly that in terms of China and Thailand—Thailand for the trafficking of people going through it and China because of its population—we are going to have enormous problems in those countries, and what exists today is going to be multiplied.

**Dr Klugman**—It is imperative that we set this standard according to our own moral stance and not be sidetracked by anything else. What other countries do in their own jurisdictions is their own affair. What Australia should do, because it is a signatory to the second optional protocol, is uphold abolition of the death penalty and not send people to be killed in other countries.

**Senator MASON**—Dr Klugman, you said in response to a question from Senator Wortley that, because of the issue of West Papua and the death penalty issue, you do not think Australia should ratify this treaty. Let's go back to the first witnesses we heard from today. I think one of them said that really this treaty codifies current practices and approaches. I think that was from the Department of Defence; it may have even been from the Australian Federal Police. In a sense, it codifies what currently is going on. If we did not ratify this treaty, how would that protect people in the way you have said? How does this treaty change the situation with respect to the death penalty? It does not, does it? At the moment the police are exchanging information. This treaty does not make it easier. Do you see my point?

**Dr Klugman**—It does, because it says 'may', not 'shall'. The fact that it does codify makes it even more important. These things are always open to negotiation. If Australia were to say, 'We want these two elements included in this treaty,' then would become a negotiating point.

**Senator MASON**—Sure, but you are saying we should not ratify the treaty in its entirety because of these two points. My point is that I do not think it makes any difference. Do you understand what I am saying?

**Mr Rowlings**—Yes, we understand what you are saying. The term used was 'to codify'. Another phrase would be 'to reinforce the status quo', and the status quo is wrong, in our submission, and therefore—

**Senator MASON**—That is a fair argument, but you are saying you do not think Australia should be part of this treaty because the status quo is wrong. That is really what you are arguing.

**Mr Rowlings**—Absolutely. The problem is that this is a benchmark treaty. If this is going to be used for other treaties—as it is, according to the Minister for Foreign Affairs—it is very important to get this treaty right. So the time frame for discussion and debate in this committee and elsewhere should perhaps be a bit longer than it is.

**Senator MASON**—So you are not even arguing that this makes it worse in relation to those issues but simply arguing that we should have taken the opportunity to do more.

**Mr Rowlings**—Absolutely. Also, if this is the benchmark, it is absolutely our last chance to get it right, because it is going to be the governing document that governs all the other treaties.

**Senator MASON**—I am not an expert on treaties but, just having flipped through it, this treaty strikes me as being a mile wide and an inch deep.

**Mr Rowlings**—Yes.

**Senator MASON**—I am not sure it is going to make a lot of difference to practice at all.

**CHAIR**—Thank you very much for appearing before the committee today.

[11.16 am]

**FERNANDES, Dr Clinton, Private capacity**

**SUCIWATI, Mrs, Private capacity, through Mr Usman Hamid, interpreter**

**HAMID, Mr Usman, Coordinator, Commission for Disappearances and Victims of Violence**

**HODGSON, Mrs Nonie, Human Rights Worker, Indonesian Solidarity**

**WALUYO, Mr Eko, Program Coordinator, Indonesian Solidarity**

**CHAIR**—Welcome. Do you wish to make any additional comments about your appearance here today?

**Mr Waluyo**—Indonesian Solidarity is a human rights non-profit organisation based in Sydney.

**Mrs Hodgson**—My background is social work.

**Mr Hamid**—The national Commission for Disappearances and Victims of Violence, KONTRAS, is based in Jakarta. My background is as a human rights activist and a lawyer. I also joined the presidential fact-finding team on the murder of Mrs Suciwati's husband, a prominent human rights activist, and also some of the official investigation of the government of Indonesia. I am also here as a translator for Mrs Suciwati.

**Mrs Suciwati**—I am the wife of Munir.

**Dr Fernandes**—I am a senior lecturer at the Australian Defence Force Academy. I spent 13½ years in the Australian Army before that. I am just here to advise my friends from Indonesia.

**CHAIR**—Thank you. Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceeding of the proceeding of the parliament and warrants the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. If you nominate to take any questions on notice, could you please ensure that your written response to questions reaches the committee secretariat within seven working days of your receipt of the transcript of today's proceedings. Would you like to make some introductory remarks before we proceed to questions?

**Mr Waluyo**—Yes.

**CHAIR**—Please proceed.

**Mr Waluyo**—First, I would like to thank the honourable members of the joint standing committee for accepting our invitation to be here. It is our privilege to be able to provide knowledge and understanding for the good relationship between both nations, based on the interests of the Indonesian and the Australian people. Thousands of people in Indonesia associated with discussions about this treaty—from Aceh, West Papua and Jakarta—strongly believe that a sustainable and good relationship between the Indonesian and Australian government will best exist with the valuing of human rights and democracy. Meanwhile, the role of the Indonesian army, or TNI, was and has been the obstacle to democratic process and human rights principles being implemented within Indonesian society up until today.

**Senator BARTLETT**—I would be interested in your view on what the nature of Australia's relationship with Indonesia should be. When I was questioning the department earlier—I am not sure whether you were here then—I asked them: if we could have a treaty including defence cooperation and other things that would strengthen the ability of the Indonesian government to improve the human rights performance of the TNI, Kopassus and groups like that, should we be seeking to do that and, if so, what changes should we make to the current treaty to make that happen?

**Mr Waluyo**—It is critical to understand that in Indonesia the democratic and human rights processes have been going on. However, in some states, as we know, TNI has been an obstacle in that kind of political process. For instance, in the case of Munir, they have still not found some reason for justice. Recently, a military operation in Puncakjaya, West Papua, has caused humanitarian concern. Another instance is Poso, in Central Sulawesi, where conflict has been going on. We have military law whereby TNI should become professional and in addition the economic assets of the TNI should be handed over to the state by 2009. The government has not implemented this. The reality is that the army still resist the demands reforms. We are deeply concerned that if the treaty was accepted—imposed—with the long political process of the Indonesian army becoming professional not yet being achieved, it could jeopardise the good long-term relationship between Indonesia and Australia.

**Dr Fernandes**—Human rights justification has always been used to try and convince the public that, by aligning ourselves with the Indonesian military, we will improve their professionalism and human rights. What it actually does is grant them a degree of international legitimacy, which allows the most egregious human rights violators to rise through the ranks. I provided a submission about this. I am not speaking on moral grounds, I am speaking on strategic grounds, and the argument fails in its own terms. For example, the army base at Canungra has a plaque presented on 29 November 1971 by a Second Lieutenant AM Hendropriyono. He was trained in Australia. In 1999 he was named as one of the architects of the destruction of East Timor. He rose to be a three-star general in charge of the Indonesian national intelligence agency and was investigated for the murder of Munir—Suciwati's husband. Basically, Hendropriyono refused to answer any questions that the presidentially decreed fact-finding team put to him; instead, he filed criminal defamation charges under Indonesia's criminal code against Usman Hamid, who is still facing them.

If you look at the most famous war criminals and perpetrators of crimes against humanity in the Indonesian army, you will see that they have all been trained overseas. The reason for this is that it grants them a degree of legitimacy, which allows them to rise. For example, Yunus Yosfiah and Prabowo Subianto were trained in the US under the human rights pretext. Yosfiah is

currently being named in Sydney as a suspect in the murder of the five Balibo journalists. Major General Zamroni, the current military commander of West Papua, is another example. He used to be the deputy chief of Kopassus in 1998 and was one of the key people responsible for the disappeared people and the attacks on student activists. Training these people does not improve their human rights professionalism. What it does is grant them a degree of legitimacy and allow them to rise through the ranks. We have heard that argument throughout the 32-year rule of Suharto.

**Senator BARTLETT**—I comprehend that point. I appreciate we have limited time so I am just trying to push things along. It seems to me that, whilst there are still very significant problems with human rights in Indonesia—and some Indonesian politicians I have spoken to have been quite open about at least some of those—there have been significant advances since the Suharto era. Do you think it is fair enough to say that there has been good progress, even though there is a long way to go?

**Mr Hamid**—First of all, the military reform cannot be separated from the whole aspect of security sector reform in Indonesia, especially the intelligence reforms. We do believe that we have progress on democracy. We have presidential elections; we also have local head elections. But I think we need more additions on the definition of democracy, in terms of accountability and the rule of law for everyone, including the military.

In the reform era, including in the Yudhoyono era, the military has not yet been held accountable for any human rights violations. As you might know, all the military officials who were involved in crimes against humanity in East Timor have been released by the Supreme Court. The judges have been intimidated, the prosecutors have been pressured and the witnesses and victims have been intimidated. All the military officers who were involved in mass killings in 1984 in Indonesia or the second ad hoc tribunal after the East Timor crimes against humanity tribunal were also released by the Supreme Court. There has even been promotion of the military generals, for instance Hendropriyono, who, as my colleague Clinton said, was not only involved in murder and in the ‘scorched earth’ on East Timor but who also attacked the civilian population.

In 1989 more than 240 victims were killed, tortured, or put in jail without due process of law. Forty per cent of the victims were children and women. The case is now the subject of an ongoing investigation, led by the National Commission on Human Rights. Our parliament is also addressing the cases of disappearances involving General Prabowo Subianto and also General Muchdi Purwoprajoyo, a former commander general of the Indonesia Special Armed Forces. So far not a single perpetrator coming from the military involved in crimes against humanity in Indonesia, East Timor or West Papua has been held accountable or brought to justice.

I will make a second point on security sector reform in the area of intelligence reform. In the Suharto era, the intelligence agency was never regulated under the law. Now, in the reform era, we are trying to propose to the parliament a bill on the intelligence agency. But it is still difficult. The intelligence agency even proposed its own version of the draft laws on intelligence, one which would give it special powers in terms of intercepts, arresting suspects, seizing belongings, opening emails, opening letters or intercepting communications. So the intelligence agency is trying to take over all the authority that belongs to the police. It is also trying to propose to the parliament the self-financing of the intelligence agency—that is, not only would it have funding

from the state budget and the presidential budget but also it would be self-financing. So I think it would be better for the Australian parliament to address the need to strengthen the capacity of our parliament to make legislation or to budget, in terms of security sector reform.

We do believe that we have made some progress. But in terms of law reform and in terms of implementing military reform—to bring them to account—I think it is problematic.

**Senator BARTLETT**—Would you say that we should not adopt a treaty like this at all until we make a lot more progress, along the issues you have outlined, or should we try to adopt an improved treaty as a way of helping to progress some of the things you are talking about?

**Mr Hamid**—At the maximum level, I think there should be a condition that until the security actors, such as intelligence, are held accountable and being put under democratic oversight—parliament control, judicial control and executive control—the cooperation should be reconsidered. The second point I would like to make is: at the minimum level, there should be human rights monitoring of this implementation treaty as part of the implementation mechanisms. But I would like to propose to you the first maximum position.

**Senator BARTLETT**—This is obviously a treaty with the government of Indonesia. Having a part of that that deals with defence cooperation when the government of Indonesia does not fully control the defence force is a bad idea.

**Mr Hamid**—The Indonesian government is now trying to take over all the military assets and business activities, but the government has not yet issued presidential regulations to implement such laws that require military and business to be taken over by the government. The military is trying to resist on this subject. This is because of the position and the structure of politics. Military headquarters and the defence ministry are equal. Unlike Australia, the military is under ministry of defence command. In Indonesia, the military chief and the ministry of defence can compete, and active military officers are still allowed to sit in the civilian bureaucracy—in the ministry of defence, in the state intelligence agency and also in the ministry of security, politics and legal affairs. This is stipulated in the law and the military as a compromise of the civilian elites and the military who were still in the parliament when the draft law was proposed.

The question is the chain of command. When the secretary general of the defence ministry, active military general Syafrie Syamsuddin, was involved in riots in May 1998, to whom was he responsible: to the chief of the army, to the chief of the Indonesian armed forces, or to the minister of defence? What if the minister of defence and the chief of the Indonesian armed forces have different positions? To whom is he responsible?

**Mr ADAMS**—There is a human rights commission in Indonesia, under the government?

**Mr Hamid**—We have an independent human rights commission on the basis of a new law in 1999. This commission has a mandate to conduct inquiries to be submitted to the attorney-general. It inquired in East Timor on East Timor crimes against humanity. The report has been recognised internationally by the United Nations and, I think, by the Australian public and the government. Also, the national commission on human rights has many initiatives to investigate or inquire into many past human rights abuses in Indonesia. But so far, the attorney-general has refused to follow up and to bring cases to the court. Now the parliament is discussing this. So I

think it is important for us to have the Australian government address the question of human rights in Indonesian politics, so that democracy in Indonesia will have more progress. The accountability of the states, especially the security sector, intelligence and military will be on progress.

**Mr ADAMS**—There is no doubt that that is a great aim to have in a democracy: that it is answerable to the people through its parliament and the parliamentary processes. There seems to be still some way to go. What we can address in this treaty we will have to look at. I was interested, Dr Fernandes, in your submission in relation to overseas trained army personnel. Has there been any academic work done on this in the world? I remember the English trained a lot of people in Africa who turned out to be pretty nasty people. Has there been any work done?

**Dr Fernandes**—Not that I know of. It is very difficult, because it is only after doing a lot of detective work that you find out who has been trained where. You cannot just go up and get the government to tell you who they have trained in Australia. I happen to know because I spent 13½ years in the Australian Army, including in Intelligence Corps, but also because of poring through their published biographies which say, ‘I’ve been trained here; I’ve been trained there,’ et cetera. The main thing is that we should be aligning ourselves with the Indonesian people, not with the one group that is hated and feared by them everywhere in the archipelago. We should be encouraging Indonesia’s democratic transition, not impeding it.

**Mr ADAMS**—So your submission is that we are not achieving anything by going into the training programs with the Indonesian military?

**Dr Fernandes**—I do support the other parts of the treaty. I think that cooperation on drug smuggling, human trafficking and so on—

**Mr ADAMS**—Terrorist activities?

**Dr Fernandes**—Yes. Police cooperation and intelligence cooperation is a good thing. That is exactly how you would try to stop terrorism by those methods, at least in the short term. But military-to-military links must be opposed until the Indonesian military is under civilian control. I did not hear what the Department of Defence, DFAT or whoever else you questioned earlier said because the door was locked—we could not get in. So when I see their comments in *Hansard* I will let you know—later on, I guess. I do support the rest of the treaty though. I think that the military-to-military links must be opposed until the Indonesian military is brought under civilian control. That is basically it.

**CHAIR**—Ma’am, did you want to say anything?

**Mrs Suciwati**—Thank you very much for giving us this opportunity. With this opportunity I would like to tell the story, to give a human-faced perspective, about my husband who was killed, who was poisoned. Munir, like Yudhoyono, is the father of children—of his son and of his daughter. Munir had a dream of an Indonesia with democracy, of an Indonesia with human rights and also of an Indonesia with military professionals. Just because he had this dream, he was killed—because he was very vocal and very active in criticising military abuses and also criticising government abuses in order to have a better and democratic government and a professional military.

We believe that the murder of my husband was a conspiracy involving many officials of Garuda national airways and also state intelligence agencies, because without their role it would have been impossible to kill Munir on the airplane, on the international flight, on the way to a European country, the Netherlands. What is frustrating me is the release of the single perpetrator that was brought to justice. He was a co-pilot of Garuda. He was in contact with the state intelligence agency. This finding was referred to the presidential fact-finding team and was also reconfirmed by the Jakarta district court at the end of December 2005.

Unfortunately, the findings of the presidential fact-finding team and also the verdict of the Jakarta district court were never taken into serious consideration by the police. This is very ironic. The police did not take any serious action when it found that there had been 41 telephone or satellite telephone communications to intelligence agency phone numbers from the telephone number of the pilot's house. This was different to the way that the police handled the terrorism case. They are very comparable. They can arrest anyone on the basis of one SMS or short message or email, but in the case of my husband there were 41 communications and they did not take any proper action.

**CHAIR**—Thank you. Mrs Suciwati, do you understand that what you said will be published?

**Mrs Suciwati**—Yes. I fully understand.

**Senator WORTLEY**—Your organisation has expressed a number of concerns about Australia's and Indonesia's commitment to the principle of non-interference in the internal affairs of one another, the defence cooperation provisions, the law enforcement cooperation provisions, the intelligence cooperation provisions, the proliferation of weapons of mass destruction provisions and the emergency cooperation provisions. Given that you have expressed those concerns, does your organisation support the agreement in principle, or do you believe that it should not be ratified as it currently stands.

**Mr Waluyo**—We believe the principles of the agreement should be the principles of the United Nations human rights charter. We believe that the good relationship between Indonesia and Australia in the long term should have a basis of human rights and democracy. That is why we have some criticisms of this treaty on the basis of the relationship in the treaty.

**Senator WORTLEY**—Could you perhaps go a little bit further than that? You say that you agree with it in principle. But should those areas of concern that you have raised not be addressed and the agreement proceeds, would you support it then? Do you think that your concerns are big enough for the agreement not to proceed in its current state?

**Mrs Hodgson**—Yes. We believe that these changes need to be made before it is ratified.

**CHAIR**—Do you see any benefits for a framework agreement for cooperation between Australia and Indonesia?

**Mrs Hodgson**—Yes, if there are conditions to it; if we work with Indonesia to improve its human rights record and ensure that the military are under civilian governance.

**Mr WILKIE**—You talked about the possibility of the Australian military being used to train Indonesian military personnel who may then use that training or any equipment supplied against the Indonesian people and in committing human rights abuses. You mentioned that that training may have occurred in the past. I do not need an answer now but would you be able to see if you could find any examples of where people who have been trained by Australian military personnel in the past have then gone on to commit human rights abuses? You can take that on notice.

**Mrs Hodgson**—Sure.

**CHAIR**—Thank you very much for appearing before the committee today.

[11.46 am]

**CAMPBELL, Mr William, First Assistant Secretary, Office of International Law, Attorney-General's Department**

**GRIGSON, Mr Paul, First Assistant Secretary, South-East Asia Division, Department of Foreign Affairs and Trade**

**KIMPTON, Mr Philip, Executive Officer, Sea Law, Environment Law and Antarctic Policy Section, International Legal Branch, Department of Foreign Affairs and Trade**

**MASON, Mr David, Executive Director, Treaties Secretariat, International Legal Branch, Department of Foreign Affairs and Trade**

**RICHARDS, Ms Penny, Senior Legal Adviser, Department of Foreign Affairs and Trade**

**VENAMORE, Ms Heidi, Director, Sea Law, Environment Law and Antarctic Policy Section, International Legal Branch, Department of Foreign Affairs and Trade**

**HARTWELL, Mr John, Head of Division, Resources Division, Department of Industry, Tourism and Resources**

**ANDERSON, Mr John Christie, Senior Adviser, Department of the Treasury**

**Treaty between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea**

**CHAIR**—We will now take evidence on the Treaty between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea.

**ACTING CHAIR (Mr Wilkie)**—I will take over as the chair has been unexpectedly called away. Although the committee does not require you to give evidence under oath, I should advise that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. If you nominate to take any questions on notice, could you please ensure your written response to questions reaches the committee secretariat within seven working days of your receipt of the transcript of today's proceedings. Do you wish to make some introductory remarks before we proceed to questions?

**Ms Richards**—We are pleased today to present to the committee the treaty on certain maritime arrangements in the Timor Sea, also known as the CMATS treaty, which was signed by the ministers for foreign affairs of East Timor and Australia on 12 January 2006. We appreciate the committee bringing forward the public hearing for the CMATS treaty. As you would be aware, the CMATS treaty and the International Unitisation Agreement for Greater Sunrise, also

known as the IUA, were brought into force by the two governments last Friday, 23 February 2007, by an exchange of notes in Dili.

The Minister for Foreign Affairs invoked the national interest exemption last Thursday, 22 February, for the CMATS treaty and wrote to the chair of the committee informing him of this step. As Mr Downer stated in his letter to Dr Southcott, there was a limited window of opportunity to bring the CMATS treaty and the IUA into force and the government did not wish to allow that window of opportunity to pass.

The government tabled the CMATS treaty on the first sitting day available this year—6 February 2007. Mr Downer had agreed last year with the Prime Minister of East Timor, Dr Jose Ramos-Horta, that we would move through our domestic processes as closely in harmony with East Timor as possible. This was to ensure the greatest likelihood that the treaty would proceed to enter into force. Both governments wished to avoid the situation where only one of them had embarked on or substantially completed processing of the treaty domestically. Focus on entry into force of the treaty was diverted by several disruptions in mid-2006 in East Timor. That was the reason why the CMATS treaty was not tabled earlier, although I should note that the treaty has been publicly available for the past 12 months.

The CMATS treaty was the result of challenging but ultimately productive and mutually beneficial negotiations with East Timor. The CMATS treaty offers Australia and East Timor an historic opportunity to put to rest for some considerable time the differences in our respective interests in the Timor Sea and work further together in the exploitation of petroleum resources. The CMATS treaty, along with the IUA, will allow the exploitation of the valuable Greater Sunrise gas field to proceed on a certain and stable basis.

Under the CMATS treaty, Australia has agreed to share half the total upstream tax revenue from Greater Sunrise with East Timor, which is likely to amount to several billion dollars for East Timor over the life of the project additional to the allocations already made under the IUA. Instead of receiving tax revenues from 18 per cent of the resource under the IUA and the 2002 Timor Sea Treaty, East Timor will now receive 50 per cent of the total tax revenue collected by the two countries. The revenue accruing to East Timor will help lay strong foundations for the development and stability of one of our close neighbours.

The CMATS treaty and the IUA are good deals for Australia and very much in our national interest. The treaty will promote further investment in Australia's offshore petroleum industry. Australia is currently the fifth largest exporter of LNG, with seven per cent of global volume. The development of Greater Sunrise has the potential to build significantly on Australia's standing in the global energy market. The Australian government will receive substantial revenues from the Greater Sunrise gas field over the life of the project. The CMATS treaty will also promote strength in bilateral relations by putting to one side diverging maritime claims and enabling enhanced cooperation and coordination in the Timor Sea.

Other positive arrangements established by the CMATS treaty include allowing East Timor to continue exercising water column jurisdiction—that is, fisheries management prerogatives—within the joint petroleum development area. It also allows Australia to continue authorising and regulating petroleum activities east and west of the joint petroleum development area and south of the Australia-Indonesia seabed boundary. The CMATS treaty also establishes a maritime

commission that will be the focus of bilateral discussions on issues of interest both to Australia and East Timor in the Timor Sea, including, for example, security of offshore facilities and protection of the marine environment. Officials are currently here from the Department of Foreign Affairs, the Attorney-General's Department, the Department of Industry, Tourism and Resources and the Treasury to assist with inquiries. Thank you.

**ACTING CHAIR**—Thank you very much. Before we proceed to questions on the treaty itself, I have a few questions about the process of invoking the national interest exemption. Given this treaty was signed in January 2006 and that the minister made the statement to parliament in February last year that the treaty would be brought forward virtually as quickly as possible to the Australian parliament for consideration, why has it taken until February this year for the treaty to be tabled so that this committee can investigate it?

**Ms Richards**—The feeling was that both governments wished to move as closely in-step as possible through their domestic processes. As you know, the processes are somewhat different, so it is difficult to dovetail them exactly, but East Timor had requested us to arrange for synchronous entry into force of the treaty. The East Timorese processes were disrupted by domestic developments in 2006 but, towards the end of last year and the beginning of this year, the East Timor government was in a position to move quickly and had requested that Australia proceed with synchronous exchange of letters and entry into force. So the Australian government sought to meet that East Timorese request to be in a position to exchange notes on the same day.

**ACTING CHAIR**—So the Timorese parliament have followed their due process in considering the treaty, but Australia has not; is that right?

**Ms Richards**—Mr Downer, as you know, on 22 February invoked the national interest exemption, which is a provision allowing for unusual measures in the event of safeguarding Australia's national interest. It was felt in this case, because the treaties bring significant national benefits to both countries and because there was possibly a very narrow window of opportunity to bring them into force in the short term, that it was important to take advantage of that window of opportunity.

**ACTING CHAIR**—Then why didn't the government ask the treaties committee at the last sitting fortnight to look at urgently considering this treaty within that week and reporting as quickly as possible, rather than invoke a national interest exemption that bypasses the committee completely?

**Ms Richards**—The treaty was tabled on 6 February, the first available tabling day this year, and it is the government's intention to answer the committee's questions. As I mentioned, the treaty has been available to the general public for a full 12 months but, as I said, there was a rapidly closing window of opportunity, developments were moving quickly in East Timor, and in the national interest it was thought best to grab that window before it closed.

**ACTING CHAIR**—This is a rather blunt question, but whose incompetence led to this situation, given that this treaty could have been examined by this committee at any point in the last 13 months and it has taken until now for it to be tabled? Is that a decision of the minister or the department?

**Ms Richards**—East Timor had requested the government to try and move in step with it, to ratify synchronously if that were possible, and in good faith the government sought to respond to that and move step by step with East Timor as closely as the procedures allowed.

**ACTING CHAIR**—I think it is outrageous that this committee was not given the opportunity to examine the treaty in due time, and it is a failing on behalf of both the minister and the department which I find totally unacceptable. Does anyone have any questions?

**Mr ADAMS**—The Offshore Petroleum Amendment (Great Sunrise) Bill 2007 has been introduced into the parliament. What is the purpose of that bill and how does it relate to this?

**Mr Hartwell**—The amendments to the Offshore Petroleum Act reflect the fact that when it comes into force the act will replace the existing Petroleum (Submerged Lands) Act. It was necessary, given the developments outlined by Ms Richards that have taken place, to amend that act to take into account the coming into force of both the CMATS treaty and the Sunrise Unitisation Agreement. So it was essentially a procedural aspect to make sure that that act is up to date.

**Mr ADAMS**—Is the parliament sitting in East Timor?

**Mr Grigson**—It has been sitting; I do not know whether it is scheduled to sit today.

**Mr ADAMS**—Is it dealing with this treaty as well?

**Mr Grigson**—It has dealt with it.

**Mr ADAMS**—It has dealt with it? It has been passed?

**Mr Grigson**—Yes.

**Senator TROOD**—Ms Richards, could you perhaps explain this window of opportunity which we are seeking to exploit.

**Ms Richards**—On the East Timorese side, their constitutional processes require parliament to approve the treaty and require the President to order the publication of the treaty. As you may know, elections have been announced in East Timor and I think parliamentary attention is rapidly going to be diverted to those elections. It was not clear, if we did not do it now, that the Timorese would be able to focus on the treaty again until after their political processes—the elections and so on—had been completed. Maybe Mr Grigson could say more about the elections.

**Mr Grigson**—I have nothing to add to that. I think that is right. The presidential election has been called for 9 April. Parliamentary elections will be announced sometime after that. I think the opportunity to keep the attention of the parliament was rapidly moving away from us.

**Senator TROOD**—I think we can all appreciate, Acting Chair, how the onset of elections subverts the good intention in relation to legislation.

**ACTING CHAIR**—Absolutely, but could someone please explain to me why on the DFAT webpage there is a media release from the minister dated 8 February, which says the process is not the timing of the elections. It says it was agreed to move through in parallel, which has already been stated, but that it was not the timing of the elections that dictated the government's approach. That is totally the opposite of what you just said.

**Ms Richards**—There had been repeated requests from East Timor for us to move in tandem with them to the extent that we could and to ratify synchronously. The East Timorese advised us that they would be in a position to exchange notes on Friday and so we moved quickly to try and meet that request.

**ACTING CHAIR**—But we were actually aware of this in the previous sitting fortnight. We knew that the East Timorese were looking at bringing it forward to the parliament, and we could have had this come before this committee in that first week of sitting this year, couldn't we?

**Ms Richards**—The East Timorese processes were changing day by day. We were monitoring them closely but the latest request that we had was to be ready by 23 February. That was one of a number of requests, and the situation there was quite volatile.

**ACTING CHAIR**—Obviously that is the case, but why wasn't any consideration being given to including this committee in the process, given that you knew it had to go before the Timorese parliament and you also would have known that it would have had to come before our parliament via this committee?

**Ms Richards**—Indeed that is the reason why we tabled the treaty on the first available sitting day of this year, 6 February.

**ACTING CHAIR**—If you knew that it was urgent, that the Timorese were in a position to ratify, why not then ask the committee to consider the treaty as quickly as possible outside of the normal 15-day reporting requirement so that we could have had an opportunity in that first week of parliament to consider that treaty, to report and to even have a response on Thursday of that week?

**Ms Richards**—In fact my understanding is that the committee has kindly agreed to advance the normal process and that is why this hearing was set down for today, which I understand is more rapid than the usual process.

**ACTING CHAIR**—That is not answering the question. The last treaty that this committee considered late last year—it concerned the exchange of prisoners with Cambodia—was tabled and we considered it on the Tuesday night. We agreed on the Tuesday night that we would agree to that treaty proceeding and we tabled our report on the Thursday. That could have happened in this case but no-one has considered the involvement of the parliament in the process.

**Ms Richards**—In fact I think we were very conscious of our own parliamentary processes but the situation in East Timor was very volatile. We had a number of different dates on which they had advised us that they would be able to bring it into force, and those continued to change. It was the East Timorese side that requested that we ratify synchronously and exchange notes on

the same day and so, trying to meet their request in good faith, we tried to keep the processes as closely in sync as possible.

**ACTING CHAIR**—Just moving on to the agreement itself, the unitisation agreement allows for the 90-10 split, I think, in that part of Sunrise that is in the JPDA. How does the CMATS treaty override that? Is it 50-50 of the whole of the gas field or is it still 90-10 in that portion of the JPDA and 50-50 for the rest?

**Ms Richards**—The resource allocation remains the same as under the International Unitisation Agreement, but what changes is the revenue split. So the East Timorese now receive 50 per cent of the upstream revenue, even though the allocation of the resource remains as provided under the IUA.

**Mr Hartwell**—Maybe I can add a little to that. Essentially, revenue will be calculated on the basis of the amount of the resource that lies in the Joint Petroleum Development Area. Under Australian jurisdiction, approximately 80 per cent will be calculated according to Australian taxation regimes and then the figures will be aggregated to bring forward a fifty-fifty split.

**ACTING CHAIR**—To try to put it in plain, simple language, does that mean overall that you will have a fifty-fifty split of the revenue for the whole of Greater Sunrise?

**Mr Hartwell**—Yes, indeed.

**ACTING CHAIR**—But that part of the JPDA is also split 50-50.

**Mr Hartwell**—Yes.

**Senator TROOD**—Obviously various factors might affect the revenue, but have you made some calculations—perhaps this is Mr Anderson's field—about the extent of the revenue from the field?

**Mr Hartwell**—Maybe I can take that; we work together with Treasury on this one. If you are talking about the Greater Sunrise field, while these are always heroic assumptions we would expect that the revenue could be around \$US20 billion. That would mean \$10 billion each to East Timor and Australia.

**Mr Hartwell**—That is over the life of the field.

**Mr ADAMS**—Could you remind us how long that might be?

**Mr Hartwell**—At this point in time, that would depend on the proving up of the field. At the moment, the best estimate around is that there are about eight trillion cubic feet of gas and nearly 300 million barrels of condensate. We would expect it to run 25 to 30 years, but that would be a commercial decision.

**Mr ADAMS**—And the price of gas in world terms would change that as well.

**Mr Hartwell**—Indeed. Revenue figures will always be subject to fluctuations in petroleum prices.

**Mr ADAMS**—Carbon trading et cetera.

**Senator TROOD**—I realise that there are lots of factors that affect the calculations of revenue, but can you give us any idea of what proportion of the Timor-Leste budget the revenue might be? The question I am asking is: how significant a source of revenue is this to East Timor for its budgetary purposes?

**Mr Hartwell**—I might like some of my colleagues to enter into that. From the figures that we are quoting—and you also have to take into account that significant revenues are going to Timor-Leste from the Bayu Undan project—it would be very significant indeed in terms of their budgetary requirements.

**Senator TROOD**—Billions of dollars over the life of the project.

**Mr ADAMS**—Is there somebody with those figures? Is there somebody with what the budget is and what our contribution is? This replaces some of our contribution as well, I take it.

**Ms Richards**—We might have to take the question about the total East Timorese budget on notice, if that is all right.

**Mr ADAMS**—Can we get some figures on that?

**Mr Campbell**—In East Timor, the East Timorese revenue from the joint petroleum area is placed in a petroleum fund, which it keeps. The revenue that it has already received from the Bayu Undan deposit within the JPDA is quite substantial; there is quite an amount in the fund. That can be drawn on by East Timor.

**Mr Hartwell**—In 2005-06, East Timor received \$660 million from the Bayu project.

**Senator TROOD**—What proportion was that figure of East Timor's revenue?

**Mr Hartwell**—That reflects the 90 per cent share of the revenue that they get. The Bayu project is totally within the joint area.

**Senator TROOD**—My question is: what proportion of the East Timorese budget is that \$660 million?

**Mr Hartwell**—We have taken that question on notice.

**Mr Campbell**—We can probably say that that figure far exceeds the East Timorese budget for a year, but we do not have the precise figure.

**ACTING CHAIR**—Will article 4 allow Australia to exploit other fields in the Timor Sea outside the JPDA and Sunrise IUA? Will Australia's exploitation of these fields have any effect on negotiations for a permanent maritime boundary?

**Mr Campbell**—The CMATS treaty is structured so that Australia will be able to continue to exploit the resources to the east and west of the JPDA and to the south of the agreed seabed line with Indonesia. That would include resources such as the Laminaria deposit and other deposits in that area. Under the treaty, that is without prejudice to the ultimate delimitation of the boundary between the two countries. Under the treaty and the associated exchange of letters, Australia can continue to explore and exploit those deposits.

**ACTING CHAIR**—Given that Australia has agreed with Timor-Leste to give them 50-50 on Sunrise, if there are other fields that are located in the Timor Sea which they believe are in their maritime boundaries, might they put in a claim to us for royalties from those other fields?

**Mr Campbell**—This agreement would preclude them from doing so.

**ACTING CHAIR**—So it specifically excludes that?

**Mr Campbell**—Yes. There is a clause in the treaty that states that there will be no further revenue claims between the two countries.

**ACTING CHAIR**—You have done well there.

**Mr Campbell**—It is article 5, paragraph 12.

**ACTING CHAIR**—Thanks again for coming.

**Mr Hartwell**—I have one clarification. I mentioned a figure of \$660 million. I may have said that that was in 2005-06. In fact, that is for 2006-07. It is expected revenue for the current year.

**ACTING CHAIR**—Thank you.

Resolved (on motion by **Senator Trood**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

**Committee adjourned at 12.10 pm**