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JOINT STANDING COMMITTEE ON TREATIES

Reference: Timor Sea treaties

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JOINT COMMITTEE ON TREATIES

Thursday, 3 October 2002

Members: Ms Julie Bishop (*Chair*), Mr Wilkie (*Deputy Chair*), Senators Barnett, Bartlett, Kirk, Marshall, Mason, Stephens and Tchen and Mr Adams, Mr Bartlett, Mr Ciobo, Mr Evans, Mr Hunt, Mr Peter King and Mr Scott

Senators and members in attendance: Senator Tchen and Ms Bishop, Mr Ciobo, Mr Peter King and Mr Wilkie

Terms of reference for the inquiry:

Timor Sea treaties

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Committee met at 9.01 a.m.**FADELLI, Mr Bruce Peter, AM, President, Northern Territory Chamber of Commerce and Industry**

CHAIR—Ladies and gentlemen, I declare open this public hearing of the Joint Standing Committee on Treaties in the beautiful and very warm city of Darwin. The Exchange of Notes Constituting an Agreement between the Government of Australia and the Government of the Democratic Republic of East Timor concerning Arrangements for Exploration and Exploitation of Petroleum in an area of the Timor Sea between Australia and East Timor, and the proposed Timor Sea Treaty between the Government of Australia and the Government of East Timor, were tabled in the parliament on 25 June 2002. Preliminary evidence on the treaties was taken from representatives of the relevant Commonwealth departments at public hearings in Canberra on 12 July.

It was clear, however, that the treaties would attract considerable public interest. The committee therefore called for submissions from interested parties by 31 July. To date, over 80 submissions have been received by the committee, and a further hearing was held on 26 August in Canberra. In reviewing properly the treaties, the committee considered it essential to take evidence in locations other than Canberra. The committee believes that it is important that a wide range of individuals and organisations have an opportunity to express their views on these treaties in the context of this review. Accordingly, the committee took evidence yesterday in Perth and, after today's hearing in Darwin, will travel to Melbourne to take evidence there tomorrow. A further public hearing has been scheduled in Canberra next week. Today we will take evidence from the representatives of mining industry and commerce organisations in the Territory, the Northern Territory government, interested individuals and non-government organisations from Australia and East Timor.

I welcome Mr Fadelli. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant 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. Mr Fadelli, would you like to make some introductory remarks, and then we will proceed to questions.

Mr Fadelli—The Northern Territory Chamber of Commerce and Industry is the largest employer association in the Northern Territory, representing approximately 20 per cent of the business community across the Territory, who employ over 22,000 employees in all industry sectors. We are a member of the Australian Chamber of Commerce and Industry, we are affiliated with the Australian Retailers Association and we are the secretariat for the Pharmacy Guild of Australia. Our councils include manufacturing, international trade and commerce and tourism. In addition, the Northern Territory Expo is fully owned by the Northern Territory Chamber of Commerce and Industry.

The Timor Sea Treaty between the government of East Timor and the government of Australia raises one issue of concern to Northern Territory business: it is article 11, Employment, section (a)(i). This article ensures that preference is given in employment in the JPDA to nationals or permanent residents of East Timor. While we understand the sentiments, it really is a case of trading off the employment opportunities of Territorians for those of the East Timorese. From a business perspective, one, East Timorese businesses will have a competitive

advantage in any bidding process as they can assist the contractor to meet their obligations simply based on the ethnicity of their work force; and, two, foreign companies can establish in East Timor and employ nationals or permanent residents of East Timor to gain a competitive advantage, again simply based on the ethnicity of their work force.

The Northern Territory has a fledgling oil and gas industry work force which also requires promoting. The treaty should aim at fostering a partnership between the East Timorese and Northern Territory work forces. We propose the treaty be amended to include that preference is given in employment in the JPDA to nationals or permanent residents of East Timor and the Northern Territory of Australia. We have a precedent in the construction of the Alice Springs to Darwin railway, where preference is given in employment to residents of the Northern Territory and South Australia.

Section (a)(ii) relates to training provisions for nationals or permanent residents of East Timor. The Northern Territory has recognised the need for training the work force to meet the new demands expected from the development of the Timor Sea gas reserve. The Northern Territory government has issued a statement and memorandums of understanding are on the way for the formation of the oil and gas institute as a part of the Northern Territory University. The Northern Territory has these programs in place to meet the demand. Training both residents of the Northern Territory and nationals or permanent residents of East Timor will enhance and improve the number of trainees passing through the programs. The treaty could further foster the partnership between the East Timorese and Northern Territory work forces by adding to this clause that preference be given to the Northern Territory in training nationals or permanent residents of East Timor in preparation for employment or employed in the JPDA.

CHAIR—Thank you, Mr Fadelli. In relation to article 11 and the employment preference, presumably in the construction phases of a project—let us take the Bayu-Undan Project—the work force will need, in the main, to be skilled. Is it not more likely that there will be a skilled work force in the initial phases in any event and that the East Timorese work force will have to be trained, so that, in essence, it is unlikely that this clause will have an immediate impact—rather that its impact will be long term?

Mr Fadelli—You are probably correct in what you are saying there, but it leaves it quite open, doesn't it, when it says 'preference'? Preference is not related to skills—it is quite open-ended in that respect. Is it preference in skills or preference in nationality?

CHAIR—As a federal representative, I wonder about your suggestion that preference be given to East Timorese and Northern Territory workers. Would it be preferable to suggest an employment preference for the Australian work force rather than the Northern Territory work force?

Mr Fadelli—We are quite prepared to stick to what I have said. We have done it with the railway—given preference to South Australia and the Northern Territory. Under the LIAP, it is something like 90 per cent Northern Territory-South Australia for the railway.

CHAIR—The treaty itself proposes that the revenue be split between East Timor and Australia 90-10. What do you say to the suggestion that the employment preference clause also

be split according to that percentage so that 90 per cent of the work force is East Timorese and 10 per cent is Australian?

Mr Fadelli—I do not think you should be definitive, because then you are really putting numbers to a work force that might not be there.

CHAIR—You made another point about training programs in the Northern Territory that would be available. How do you propose that East Timor would pay for their work force to be put through these training programs? How would that work?

Mr Fadelli—It is my understanding that all of these training programs are going to be set up on a commercial basis. There would be incentives for the petroleum companies to train their people up. So it is a matter of whether the funding is part government—from the East Timorese government or from the Northern Territory government—or a combination of funding from government and the petroleum companies that seek this labour force.

Mr WILKIE—Obviously a lot of consideration has been put into whether the gas from the Bayu-Undan project comes to Darwin, and also whether the gas from Greater Sunrise comes to Darwin. Has the chamber of commerce done any analysis of the financial impact of those two scenarios for your members?

Mr Fadelli—Yes, the Northern Territory Chamber of Commerce and Industry and the Territory Construction Association together have engaged Dr Peter Brain from the National Institute of Economic and Industry Research. We had a report tabled in January which said that the financial benefit would be in the order of about \$22 billion and the work force would be in the order of about 20,000 people.

Mr WILKIE—That is the scenario if both projects came onshore?

Mr Fadelli—That is the scenario if Sunrise came onshore.

Mr WILKIE—What about if it was just Bayu-Undan which came onshore?

Mr Fadelli—That would be considerably lower. I think from memory that the work force there will be something like 2,000 people during construction and then it will taper off quite significantly during operation.

Mr KING—I would just like to pick up on something that Madam Chair mentioned to you, Mr Fadelli, in relation to the benefits flowing to the people of Darwin and the Northern Territory. The Bayu-Undan project seems to be ready to come online pretty quickly. There is talk of the construction of a major plant in Darwin commencing possibly as early as November. Has Dr Brain's report done an analysis of the benefits to your members of that project?

Mr Fadelli—Dr Brain's report was centred on Sunrise. Most of the figures for Bayu-Undan are already available through different government publications and have been around for some time. The project that we had a query on, and that nobody was really sure on, was Sunrise. Hence we engaged Dr Brain to do the Sunrise report.

Mr KING—If the Greater Sunrise joint venture partners opt for floating gas to liquids processing and offtake, have you assessed the benefits to Darwin and the Northern Territory in those circumstances?

Mr Fadelli—Yes, the benefits drop from something like \$22 billion down to about \$1 million.

Mr KING—It is that low?

Mr Fadelli—That figure was given to us basically just for port servicing charges; I am talking from the perspective of employment.

Mr WILKIE—The plant for Bayu-Undan would still be built in Darwin and that would still be significant.

Mr Fadelli—I thought we were sticking to Sunrise here; I did not realise that you were coupling the two projects. The original question was on Sunrise.

Mr KING—Yes, my question applied only to Sunrise.

Mr Fadelli—The floating plant is for Sunrise. The Bayu-Undan project and the onshore plant are a separate set of numbers.

Mr KING—Yes, that is why I was focusing on Sunrise. What is your view about an employment preference clause in relation to operations in the area that you have identified and/or onshore operations?

Mr Fadelli—We do not have any problem with the clause as it reads except we want the inclusion of the Northern Territory. Preference should be given in employment in the JPDA to nationals or permanent residents of East Timor and the Northern Territory of Australia.

Mr KING—If that were to be happen, wouldn't it be necessary to also ensure that the occupational health and safety standards were at least the superior standard for the time being?

Mr Fadelli—That would go hand in hand, definitely.

Senator TCHEN—I think you raised a very important point about the employment preferences. We heard evidence yesterday in Perth about that as well. There are two things about it, however. The first is in the Timor Sea Treaty. I am not sure whether you have seen it yet. It is actually quite a small document. But the very first sentence actually says:

THE GOVERNMENT OF AUSTRALIA and THE GOVERNMENT OF EAST TIMOR CONSCIOUS of the importance of promoting East Timor's economic development;

That is the very first clause. One would expect that further on the provision actually will show some sort of preference for East Timor. This article 11 is in line with that. I think it might be a bit contrary to the spirit of this treaty to then come back and say we should give preference to Australia as well. Do you see that as a difficulty? It is a bit like going back on our word.

Mr Fadelli—I believe that there is a real need to foster a good relationship between East Timor and the Northern Territory in the work force and training. Given that at the end of the day the East Timorese people will need assistance and will need training, if it is open ended they will have the option to source that from Surabaya, from Singapore, from Hong Kong or wherever. So I think it could be worded such that it still stays within the spirit, because we are not saying that they be deleted. What we are saying is that the treaty should look at some way of promoting and fostering a working relationship between the two nations. We have even gone as far as to say that somewhere down the line both governments should be looking at the region as a free trade zone, very similar to what happens between Batam and Singapore. Down the line, that should be considered—a zone where we have common taxation regimes, visa regimes, employment regimes, training regimes and movement regimes. It is our nearest neighbour and I do not see why we should not be working together. So we are definitely not against promoting assistance to East Timor.

Senator TCHEN—Can I put something else to you and test your view? I think the chair suggested to you, and this occurs to me also, that any preference clause included, in terms of Australia rather than the Northern Territory—and you put a very good case for the Northern Territory, I must say—would possibly be within the spirit of this promoting of East Timor's economic development. The Northern Territory's work force and population do have a particular characteristic which the rest of Australia does not share. That is the large Indigenous population and the unemployment problems that population experiences. Do you think that perhaps it would be good if article 11 was actually amended to specifically give preference not only to the East Timorese but also to the Indigenous population of the Northern Territory?

Mr Fadelli—We class ourselves all as Northern Territorians. I was born here. My grandfather came here in 1920, so I am from one of the old families. We do not see any need to really split that, because we are all Territorians; we all work together. If you go to the railway contract, which is a classic and, as I have said, a precedent, there is already in there a component for training Aboriginals for employment. It has probably been one of the most successful parts of the railway construction story that will emerge in the next few months—the number of Aboriginal take-ups and the number of Aboriginals employed. That has been successful. They have gone through the training programs, which have been initiated by the Territory Construction Association and ADrail, and assisted through our branches of the Chamber of Commerce and Industry in Tennant Creek and Katherine.

CHAIR—Picking up on that point about article 11, in reality, in practical terms, the construction that has been going on in Bayu-Undan has had an Australian work force involved, according to the evidence we received yesterday. The Australian Maritime Officers Union gave evidence to the effect that under the Timor Gap treaty with Indonesia the employment scenario was a 50:50 ratio Australians to Indonesians. The reality of the employment preference clause was that Australia's maritime skill base was such that the supply, exploration and survey work force was 100 per cent Australian. In other areas the commercial imperatives of the operators were such that a work force was engaged from all over the region. Would that not in reality be the scenario that we would see in this Timor Sea treaty, and in fact that the article is merely an expression of intent that, where possible, the East Timorese work force should be given a preference, say, over another unskilled work base from the Philippines, for example, in the spirit of the treaty?

Mr Fadelli—As I said earlier, I tend to agree exactly with what you are saying, but why have it in there, to a certain extent? In reality what you have described is probably what will happen. I do not disagree with that. But then if you are going to start putting names to things, then throw our name in there while you are at it. If not, why have names in there?

CHAIR—Because we are trying to express an intent of support for East Timor's economic future. So if there is a preference for an unskilled work base—which would in reality be the position until the East Timorese are trained in the skills required—then it would be preferable to take East Timorese workers rather than, say, Philippine workers.

Mr Fadelli—That would end up being logical anyway. Why would you transport unskilled Philippine workers all the way from the Philippines when the East Timorese are right on your doorstep?

CHAIR—It depends on the commercial costs of it all, doesn't it? At the end of the day the operators are there to make a profit.

Mr Fadelli—I think logically they would go for the East Timorese.

CHAIR—Then, if this pans out as the Australian government is anticipating, and there are training programs in place and training opportunities for East Timorese, again would it not be preferable for the operators to be looking to employ East Timorese rather than equivalently trained or skilled workers from the region?

Mr Fadelli—What we are missing a bit here is that we are trying to aim at fostering better future cooperation between East Timorese business and Northern Territory business. As I said earlier, we are looking at things down the track like free trade zones. We feel that any treaty or any such government instrument should take that into consideration and develop a framework where you can foster that growing relationship between East Timor and the Northern Territory.

Mr WILKIE—First of all, I would like to see more Northern Territory people employed in the project if it is possible. I do not know whether it is an option to put it in the clause. I think the previous Timor Gap treaty had Australian and Indonesian preference. If anything, we might get away with that, and we might not, but that is another discussion point. In Western Australia in the offshore oil and gas field I do not think there is a preference for West Australians, and in the Bass Strait I do not think they have a preference for Victorians or South Australians. So, whilst it would be nice—those states would love to have it—I do not think that can be really possible. To move on a little bit, in Perth yesterday we had a submission from the fishing industry that operate in the northern waters here, and they were concerned that ratification of the treaty may have a direct impact on their operations. Do you have any commercial fishing people involved in the chamber, and have they expressed any concerns?

Mr Fadelli—The commercial fishing people have their own organisation in the Northern Territory. Maybe a couple are members of the chamber, but they would be on the basis of industrial relations and other such services we provide.

CHAIR—As there are no further questions, unless there is anything you would like to add, that is certainly sufficient for our purposes this morning. Thank you very much for coming

before the committee and for giving us your views. We will be reporting back to the parliament in due course.

Mr Fadelli—Thank you very much.

[9.25 a.m.]

ANDREJEWSKIS, Mr Andrew Joseph, Director, Petroleum Developments, Office of Territory Development, Department of the Chief Minister, Northern Territory Government

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I advise you that hearings are legal proceedings of the parliament and warrant 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. This morning, we received a rather substantial bundle of documents, which are beautifully presented. I have not had the opportunity to read them because I received them just before we started this morning. Would you like to take us through this, in as short a time as possible because we do not have an opportunity to read it all, and then we will go to questions?

Mr Andrejewskis—Certainly. At the outset, I would like to set out the government's position on the Timor Sea treaty: we believe that it should be ratified as speedily as possible so that the gas developments that are now waiting to be developed can proceed. In support of our contention, I would like to give you a PowerPoint presentation which I hope will amply demonstrate the context and the importance of the treaty to both East Timor and Australia. Hard copies of the presentation are in the package. The package also contains some fact sheets of the potential gas projects, some of the information that has been released already in the public arena and three separate analyses and reports by ACIL Economics on the benefits of bringing gas onshore.

A PowerPoint presentation was then made—

Mr Andrejewskis—A number of the Timor Sea gas resources in the Joint Petroleum Development Area are ready for development. These gas resources have a customer base, but there is a need for a ratified treaty and an international unitisation agreement on Sunrise before that development can happen. The development of those fields will bring benefits to the Northern Territory, to East Timor and to Australia. Although I am sure you have probably seen maps like these ad nauseam, to set the context I would like to point out: the land mass of Australia, the international boundary, the JPDA, the Timor trough which is 2,000 to 3,000 metres deep on an active zone where the Australia geological plate is moving to the north-west, and the Democratic Republic of East Timor.

The yellow dots—you can see there are a number of them—represent gas fields that have been discovered, none of which are in production. There are five red dots depicting oilfields in various areas that are in production: Challis, Jabiru, Laminaria, Buffalo, Elang-Kakatua. The critical gas fields that we are discussing are Bayu-Undan and Greater Sunrise and I will just mention Evans Shoal and Petrel-Tern, as they are the four fields that make up the bulk of the known Timor Sea resources at the present time. Between those four fields we have in excess of 20 trillion cubic feet of gas. The two critical ones, of course, are Bayu-Undan and Greater Sunrise. I also point out—and this will be important in the context of some comments I will make later—that the Greater Sunrise and Petrel-Tern fields were discovered some 30 years ago.

This slide gives you the split-up of the resources: Bayu-Undan, with Phillips as the operator, at 3.4 Tcf; Sunrise, with Woodside as the operator, 8.4 Tcf; Evans Shoal 7.7 Tcf, which has a component of carbon dioxide, which is an issue; and Petrel-Tern, 1.2. There is also another new field called Blacktip in Australian waters, but it is not part of this issue at the present time. Also of importance, Bayu-Undan has over 400 million barrels of liquids—that is condensate and LPG—and Sunrise has approximately 300 million barrels of condensate.

The primary requirement for any gas development—and I am sorry to make it so simple but I think it is important—is that you need gas customers. With oil, if you can find it and it is commercially viable, there is a world market for it and a world price for it. With gas, you must have gas customers. To put it simply: no gas customers means no gas development. Going back to what I said earlier, Sunrise and Petrel-Tern were discovered some 30 years ago; there were no gas customers. There are gas customers lining up now. Critically, gas customers need a long-term secure supply. They are looking for competitive prices. They are looking for commercially competitive terms. And, above all, the customers and the producers must work in stable and transparent fiscal and legal regimes and administration of those regimes.

The customers are in a global competition for projects. For example, a large methanol company, Methanex, at one stage were considering locations in four different parts of the world—South America, Malaysia, Australia and the Middle East. There would be one methanol plant built, but where were the conditions suitable for it? So there is that competition. There is always competition by suppliers for a particular project: who is going to supply the gas? It is also important to recognise that there is a timing of opportunity between the producer and the supplier. The two must come together—in other words, the supplier and customer alignment. The gas may be available for a long time but there are no customers; the customer may be available but there is insufficient supply, and so on. What you are seeking is an alignment.

A key point I would like to make is that Bayu-Undan and Sunrise fields are ready to be developed. Both fields are in a JPDA, whether wholly or partly. But again, as I pointed out earlier, you need a ratified treaty to give the certainty that the investors need to develop those fields, and for Sunrise an international unitisation agreement is also required. In case you have not seen this, for Bayu-Undan liquids and gas field there are upstream developments. There are three platforms and a floating storage off-take tanker. The gas with the liquids is produced into the two platforms, where it is separated. LPGs—propane, butane—and condensate are separated and stored in the tanker. Then the gas is recompressed with these compressors and reinjected into the reservoir. That means that the component of monetising the gas resources is not occurring, so the gas has got to be used, brought onshore for a customer, so that the value of the gas can be achieved. Incidentally, if you take note of this unmanned platform, which is in 80 metres of water, it is shown there as at May, with a drilling rig starting to drill the wells. That liquids phase is being constructed as we speak.

I will now talk about the gas phase—and this is important—getting back to the customer. The Bayu-Undan joint venture has been able to secure two gas customers to supply 3 million tonnes per annum LNG to two markets, Tokyo Electric Power and Tokyo Gas in Japan, commencing January 2006. The importance of that contract is that, if you work back from that first delivery date, construction on that LNG plant and pipeline must happen soon. From your comments earlier, Madam Chair, you have had some evidence of that.

Just to illustrate—and this is Darwin, the airport, the new East Arm Port—this is the location at Wickham Point for the proposed LNG plant, subject to the treaty and the final decision. Turning to Sunrise, this is an artist's concept of bringing Sunrise Gas on shore. It is a huge field but rather flat and it would require the take-off of condensate into a floating storage unit and gas being piped to shore.

You need customers, and we believe that the joint venture and the Northern Territory government are working to secure these customers. The customers in the Northern Territory include a number of mineral processing projects, aluminium smelting, alumina refining such as Gove, a zinc refinery at McArthur River and some other mineral processing areas south of Darwin. There is a possibility of LNG maybe sometime in the future, power generation, ammonia/urea and others. There are customers in Australia, including the piping of gas to South Australia, New South Wales via Moomba and the potential also to go into the Mount Isa region. There is a competing project of floating LNG. I make no bones about it, the Northern Territory's preference would be to bring that gas onshore.

On the assumption that both Sunrise and Bayu-Undan would come onshore, the benefits to Australia, including the Northern Territory, on a net present value basis, discounted at six per cent over 26 years—that is, six years for construction, 20 years for operation—would increase Australian gross domestic product by \$56 billion. It would be an increase in net exports of \$33 billion, an increase in Commonwealth revenue of approximately \$10 billion and create indirectly and directly 11,900 jobs. This is Australia-wide, including the Northern Territory.

The development of both of those fields would mean that there would be a pipeline infrastructure developed. That would lead to the encouragement of future exploration efforts in the JPDA. Future exploration efforts would then mean future developments would take place. That will benefit East Timor, the Northern Territory and Australia. Nothing breeds or attracts success like existing success. But the progress has got to be step by step. The best illustration of that is the North West Shelf. It started off with a few projects and it gradually built up as the infrastructure was developed. The point I would like to make here is that, if we do not take steps now to start this, in 20 or 30 years time the big projects or the big developments would not have taken place because we have not taken these first steps, and these are critical.

In conclusion, again, I make no apologies. You have seen this before. We do need a ratified treaty and an international unitisation agreement on Sunrise. I understand the Sunrise IUA is not part of this committee, but the ratification of the treaty is. I think that spells it out.

Senator TCHEN—In regard to the financial benefit you showed us earlier, is that for the life of the project?

Mr Andrejewskis—Yes, it is. It is a 26-year period with a net present value back to today, allowing for six years of construction and 20 years of life.

Senator TCHEN—Thank you.

CHAIR—Was there anything further you wish to add?

Mr Andrejewskis—No, I think that pretty well sums it up.

CHAIR—We will take the hard copy as evidence given in these proceedings. In relation to the unitisation agreement, why is it that in the case of Bayu-Undan it has been able to proceed without a treaty being ratified and yet in the case of Sunrise it will require both a unitisation agreement and the treaty being ratified?

Mr Andrejewskis—As I understand it—and this is something that is probably more accurately reflected by the joint venturers in Bayu-Undan—the opportunity to build the liquids plant and upstream facilities was there at the time. I understand that the decision was based on some undertakings that were given at the time, and the joint venturers at the time made a conscious decision. However, I understand that, with the investment required for the gas plant, the joint venturers are not willing to go ahead without a legal framework that is sustainable, and part of that is a ratified treaty.

CHAIR—So they have entered into contractual obligations previously and work has commenced. There has been investment, obviously based on the exchange of notes, which is less than a treaty status agreement, but you are saying that now they are at a point where they require a legal framework for further investment?

Mr Andrejewskis—That is correct. I understand that this upstream investment is of the order of approximately \$A3 billion; further investment required would be of approximately the same order.

CHAIR—I will pick up on a point that the chamber of commerce made about the employment preference clause in the treaty. Does the Northern Territory government have any position in relation to that issue?

Mr Andrejewskis—Not really. The clause covers the general principles of Australia and East Timor employment and probably, in effect, would cover the practical realities of it. It does not really wish to add anything further to it.

CHAIR—I want to refer to article 8(e) of the treaty. Do you have a copy of the treaty with you?

Mr Andrejewskis—Yes, I do.

CHAIR—You might know it off by heart. Article 8(e) states:

Neither Australia nor East Timor may object to, nor in any way impede, a proposal to use floating gas to liquids processing and off-take in the JPDA on a commercial basis ...

The Northern Territory government has expressed disappointment with that article. Could you expand on the type of guarantee that the government would find satisfactory that would allow for floating gas to liquids processing in the event that pipelines were found to be uneconomic?

Mr Andrejewskis—There could have been an interpretation of article 8(e) that might suggest a preference for one or another. The Northern Territory government would have been happier with more neutral language. But I have been asked to pass on advice that the Northern Territory government can live with the language as is and would rather see the treaty ratified.

CHAIR—Rather than renegotiate terms?

Mr Andrejewskis—Absolutely.

CHAIR—Are there any other articles or terms in the treaty that the Northern Territory government has a concern about, or indeed are there any aspects that have been omitted?

Mr Andrejewskis—No. As I said, the Northern Territory government is prepared to live with the treaty as is, providing it is ratified.

CHAIR—The terms of the treaty as is.

Mr Andrejewskis—As is.

Mr WILKIE—I am interested in your comments about the need to have a customer to make it viable. Obviously Bayu-Undan is covered. They have got the market. They bring it to Darwin and they have still got it covered. With Sunrise, I have been told that just to make it viable they still require, if you are looking at customers, something like 900 terajoules a day extra just to make the figures add up to break-even. They are saying, ‘Look, it is not going to be viable for us to do that at this stage given that the entire east coast market is just 1,400 a day.’

Mr Andrejewskis—Some of the markets in the Northern Territory would be new projects. There are a number of contracts for the east coast that are dropping out about 2006, because you need these lead times to actually negotiate some of these contracts. Furthermore, there are new projects in the south that would like to get gas but want to get a long-term, secure supply of large volumes of gas. The Northern Territory government’s work on this, which has been rather extensive, both internally and with the use of consultants, indicates that there is a market of that scope that is available. It is not easy but we believe it is achievable.

Mr WILKIE—The information I have been given, for example, with the North West Shelf is that they are only delivering at this stage 550 terajoules a day after 18 years of operation. You need over 900 extra here before they could even make it viable. For Sunrise, you need a market with immediate ramp-up volumes greater than that achieved by the North West Shelf. Do you think it is really feasible?

Mr Andrejewskis—It is feasible. As I said, the customer and supply alignment needs to be there, and there are attempts that are currently under way, over the next few months, to achieve that. If we look at an aluminium smelter plus the new zinc smelter plus expansion on Gove plus power just in the Northern Territory alone, that would take care of something of the order of half of that particular 980, or close to it. Then there are markets where we have been in touch with customers in the south. We have had extensive discussions with them by the Chief Minister and other ministers and myself to discuss these potential contracts. There is a willingness to buy gas from the Timor Sea. I think it is a commitment to actually make it happen. Those are commercial things that we are trying to achieve.

Senator TCHEN—Yesterday the committee heard evidence from a number of interested parties in Western Australia about the management of the water columns, the fishery. There was concern that that may have potentially an adverse impact on a treaty like this. Basically they

were concerned about confusing the issue for future management of the fishery. Does the Northern Territory government have any concern in that area, or have you looked into that area?

Mr Andrejewskis—I cannot really speak on the water column issues; it is not in my area of competence. I might just suggest that the treaty itself deals with the seabed and the resources below it. I am not under any directions or instructions regarding the water columns, so I am sorry, I cannot really expand on that.

Mr CIOBO—I am interested in the comments you made about the projects down south, because it is a fairly crucial point in terms of the total gas market. Can you be more specific? Is it commercial-in-confidence or can you outline some of the various options that have been put forward and whether they include the construction of a new pipeline? I saw among your handouts the proposed pipelines to Queensland and the Cooper Basin.

Mr Andrejewskis—The pipeline there is a proposal, subject to Sunrise Gas coming onshore, to build a new pipeline from Darwin to Moomba with a minimum capacity of around 120 petajoules per annum. There are customers we have spoken to who would be willing to take gas volumes of that order in South Australia and for New South Wales markets.

Mr CIOBO—So these are not new projects; they are existing?

Mr Andrejewskis—Some are expansion and some are new; some are to replace contracts that fall over in about 2006.

Mr CIOBO—So we will see a more competitive domestic marketplace as a result of this?

Mr Andrejewskis—Yes.

Mr KING—We heard from Mr Fadelli that, if the gas pipeline from Sunrise does not proceed, the benefits flowing to the Australian economy would decrease to something like \$1 million per annum. Did you hear him say that?

Mr Andrejewskis—Yes, I did.

Mr KING—Do you agree with those figures?

Mr Andrejewskis—I do not have any figures with me to state exactly what the figures might be for the Northern Territory, but they certainly would be reduced. In our group we have been working on the total package and so that has been our focus. Sunrise is critical to the establishment of some of the customers I mentioned, like an aluminium smelter, expansion of the alumina refinery and so on. Without the large volume of gas that Sunrise could supply, these projects could not proceed.

Mr KING—It seemed a somewhat dramatic conclusion, especially if the alternative is shipping the product from Sunrise, from a facility linked to the well. There would still be significant benefits for the Australian community, I would have thought.

Mr Andrejewskis—The benefits to the Australian community would be in royalty dollars and in taxation that flow directly to Canberra. It would provide very few benefits to the Northern Territory, we believe, because those facilities would be built offshore. There would be some service supply opportunities and that would be about it.

Mr KING—I think you have a special authority on this called the NT Adjacent Area Joint Authority.

Mr Andrejewskis—That is correct.

Mr KING—What does that body do?

Mr Andrejewskis—That joint authority administers the Commonwealth act in Northern Territory waters on behalf of the Commonwealth.

Mr KING—So it is a Northern Territory authority but it is administering certain responsibilities for the Commonwealth.

Mr Andrejewskis—That is correct.

Mr KING—Under the Seas and Submerged Lands Act.

Mr Andrejewskis—That is right, the Petroleum (Submerged Lands) Act.

Mr KING—Has any thought been given by that body or by your government to plan B? If Sunrise, for whatever reason, does not proceed to do what Bayu-Undan has done—that is, pipe it ashore—and then decides to ship it from the Timor Sea, has any thought been given to whether there are commercial and other opportunities for employment and so on that might be available to the people of the Northern Territory and Australia generally?

Mr Andrejewskis—We have talked to relevant Commonwealth government departments about this. Our focus and our belief is that we can justify bringing gas from Sunrise onshore, and that has been our focus. As to a plan B, fundamentally I think we will look at it when the time comes, if it comes. We hope it does not.

Mr KING—We all hope that plan A is successful, but my colleague Mr Wilkie has pointed out that there are some economic difficulties in the way of plan A. That is why I am raising with you the possibility of having a plan B. It seems to me that there are some possible aspects of this treaty which may assist you in formulation of a plan B so long as such an alternative is clearly kept in mind as a fall-back position.

Mr Andrejewskis—If it was a fall-back position, clearly it could not be demonstrated that there is a commercially robust gas onshore plan. Certainly, the Northern Territory government will be looking at plan B. What that might be, and in what form, I would not like to speculate on at this particular time.

Mr KING—Do you have there the ACIL report that was done for your government?

Mr Andrejewskis—I do not have a copy.

Mr KING—The one that was provided to us this morning?

Mr Andrejewskis—Yes.

Mr KING—There are two scenarios in that report: scenarios A and B. Are you familiar with those?

Mr Andrejewskis—Yes; there is also scenario C. It is a third volume that is in your folder. It is purely a domestic gas onshore scenario for Sunrise.

Mr KING—I do not think I have seen scenario C; where is that?

Mr Andrejewskis—That is the May 2002 folder.

Mr KING—Madam Chair, do you mind if I ask our witness to briefly identify scenario C in their reports, which we were given this morning?

CHAIR—No.

Mr Andrejewskis—There is a volume dated May 2002; that is the one.

Mr KING—I see.

Mr Andrejewskis—That will be based on a domestic case for Sunrise onshore. It still provides you with a robust case, we believe.

Mr KING—I see. Madam Chair, if it is convenient to you, I will ask the witness to briefly summarise each of those three scenarios. They are at the foundation, as it were, of the Northern Territory government's position. Are you content to do that?

CHAIR—Certainly—if you are happy to do that, Mr Andrejewskis.

Mr Andrejewskis—I am happy to do that, but I point out that, whilst the treaty has an impact on Sunrise, the options of floating LNG versus gas onshore are really more commercial issues than pure treaty ones. But I am happy to just quickly indicate to you that scenario A—

CHAIR—But aren't you seeking Commonwealth intervention in relation to those issues?

Mr Andrejewskis—Yes, we are.

CHAIR—So it might be a commercial decision, but the Territory government is seeking Commonwealth intervention—

Mr Andrejewskis—Or assistance.

CHAIR—or assistance, as there was in the North West Shelf.

Mr Andrejewskis—That is correct.

Mr WILKIE—Convince us.

Mr Andrejewskis—In another time and another place, I think. Scenario A is based on Bayu-Undan being developed with a gas onshore LNG project. Scenario B is the floating LNG option, or Sunrise being brought onshore for an expanded LNG plant in Darwin, plus a range of domestic gas customers. The study by ACIL in May 2002 includes Bayu-Undan being brought onshore as before, but it is purely a domestic gas case; in other words, with no LNG from Sunrise—at least, not initially—and then with a whole bunch of gas customers, as I described to you, in the Northern Territory and the rest of Australia.

Mr KING—Can you tell me why Woodside, for example—as you understand it or as perceived by your government and various instrumentalities—would want to ship direct from a well, as distinct from piping onshore? What are the commercial advantages if there is no domestic market?

Mr Andrejewskis—We would probably dispute some of the assertions that Woodside is making.

Mr KING—What I am asking you is: has the government done a cost-benefit analysis, having regard to the sort of infrastructure you are prepared to put into the project? I notice, from the reports, that your government has examined very carefully the support you could give to various onshore piping projects. What advantages are there for the Sunrise field if they do pipe it onshore and then resell it or ship it overseas?

Mr Andrejewskis—We are not proposing that Sunrise gas be brought onshore purely for LNG; we are proposing that it be brought onshore for domestic gas customers. Somewhere down the track perhaps one of those customers could be LNG, but that is not at this stage. We are suggesting, and are putting to you, that there are a number of customers waiting in the wings who would like to buy Sunrise gas. Some of those are large new projects requiring large volumes of gas; they will not come here if that gas is not made available. There are markets also in the other parts of Australia that are willing to take Sunrise gas via Moomba, but they will go to alternative sources of gas if that gas is not made available—in other words, that customer-supplier alignment.

Mr KING—To what extent is the Northern Territory government actually considering the infrastructure potential that it can provide to the Sunrise project to achieve the outcomes that you want?

Mr Andrejewskis—It is considering a number of options at this time, and I am afraid I am not prepared to go any further than that because there are some matters in preparation at this time.

Mr KING—I guess I was digging around in that area, and I thought you would probably end up saying that.

Mr Andrejewskis—Yes, you were!

CHAIR—You just stop him anytime you want to.

Mr KING—Thank you, Chair; those are the only questions I wanted to ask.

CHAIR—I did not mean to stop you in your tracks! In the government's submission it is mentioned in passing that the Northern Territory government is not recommending Timor Sea gas be reserved for domestic use. It then goes on to say that if it is not piped to Darwin, the nation could forego value-adding development et cetera. Then there is reference that 'a floating LNG only option does nothing to reduce Australian greenhouse gas emissions.' Can you expand on that?

Mr Andrejewskis—We are getting into an interesting area. The use of a gas to power alternative developments actually saves a lot of greenhouse gas emissions. The gas that is utilised by Sunrise into a floating LNG plant and then exported does nothing for the Australian side of the equation of greenhouse gas emissions, whereas gas onshore would. It is a difficult area, I am afraid.

CHAIR—On page 4 of the executive summary it says that without Sunrise gas:

Gas resources may be insufficient to service those markets to meet moderate growth in demand from household, commercial and industrial consumers.

Has that also been analysed? The growth expectations from each of these sectors and—

Mr Andrejewskis—Some analysis has been done. One of the analyses that we have done—again, this is part of something else that I would rather not go into—has shown that the provision of Sunrise gas to southern markets could actually reduce the price of gas in various states in real terms by 10c or 20c per gigajoule. That is on the basis of large volumes being able to come into the market and be a source of competition.

CHAIR—In terms of the rest of Australia, do you mean?

Mr Andrejewskis—That is correct.

CHAIR—Mr King asked you about the Northern Territory adjacent area joint authority. What other responsibilities do the Northern Territory government have in relation to the northern waters, if I can put it that way?

Mr Andrejewskis—It also administers the immediate adjacent area—the Northern Territory territorial waters as such, rather than just the Commonwealth waters—and it would act on behalf of the Commonwealth in certain areas for assistance, as I understand it. I am not in the administrative area of those so I am afraid I will not go past that point, if I may.

CHAIR—Thank you very much for your time this morning. We appreciate the very detailed submission, which will be read in its entirety in the course of our report writing.

CHAIR—Mr Andrejewskis, before you leave, can all the documents you have provided to us form part of the public record?

Mr Andrejewskis—Certainly.

CHAIR—I note in there some commercial-in-confidence tags. Is there anything that—

Mr Andrejewskis—I think that one page had some information that was commercial-in-confidence, but that has been excised.

CHAIR—Thank you very much.

Proceedings suspended from 10.04 a.m. to 10.17 a.m.

[10.18 a.m.]

ALMOND, Mr Terry, Northern Territory Manager, Honeywell Ltd; and Executive Member, NT Minerals Council (Inc.)

BORGELT, Mr Garth, Northern Territory Manager, NT Gas Pty Ltd; and Member, NT Minerals Council (Inc.)

PURICK, Ms Kezia, Chief Executive Officer, NT Minerals Council (Inc.)

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant 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 the parliament. Ms Purick, would you like to make some introductory remarks? I take it that there has not been a written submission.

Ms Purick—No, there has not.

CHAIR—Perhaps you could outline your submission to us and then we will proceed to questions.

Ms Purick—Thank you. On behalf of the Minerals Council I thank the committee for the opportunity to present a brief overview of our position and to answer any questions relating to the treaty, the terms of reference to the treaty, and these current hearings today. In appearing here today I would like to provide a snapshot of the Minerals Council so as to give the committee an understanding of why we requested an appearance.

The Minerals Council is an independent, non-political, incorporated body which was established in 1955 to promote and represent the views of its members, which include mineral exploration, mining, quarrying, extractive, petroleum, pipeline and supply companies. The group is recognised for effective issues management and cooperative action for the Northern Territory minerals and petroleum industry. Its mission is to promote the development of a safe, profitable and environmentally responsible minerals and petroleum industry that is internationally competitive and attuned to community expectations.

Typical activities of the Minerals Council include: engaging with key government decision makers and those who advise them; influencing policy development; improving industry performance through the development of codes, guidelines and the sharing of best practice; providing members with up-to-date information on issues that are likely to affect the industry; maintaining close working relations with other industry groups with an interest in the resource industry and with other key industry associations in Australia; running topical and relevant seminars, conferences and workshops; and providing a comprehensive range of information about and for the industry. The secretariat of the Minerals Council is based in Darwin, and I report to a board of 12 elected members from the resource industry.

Key issues in the Northern Territory relating to the ratification of the Timor Sea Treaty are as follows. The minerals and petroleum industry is the most significant contributor to the Northern Territory economy, contributing approximately 34 per cent to the gross state product. A keystone of the Northern Territory government's economic development strategy is to build on the solid base of the minerals and petroleum industry. While the benefits of proposed land based gas developments are acknowledged and noted by the Minerals Council, the current strength of the Northern Territory's economy is from hard rock mining projects, and most are in need of competitive energy for future expansions and developments—most notably being Alcan Gove and McArthur River Mine.

Two proposed new, large-scale hard rock mining projects 100 kilometres south of Darwin also need competitive energy supply to ensure development commitment. Natural gas is not available in sufficient quantities in the Central Australian region to underpin development of these energy-hungry projects. Without a cost-effective alternative energy supply—such as gas from the Timor Sea or the Bonaparte Gulf—they will not be, or are unlikely to be, developed because they will not be competitive internationally.

Proposed pipeline projects from Darwin to regions in the southern states and across to the Gove Peninsula that are dependent on Timor Sea gas coming to shore will bring enormous economic and social benefits to many of the regional areas of the Northern Territory, including jobs during construction phases, the provision of gas to areas that are heavily reliant on diesel for power supply and the ability to lay telecommunications cable, which will bring enormous benefits to many communities. The Timor Sea Treaty will be and is the fundamental document underpinning the development of resources in the Timor Sea region shared by Australia and East Timor and, as such, must provide clarity, fairness and certainty in areas such as taxation, legal, safety, health, the regulatory regime and maritime boundaries. Finally, of critical importance is the conclusion of a separate international unitisation agreement for the Greater Sunrise fields, given that they will be developed as a single unit.

The Minerals Council trusts that this committee will acknowledge the benefits that will flow to the Northern Territory, in particular, and to Australia and East Timor from the developments in the Timor Sea region and the critical importance of the Timor Sea Treaty being ratified, as it will provide certainty and clarity to the resource industry in the Territory and Australia.

CHAIR—Thank you. You have just stated that this treaty will be a fundamental document in the potential development of the area. Have you read the treaty?

Ms Purick—I have read the treaty but not in great detail.

CHAIR—Are there any aspects of the treaty that you would like to comment upon, such as any of the particular articles? You have mentioned the need for clarity, fairness and certainty in a range of areas. Is there anything in the treaty document, or anything that has been omitted from the treaty document, that you would like to bring to our attention?

Ms Purick—Not at this point. But, from the resource industry's point of view, the imperative for clarity and certainty in arrangements is fundamental to making any commitment in the development of any project, whether it be onshore or offshore. The same stands for this

situation. If there is the opportunity for the Minerals Council to provide a written submission subsequent to these hearings then we would welcome that.

CHAIR—In particular, there has been a deal of evidence given to this committee about the employment provision in the treaty. Are you aware of that—article 11?

Ms Purick—I am aware of it, and I was here this morning for the other participants.

CHAIR—Part (a) of the article reads:

Australia and East Timor shall:

i. take appropriate measures with due regard to occupational health and safety requirements to ensure that preference is given in employment in the JPDA to nationals or permanent residents of East Timor ...

Does the Minerals Council have a position in relation to that article?

Ms Purick—We do not have a formal position, but I would concur with the chamber of commerce's comments earlier this morning that from a purely selfish Northern Territory point of view we would like to see the Northern Territory included in employment and training opportunities.

CHAIR—Would you acknowledge that in reality, for at least some time to come, the skilled work force is unlikely to come from East Timor in any event?

Ms Purick—In reality, that is what may occur. However, I understand the intent to have it in the treaty for future developments and just basically the future—in 10, 20 or 50 years time. That is why it is obviously crucial when the treaty is ratified, or before it is ratified, that whatever is put in place will bring benefits not only to East Timor but also to the Northern Territory of Australia.

CHAIR—In reality, if we were talking about an unskilled work force, the treaty is giving preference to East Timorese rather than unskilled workers elsewhere in the region. I will exclude Australia from that because the cost basis of the Australian labour would probably preclude us from that category, but it is giving a preference to East Timorese unskilled workers over those from, say, the Philippines or Indonesia.

Ms Purick—In the resource industry—and you mentioned it yourself—the issue of safety and health is the No. 1 priority. Any unskilled work force, regardless of where they are from, would have to be trained before they would meet the requirements of working in the resource industry.

CHAIR—Indeed.

Ms Purick—By nature, it is a very hazardous industry: whether it is hard rock mining or petroleum developments offshore—or onshore, for that matter. That would be of paramount importance to the operators in having not only a skilled work force but also a work force that

was attuned to the safety and health requirements of that project, and of the company and the industry generally.

CHAIR—The treaty goes on to say under article 11 that Australia and East Timor shall:

facilitate, as a matter of priority, training and employment opportunities for East Timorese nationals and permanent residents.

I take it that the council, given what you have just said, would support training and employment opportunities. Do you have a position or any ideas or suggestions on how Australia might go about fulfilling its obligations for providing training and employment opportunities for East Timorese nationals, particularly the training aspect?

Ms Purick—We do not have a formal position on it, but obviously training and the provision of training and employment opportunities should naturally occur from Australia, or through the Northern Territory; we would like that best. It is well acknowledged in this country, and by other countries, that our standards of education and training are exceptionally high, particularly in the resource industry, and it would be logical if our intellect and our corporate intelligence in this area was tapped into from Australia.

CHAIR—Are there any particular training programs or institutions in the Northern Territory now that would be available for, or at least adaptable to, this circumstance?

Ms Purick—Yes there is; the Northern Territory University is, I believe, the one that is in a position to provide training. We also have a series of training advisory councils that cover the respective industries and groups in the Northern Territory. For example, there is one for the minerals industry, there is one for the seafood industry, there is one for the retail industry and there is one for business, engineering and construction. We have those structures already established in the Northern Territory that could provide advice and the opportunity for training here in the Territory.

Mr WILKIE—You made reference to the unitisation agreement and the treaty. Are you aware that the unitisation agreement, whilst referred to in the treaty as a separate document, will be dealt with separately?

Ms Purick—Yes, I am.

Mr WILKIE—We have heard evidence that people believe that the ratification of the treaty and the signing of the unitisation agreement should occur at the same time. Does the Minerals Council have a view in relation to that?

Ms Purick—As we stated in our opening statement, it is of paramount importance that that unitisation agreement is concluded, either in parallel or before the ratification of the treaty. It is of fundamental importance to the operators to have that certainty and that clarity prior to making business development commitments.

Mr WILKIE—Are you aware that in regard to the unitisation agreement, from my understanding at the moment, there are a few differences of opinion about what is being

proposed? Whilst we have not seen the document, that is my understanding. Once that is concluded, it will then have to come back to this committee for further evaluation and report, which could in fact delay the ratification of the treaty for some months.

CHAIR—If they were tied.

Mr WILKIE—If they were tied, yes. How would the council feel about that?

Ms Purick—Obviously, delays are not always welcome. But quite often in the resource industry they are inevitable, particularly with the size and scope of projects that are being proposed offshore and onshore. We are not in a position to comment on the commercial arrangements of our member companies or what is happening in the Timor Sea. If need be, we can come back to you with more in-depth comment.

CHAIR—Taking up on that, is it not the fact that this treaty can be ratified, which in effect would allow Bayu-Undan to proceed? The unitisation agreement is required for Sunrise, so this treaty could be ratified prior to the unitisation agreement being finalised.

Ms Purick—That is correct. But the Minerals Council believes that the unitisation agreement should be concluded in arrangements in parallel with the treaty.

CHAIR—Are you aware of the position that Phillips Petroleum have put on behalf of the joint venture parties in Bayu-Undan, that Bayu-Undan is ready to proceed in the second phase as soon as the treaty is ratified, and that they are urging the committee not to wait until the unitisation agreement is finalised?

Ms Purick—We are not in a position to comment on particular companies' positions and what they may have put to you prior.

CHAIR—They have put to us that they have customers ready to take their product by January 2006. It has been put to us that, unless they begin work on phase 2 of Bayu-Undan by November this year, that opportunity may be lost. Would that not be an overriding consideration for getting the treaty ratified without having to wait for the negotiations on the unitisation agreement to be concluded?

Ms Purick—As I have said previously, the resource industry is enormously complex, and there are layers of complexity within that. As stated in our opening statement, we believe that in ratifying the treaty—which we support—the unitisation agreement should be done in parallel. It is of fundamental importance to the area, not just to the Sunrise project.

Senator TCHEN—Ms Purick, you mentioned a number of inland mining projects which will be very major energy consumers. We also heard earlier from Mr Andrejewskis, very importantly, that gas customers equal gas projects. Without confirmed gas customers, there are no projects. Can you tell us about world events, in terms of planning of this mining project you are talking about?

Ms Purick—One of the two projects that I mentioned by name, the Alcan Gove project, is an existing operation on the Gove Peninsula. It is a bauxite and alumina refinery. It has a planned

expansion program at the moment. I understand that their consumption of energy with the expansion program will be 40 petajoules per year. The other project is the McArthur River mine, which is a base metal mine, an underground mine. They are looking—which they have not done in the past because of the inability to get cost-competitive energy—to establish smelting operations at site, which will bring enormous benefits to the Northern Territory as well as to Australia. Currently, their product is exported to smelters in Europe, which are proving not as an attractive option in the future as possibly smelting on site. They are well-established mines; they have mine lives in excess of 35 years. Getting cost-competitive energy to expand and to grow is of great importance to them and to the Northern Territory economy.

Of the two proposed Batchelor projects, one is a magnesite magnesium project and the other is a polymetallic project, primary driven by cobalt, lead and copper. They both need cost-competitive energy; they are very much dependent upon that—all things being equal—to get their final development commitment. Other projects are possible because the Northern Territory is highly prospective geologically, and that is a well-known and documented fact. But getting cost-competitive energy is one of the biggest issues. At Alcan Gove their energy is approximately 30 to 35 per cent of their costs.

Senator TCHEN—And this energy at the moment is powered by coal fire—it is coal-fired generation?

Ms Purick—No. McArthur River is on gas at the moment—a spur line comes off the main line—but Alcan Gove is on diesel that they purchase in from the Middle East, or a substance like diesel.

Senator TCHEN—Do you know whether the energy needs of these projects have been factored into, say, the planning of the Greater Sunrise project?

Ms Purick—Yes, they have, very much so. The companies have, I understand, been in discussions over a number of months, if not years, with the various operators and joint venture partners in many Timor Sea operations. I understand that those discussions are continuing to this day.

Mr KING—Are any of the joint venture partners in either Bayu-Undan or Sunrise members of your council?

Ms Purick—Yes, they are. Sunrise joint venture partners are members.

Mr KING—So Phillips and Woodside are members?

Ms Purick—No, Woodside and Shell are members of the Minerals Council.

Mr KING—But Phillips is not.

Ms Purick—No.

Mr KING—Has there been any discussion initiated by your council with Woodside and/or Shell concerning the infrastructure that they are seeking if an onshore facility is to be developed? That is one of two topics that have been raised today.

Ms Purick—The Minerals Council, as an incorporated association and as the industry group, does not generally get involved with the commercial arrangements of its member companies and does not comment on them publicly. We receive briefings from the companies as to the current status of either discussions or negotiations, and that goes for any of our member operators, whether they be mining companies or oil companies. The short answer to your question is no, but that is the reason why.

Mr KING—The second topic is whether your council sees any scope for cooperation between the partners in the two different fields—given what at this stage appear to be their intractable positions—to actually join forces and utilise common facilities, by which I mean the pipeline from Bayu-Undan.

Ms Purick—No. Back to my previous statement, the Minerals Council, as a matter of policy from the executive committee, does not get involved in those types of discussions.

Mr KING—I want to ask you a little bit about the mechanics of the regulatory bodies. Has your organisation been asked at this stage to give any thought to the contents of the petroleum mining code which is contemplated by this treaty?

Ms Purick—No, we have not, but I would welcome the opportunity, as would our members, to have input into the development of that code.

Mr KING—As you probably know, the designated authority will have the day-to-day obligations in relation to the administration of the petroleum activities in the JPDA. Does your council have any views as to how that might work?

Ms Purick—No, not at this stage. It is something we would have to take on notice.

Mr KING—I think you were asking about the longer term impact of the treaty. To my understanding, it is 30-year window at this stage, so I would not be worried about 40 or 50 years.

Ms Purick—Okay.

Mr KING—On the training standards, there is the Australian Maritime College in Launceston, which is probably one of the world's best training colleges for maritime personnel of all varieties, including platform operators and so on. It is a possible basis for assisting in the training to appropriate standards of, amongst others, East Timorese. Has any thought been given by the members of your council to the possibility of such a facility? I do not only mean that one; there are others as well. Papua New Guinea Maritime College at Madang has also been mentioned with regard to assisting in the training of personnel not only from East Timor but also from other parts to staff these important fields and projects.

Ms Purick—The Northern Territory University, I know, have undergone a lot of discussions and they have memorandums of understanding with a variety of institutions that relate to the offshore petroleum industry. I am not aware of it but they may already be in discussions with the institution that you mentioned. I know they have had extensive discussions and courses are available through Aberdeen institutions involved with the offshore industry in the North Sea. I suspect that they are in discussions at this point with regard to the provision of training and training opportunities that may arise from Timor Sea projects.

Mr KING—Do you or your members encourage that process?

Ms Purick—Yes, and we have been involved in discussions with the Northern Territory University and member companies in the past, and I suspect we will be in the future.

Mr KING—Article 17 deals with issues regarding OH&S and related issues—the standards of those involved in the projects. Rather than opting for a variation in the preference clause in respect of employment, might you not achieve better outcomes for Australian businesses and potential employees if you advocated a standard of OH&S and other work practices—as you sometimes see in these arrangements—that was superior between the two countries? For example, if East Timor or Australia were considered to have a superior standard in respect of these issues, then that would be the standard for the time being?

Ms Purick—The resource industry strives for best practice; the best international standards that can possibly be achieved. Most companies subscribe to the full extent of those standards. We would encourage that, whether it be the ISO standards that are relevant to safety and health or similar standards. With regard to safety and health, it must be the highest standard that it is possible to achieve and to implement, and it must be accepted by all.

Mr KING—One of the companies that has been mentioned that is working in the Timor Sea at the moment is an American construction company called McDermott. Are you familiar with that company?

Ms Purick—No, I am not.

Mr CIOBO—Ms Purick, I wonder if you could outline the work that the Minerals Council is doing to try to facilitate a domestic market for the development of Greater Sunrise in terms of gas consumption.

Ms Purick—The work that we do is with and through our member companies. We have also been a participant in discussions with the Northern Territory government and other groups that the government has set up to facilitate discussions. Our role is as a representative group, a lobby group, an educational group. As I mentioned, we do not get involved in the commercial activities of our member companies. If the companies require us to be involved in those types of discussions, then we play a role and draw upon the resources of other member companies.

Mr CIOBO—As an industry spokesvehicle, can you outline some of the work that is taking place by companies? The committee has been given two different points of view. One point of view is: 'We can't go ahead and develop this unless there's an adequate marketplace, whether that's domestic or international.' The other point of view is: 'We've got to progress this, and we

need to try and facilitate projects domestically to ensure that we get the kind of production that we're after.' As the industry spokesvehicle, what is the perspective of the industry—and, in particular, the joint venture partners that would be looking at developing Greater Sunrise—on the work that they are undertaking to try to promote either a domestic or an international marketplace for the gas?

Ms Purick—The Northern Territory Minerals Council does not get into the situation of negotiations. We are constrained to what happens within our borders and cannot go elsewhere, including internationally. We act as a facilitator sometimes between our member companies and government or our member companies and other industry associations, but, as mentioned before, it is not our policy to get involved with commercial arrangements. The companies are left to decide what is best. They make their decisions based on the commercial merit of a project or projects and we respect that.

Mr CIOBO—Do any members of the Minerals Council also operate in other interstate marketplaces for gas? I presume that Shell does, for example.

Ms Purick—Yes, we do.

Mr Borgelt—I am working for an AGL subsidiary, so I represent that situation.

Mr CIOBO—Evidence to the committee indicates that one of the consequences may be increased domestic competition in the retail and I presume wholesale marketplace for gas. Has the Minerals Council discussed that and, if so, what is the membership's feeling on that?

Mr Borgelt—I think Kezia summed it up fairly well—the Minerals Council does not get involved heavily in those sorts of topics. Even within the membership of the Minerals Council there are divergent views on the marketing of those sorts of things. And there is actually competition between members of the Minerals Council at times, so those sorts of commercial aspects are not things that the Minerals Council gets involved with.

Mr WILKIE—You mentioned that there is a number of developments ready to go that require gas. What do you think the volume of that gas would be in total for new projects?

Ms Purick—My understanding is that, as the two projects at Batchelor both involve some smelting, it would be about three to five petajoules per year.

Mr WILKIE—I have been informed that 330 petajoules a year are needed to make the project viable. So that is three to five petajoules out of 330 petajoules. What about the current domestic usage here now?

Ms Purick—I stand to be corrected if I am wrong, but I understand that the power and water consumption for the Territory is approximately 20 petajoules per year.

Mr Borgelt—I am in a position to answer that. The current consumption of power and water is about 16 petajoules, but they are forecasting increases. There are other markets. Kezia has mentioned Alcan, which has a potential for up to about 40 petajoules. McArthur River could be about 40 petajoules. There are also some other markets around town.

Mr WILKIE—Where I am coming from is that realistically I would like to see the project work and I would like to see the gas come onshore. I think it would be great for the Territory. But when you look at figures, they require 330 petajoules a year just to make it break even, and what we are talking about there is fewer than 100 petajoules. How realistic is it to believe that we can actually get it onshore and make it work?

Ms Purick—As was mentioned in the previous submission from the Northern Territory government, the government has had and I believe is still having discussions with companies in regard to aluminium smelting and interstate potential customers, as are the joint venture partners. They are of the belief that they can find customers to meet the demand. I guess that, from the company's point of view, time will tell whether it is achievable when they make announcements between now and perhaps the end of this year on the way forward with regard to their Timor Sea projects.

Mr WILKIE—To put it into perspective, it has been put to me that, in order for Sunrise to work, the immediate ramp-up volumes required are more than half of the entire east coast current gas market. So you are talking about an enormous volume of gas for them to make it work. They are the sorts of numbers that we are looking at.

Ms Purick—I believe that they are the sorts of numbers, too.

Mr KING—Just following on from that, that is assuming that Sunrise uses discrete facilities and has to operate a completely discrete operation, isn't it?

Ms Purick—Yes.

CHAIR—Thank you very much for attending this morning and giving the views of the Northern Territory Minerals Council. We appreciate the time that you have spent with us. Thank you.

[11.20 a.m.]

COFFEY, Mr Matthew Martin Joseph (Private capacity)

CHAIR—Good morning, Mr Coffey. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant 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. You did provide a submission. Do you wish to make some introductory remarks? Then we can go to questions.

Mr Coffey—Yes. I have provided a submission and since providing that submission I have had a look at other submissions that are posted on the web site. There seems to be a majority view in those submissions in relation to the clauses that we entered into on 22 March this year—that being the jumping off the ICJ and UNCLOS clauses for border negotiations. I would like to make the committee aware that there is obviously a majority feeling in those submissions that that be looked at again in the future.

In respect of this particular treaty and the exchange notes, I am coming from an angle of being involved in the environment area. I have worked for over three years on various EIS submissions to do with Sunrise Woodside and Sunrise at Shell, Bayu-Undan and also other projects in and around that area.

CHAIR—Do you have qualifications in this field?

Mr Coffey—No, not as yet.

CHAIR—You are working on it?

Mr Coffey—Yes, I am at university at the moment. Some of the projects have been approved and some are still in the process of the EIS—

CHAIR—EIS meaning?

Mr Coffey—Environmental impact statement under the Commonwealth EPBC Act. What concerns me is the great deal of detail that all companies have to address in relation to management of or harm of fisheries and the environment. I duly note that that is not really in this treaty. Although the companies are seeking to lock in security for their development, there does not seem to be any action on the front to do with the issues of environment and fisheries management. I am concerned about that. I hope those issues get addressed so that we can have some sort of standard for that area.

I would also like to point out in relation to the JPDA that, although it gets a great deal of attention from the various companies and people, it is only seven TCF of a 22 TCF resource

across the whole of the Northern Territory—so it is less than a quarter. Although it warrants so much attention—

CHAIR—What is warranting so much attention?

Mr Coffey—The quarter of our total resources in the territory. There seems to be a big issue over what is actually not a very big resource. The Bayu-Undan resource has been approved by the environment minister. Employees were acting on the premise of employment coming into Darwin: (1) working out there and (2) airport operations coming out of Darwin. Since that has happened, a Canadian company, CHC Helicopters, has won the contract and is operating out of Baukau so the premise that we were going to get employment out of that is no longer there.

CHAIR—What is that company doing?

Mr Coffey—They are doing the rotary wing operation to staff the current first phase of liquids for the Bayu-Undan.

CHAIR—Where are they transporting people to?

Mr Coffey—From Baukau, in East Timor, to Bayu-Undan JPDA. It is pointed out in submission 14 from the Australian Marine Officers Union that in the construction phase there were 138 employees out there constructing the jacket head and the quarterdecks for the liquids phase and not one East Timorese or Australian employee was involved. We have heard that of the 1,600 persons who will be working on the soon to be approved plant here in Darwin—not very far from where we are sitting; about five kilometres away—only 300 employees will be from this region. My concern is that, at the front end of this particular gas development, we have an issue where some of the things approved by the then environment minister, Robert Hill—now the defence minister—are not happening the way they were portended in the submissions. I would like the committee to look at, in a very good sense, and codify article 11 to bring into play the direct streaming of employment from both East Timor and Australia.

I know that these issues put forward safety and security issues for these developments to go ahead. My concern is that they might not be addressing other possible scenarios that might occur in the JPDA area, such as fisheries management and other situations that have occurred in that area; namely, boat people coming in as refugees seeking asylum. Unless the treaty codifies or puts something in place there, if we pick up people in no-man's-land, where or how are we going to treat them in a legal sense? They did not come from East Timor and they were not in East Timorese or Australian waters. They are in no-man's-land. I do not think this treaty addresses that no-man's-land issue and it needs to do that.

CHAIR—Where are you suggesting no-man's-land is?

Mr Coffey—The JPDA.

CHAIR—You are saying that the JPDA is no-man's-land?

Mr Coffey—Without nations having an exclusive EEZ borderline that delineates where one starts and one finishes, that will be the case, yes. That is all I have to put forward.

CHAIR—Mr Coffey, you said that you were here as an individual—and we appreciate that because we sought submissions from the Australian public generally—but you obviously have a deal of knowledge and understanding of this. What is your background in relation to this issue?

Mr Coffey—I am the youngest in my family. My two older brothers and my father worked for over 50 years in the oil and gas industry, and for 35 of those years in discovering these two holes you are talking about now—Bayu-Undan and Sunrise.

CHAIR—So you have family history in the area. On article 11, you mentioned the opportunity to employ 1,600 people in a facility not far from here.

Mr Coffey—In the construction phase. It will be only about 88 people once it is operational.

CHAIR—You understand that there are to be 300 Australians out of that 1,600.

Mr Coffey—As stated in the media.

Mr KING—It is 300 from the area.

Mr Coffey—It is 300 from this region.

CHAIR—You did not mean just Australia?

Mr Coffey—Of the 1,600, there will be 300 local employees.

CHAIR—Local from where?

Mr Coffey—Local from Darwin. The rest will be resourced from elsewhere.

CHAIR—I am sorry, I am talking about Australians as opposed to East Timorese. It will be 300 Australians who happen to live in Darwin.

Mr WILKIE—That is at the plant here in Darwin.

Mr Coffey—That is at the plant construction phase only.

CHAIR—Presumably different levels of skills are required within a work force of that size. Are you aware of the skill level of the 300 Northern Territorians—if we want to be parochial about it—who are going to be employed?

Mr Coffey—The way it was put forward in the media seems to indicate that they were on the lower end of the skill scale. It is probably to do with the concrete and the holes, I would say.

CHAIR—You do not know what skill set was required of the balance of 1,300 employees?

Mr Coffey—I think they were probably derived from specialist skills areas in constructing petrochemical plants similar to this.

CHAIR—Where do you understand that work force is going to be sourced from?

Mr Coffey—Judging by the way the industry works, I dare say they would come from places like New Zealand, Canada, the US and Norway.

CHAIR—Because Australia does not have the skill set?

Mr Coffey—Australia has proven skill sets, and that has been proven in the North West Shelf area. In relation to this particular American company, they do not have a tie or an experience with Australian staff as would the other operators, Woodside or Shell. I understand in relation to that—

CHAIR—Who is the operator?

Mr Coffey—Phillips Petroleum. In the EIS work I have been doing with Shell Development Australia and Woodside, I have been told that for their future phase, should they get a floating facility, they are currently cycling employees through their three trains at the North West Shelf and also their three trains in Oman. So they are getting a trained complement of plant operators at this stage already. They have also told me that they would like to operate under stringent ISO codes, exactly the same as the North West Shelf. One would hope that Bayu-Undan and Phillips are going to do that as well.

CHAIR—I did not appreciate that you were referring to Phillips. Phillips have been involved in this region for many years as a joint venture partner in one form or another, so it is not as if they are new to the area.

Mr Coffey—I think they had only been involved for about eight years when they bought the resource Bayu-Undan from BHP Petroleum.

CHAIR—In other joint ventures in Australia?

Mr Coffey—Not that I am aware of, no.

Mr WILKIE—You are putting forward that you need to sort out the maritime borders first before you sort out the treaty. That would delay a lot of the projects from being commenced.

Mr Coffey—It is not so much trying to get those things nussed out, it is whether it is Indonesian or East Timorese water and resources or a joint venture between East Timor and Australia, and the water and the resources need some sort of management in that period. If you do all this work, take all the time for public submissions for EISs and spend millions of dollars, you do not want to find yourself in limbo. All I am saying is that it should be noted in the signing of the treaty that there be some sort of management structure in place to ensure that all those federally approved EIS conditions are complied with and monitored.

Mr KING—When were the EISs approved?

Mr Coffey—The Phillips Bayu-Undan process is the only one that has been fully approved at the moment. It was first approved in 1998 for a multigas facility here in Darwin, separating butane-propane and natural gas. Since then it has changed from a three million tonnes per annum plant to a 10 million tonnes per annum plant. It is now seeking approval for a 3.24 million tonnes per annum plant using only dry gas. Having the liquids, propane and butane, extracted at Bayu-Undan, with the rest of the stuff coming here, is a concern in the EIS. The EIS never covered the fact that we are paying 90 per cent of our money in taxes from that resource to Timor, yet we are receiving 100 per cent of the greenhouse gas emissions to emit here in Darwin. That is not codified in the EIS and it is not in the current treaty negotiations. I fear that, whether we take the Kyoto protocol or the Montreal agreement in the future, we will have to trade carbon and have carbon taxes and carbon sinks. We should manage this issue now or it might clog the system up again later. I do not like the idea of bringing in—within five kilometres of where we are sitting now—4.6 million tonnes per annum of CO₂ that we only get 10 per cent for.

Mr KING—You are not suggesting, though, that there has been any breach of any approval in relation to the EIS by Bayu-Undan?

Mr Coffey—Not at all. I believe what happened was that the approval that Phillips Petroleum put forward was under the EPIP Act. Halfway through their approvals process the environment minister changed the act to the EPBC Act, so they have tried—as have the other companies, too, because their EISs are not complete as they have been running through these changes of legislation—to adhere as best they can, but unfortunately the issues of pipelines, gases and emissions were never in the EIS because Environment Australia are still getting their head around it now.

Mr KING—So your concern is not that there has been any infraction in respect of the EIS approvals, rather that the EIS approvals, so you say, are insufficient.

Mr Coffey—Within the JPDA area and outside in the Sunrise extra area of 79.9 per cent there are quite a lot of emissions. If and when carbon tax comes in, they will be quite a viable asset for trading. If we do not have it at the start it will certainly cloud the issue in the middle when those issues are dealt with. I imagine that, if people want to do things, the developing nation of East Timor can wear a lot more emissions as far as greenhouse gases go than we as a developed nation can because we are already very high on the scale in the global picture. We are the third highest emitter on the planet.

Mr KING—You would not suggest that there has been any putative or potential contravention of any term of the proposed treaty in respect of those matters you have raised. Really, they are extraneous to the treaty, aren't they?

Mr Coffey—They are not within the scope of the treaty but they are things that will happen following what the treaty will put in place.

Mr WILKIE—I think you are saying it is an oversight that probably could have been considered and was not.

Mr Coffey—Yes. It was a chicken and egg situation—the egg was just hatching as all this was happening. This is the first time Australia has ever had a resource piped from one sovereign state or development area associated with a sovereign state to another, so this issue has never been raised with Environment Australia or the parliament.

Mr KING—Around the kitchen table with your father and your brothers, have you ever given any thought to whether there might be some means of harmonising the requirements of the various project operators?

Mr Coffey—Yes. I am currently talking with a chap from The Hague, from Shell Development Australia, who is looking at scoping studies. What has been missed here today is that you do not need a pipeline to carry all gases. They are looking at doing a circuit to supply liquid petroleum gas, or propane gas, to Dili and Baukau for new power stations should they come on line and to Dili and Baukau for cannery plants to have small portable gas bottles because the fear is that, although these taxations will get them a great lot of greenback dollars, they will be chopping trees down every night to cook their food, and that is not good. Having money is not good for a subsistence-type economy such as East Timor. Due to their native heritage they live close to the land, and chopping trees down and cooking dinner is a practice they use now. They do not have any of their own supplies for these things: at the moment they have to get them from Singapore or Indonesia. We could perhaps get a spot market from Bayu-Undan and also the Sunrise project for liquid petroleum gas, and there is the shipping idea of Dili and Baukau, even Kupang and Roti. You could add on to that the Gove alumina plant and McArthur River. Victualling and storage of LPG is a lot easier and a hell of a lot less expensive than liquid natural gas, or natural gas that is piped, and also the kilojoule rating is only 87 per cent of natural gas.

Mr KING—Do all the various possibilities that you have just mentioned, which I do not fully understand, assume shipment from Darwin?

Mr Coffey—They assume shipment from Bayu-Undan and from the floating project, if it goes ahead, because those things are taken out offshore in a general sense on all gas projects.

Mr KING—Do you have the same concern that Mr Andrejewskis has about missing out on the onshore project?

Mr Coffey—My family has been involved in 1964 in discovering some of these holes that have not yet provided anything. My concern is that, at the front end of developing these fields, if we bring it onshore too early for \$1.18 a gigajoule and do not get foundation customers for \$3.50 a gigajoule, which you would get in the US and Japan, we will kill off exploration. The turnover and the profit on \$1.18 a gigajoule is the current ABARE price for gas here in Australia. We need to look forward to getting foundation customers. We need to bear in mind that a pipe of any volume coming 435 kilometres to Darwin from Sunrise or 484 kilometres from Bayu-Undan has never been done anywhere in the world at that length and the volumes that have been talked about by the NT government. I fear that the price for the pipeline would be too onerous. You would have to amortise a lot out of the profit or out of the customers onshore.

Mr KING—That is the whole point: Phillips are doing just that.

Mr Coffey—Their current plant is designed over 17 years at 3.24 million tonnes per annum. That will take up about 98.6 of the known resource of 3.4 TCF. The pipeline that is coming in—it was in the EIS, approved last week by the federal environment minister for the second time—will carry only 0.5 to 0.565 gigajoules of gas per day. That is exactly what the plant needs, give or take two or three per cent. Gas coming onshore there is not going to help any domestic customers because neither the pipe volume nor the resource volume is big enough.

Mr WILKIE—I think Phillips have acknowledged that. I have a question in relation to the CO₂ emissions. Are you arguing that, given the 90-10 split on the revenue, there should be a 90-10 split on the greenhouse emissions?

Mr Coffey—Thank you for that; yes.

Mr CIOBO—I would like to clarify a couple of things. Mr Coffey, it is your position that the exchange of notes in the treaty should be nullified; is that right?

Mr Coffey—I am concerned that they might undermine future actions for East Timor in relation to setting up an EEZ in cooperation with Australia.

Mr CIOBO—Given that it involves three separate sovereign nations, you say:

... all negotiations forthwith should be trilateral in nature and include all the mechanisms of the UNCLOS and the ICJ.

You say in your submission:

... the current Treaty and Exchange Notes of 20 May 2002 should be nullified completely and discharged pending an interim agreement.

Mr Coffey—Since the drafting of the submission, I have boned up a bit more on this treaty. I still feel that we should get back on board with the UNCLOS and the ICJ clauses that this committee approved the change of in March this year. As far as the other things are concerned, I realise that it would be way too difficult to try a trilateral border negotiation after seeing the history of those borders since 1972. I think it would slow the whole process down immeasurably.

Mr CIOBO—Is your criticism that the treaty should be amended to include issues such as environmental management; ecological sustainability of marine life, including fisheries and stock; and rights of passage of various vessels, be they non-citizens seeking refuge or nuclear armed and powered submarines? Should these be included in one treaty or in additional treaties?

Mr Coffey—They should be flagged in this treaty and somehow put into a framework so that they can be systematically addressed in future negotiations in relation to the water column resources and the EEZ. I think that, if this is the treaty that sets down the whole process and it does not deal with these issues finitely—the employment issue and others—you will just be opening up a can of worms each time you negotiate another agreement. If it is structured and mapped out at the front end, it could be better for both parties in future negotiations.

Mr CIOBO—I am trying to clarify your position with respect to the Joint Petroleum Development Area. Should we be going back to the ICJ to determine sovereignty over the seabed and the water column?

Mr Coffey—I merely ask the same area of space that the 1997 Indonesia-Australia treaty had. The conditions there were that all parties could use the full force of UNCLOS and the ICJ. The water and the resources have not changed, and the sovereign nation of East Timor now exists: I am asking that the conditions we offered to Indonesia we now also offer to East Timor. I think it only fair and right that we get back on board the ICJ and UNCLOS to allow a fair and equal agreement between both nations. At the moment it is not that way; we are a bit onerous on them.

Mr CIOBO—But the Timor Gap existed previously. Isn't this exactly what this treaty is doing, to a limited extent, with respect to the seabed?

Mr Coffey—It is doing that, but it is doing it on the premise that, should you have any difficulty, you cannot go to those two bodies. I would like to quote something from the treaties information kit, which is on the Internet. It seems to portend that:

Australia has also helped shape a revised **Law of the Sea Convention**, in the process gaining sovereign rights over extensive areas of sea and continental shelf through diplomacy.

This is the first border negotiation, and the first chance you have to get behind the thing you have helped create you jump off both clauses so you cannot use them. I find that slightly hypocritical. So my concerns are that we get back on board and be in equality with East Timor in negotiation capacities.

Mr CIOBO—So you are saying that Australia has benefited too much?

Mr Coffey—I am quite simply stating the fact that East Timor cannot seek an arbitrarial situation. It is not just that they cannot go to the full fledged court of the ICJ but also that there are lesser agreements to manage an arbitration that have been codified in this treaty outside of the ICJ and UNCLOS things. I want them inside so that it is an international thing; otherwise, we will go in steps and stages. My understanding of the mechanism of law is that they can trigger other ways to get you back there anyway, even though you have made those amendments.

CHAIR—Thank you, Mr Coffey, for your time this morning. We appreciate you putting in a submission to the committee and taking time to be here today.

Mr Coffey—Thank you.

[11.19 a.m.]

WESLEY-SMITH, Mr Robert Nuttall, Spokesperson, Australians for a Free East Timor

CHAIR—Welcome. Although the committee does not require you, Mr Wesley-Smith, to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant 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. We have received a submission from you. Could you perhaps, in making some introductory remarks, tell the committee a little about Australians for a Free East Timor and then turn to the subject matter?

Mr Wesley-Smith—Thank you very much for the opportunity to appear. Australians for a Free East Timor is the name of the group in Darwin supporting East Timor's human rights since after the Dili massacre. I myself have been involved since about 1974 in trying to support East Timor. Australians for a Free East Timor's role is changing now that East Timor has independence and we are probably in a downsizing phase.

CHAIR—Which would be a good thing in this case.

Mr Wesley-Smith—An excellent thing, yes. In fact, our last demonstration was in, I think, September 1999. We had about 1,000 people at that one, and if you could get that many in Sydney it would be pretty big. I am a scientist and for virtually the last 28 years a Timor activist. I am very happy to see here today three exemplary members of the Timorese civic society who have flown over for this hearing.

The submissions before you have been of two types. There are those from people who are for the treaty as it is, no matter what faults it has, and who do not care about the human rights violations in it—that is oil companies and governments. We heard from the Northern Territory government, which really did not fess up to the real issues of difference between willingness and commitment for markets; they just do not want to talk about that. Secondly, they indicated that their main interest is to get the tax benefits to Australia or the Territory, that these should not go to East Timor. I argue that these resources belong in East Timor's maritime boundary or EEZ—they do not have the maritime boundary yet.

The second group are those who are against the treaty because it is an unjust treaty. It is based on an illegal treaty which was done with Indonesia, the occupying power—and I argued that case quite strongly before you in the maritime delimitation treaty. I sent a copy of that to you. How things have changed in those few years, and now we seamlessly go from treaties with an illegal occupying country to with the East Timor independent nation. But it is based on the original treaty, and there is a great deal of misrepresentation or lack of clarity because, although the treaty is, strictly speaking, based on the JPDA, it also involves the Greater Sunrise area.

The Australian government has forced the Timor government to agree that Greater Sunrise be unitised but that only 20 per cent of it will belong to East Timor. Even on the radio this morning in your interview with the ABC, you mentioned that East Timor was getting 90 per cent of the

benefit or royalties from this treaty. But government spokespeople should always point out that in the case of Greater Sunrise they only get 90 per cent of 20 per cent, which is 18 per cent, even though, as we would say—and I have maps here to show this—Greater Sunrise is entirely within what could be expected to be the East Timor nation's EEZ. And nobody mentions Corallina-Laminaria, which is producing royalties at the moment that are all going to Australia, at a rate of \$US300 million a year, which is three times the Timor nation's budget. We also say that that area should lie 100 per cent within East Timor's jurisdiction.

It is a very important issue because, if the maritime boundary issues had been dealt with first, then there would not be the financial pressure on the East Timor government to agree to an unjust treaty. So why did East Timor sign the treaty? I can only think that there are three reasons: huge pressure from outside, primarily from Australia, inducements or incompetence. On the question of huge pressure for them to sign, I will read what Alkatiri said in his own article in the *Australian Financial Review* on 2 September:

... I signed the treaty on May 20 because it represents the best deal for my people.

He said that East Timor:

... is soon set to gain petroleum revenues that can deliver the country from a poverty unimaginable to most Australians. Yet it is the Australian Parliament that will choose whether East Timor will be given this responsibility—or whether East Timor will, yet again, have to wait for true independence.

He went on to say:

Much has been said over the past months about the Timor Sea but one thing is sure: the East Timorese people desperately need the revenues that will flow ...

I claim that a major reason why the treaty was signed was financial. Before talking about Alexander Downer's view about the treaty, I will explain that, when the issue of the EEZ and the maritime boundaries was first raised in March in a seminar in Timor, producing this map which shows the expected maritime boundaries or EEZ which would occur in East Timor under UNCLOS procedures—

CHAIR—I am sorry, who produced that map?

Mr Wesley-Smith—This map was drawn by international experts at the request of Petrotimor. Have you seen this map before?

CHAIR—I am aware of this. I am just trying to have it put on the *Hansard* record. This is from the Lowe opinion?

Mr Wesley-Smith—Yes, it is the Lowe opinion. It has the median line there, but the lateral lines are most important and need further discussion. I believe that Australia has really acknowledged the median line boundary by its negotiations on the per cent royalties, giving Timor 90 per cent of what they own 100 per cent. And in the Australia-Indonesia Maritime Delimitation Treaty there is also an acknowledgment of median line boundaries.

The minister withdrew Australia from the procedures of UNCLOS in relation to the maritime boundaries with East Timor, which was an act of bad faith. The reason given for taking treaty action prior to tabling and consideration by the treaties committee was that it related to its sensitivity. It said that if it became known that the government intended to take this matter before the declaration under article 298(1) was lodged, another country may have been able to pre-empt the government's decision and commence proceedings against Australia prior to Australia's lodgment of the declaration. They pretty well admit they were being sneaky.

The international community provided the East Timor government with a great deal of advice on some of these issues, and the fact that it has not been taken I think relates to some, or all, of the three reasons that I postulated. After the signing on 20 May, Dr Mari Alkatiri said that they wanted to talk about the maritime boundaries—so that the maritime boundaries were not compromised by this. Alexander Downer said that they can talk all they liked, that Australia would listen, but we would not change anything.

CHAIR—Where are you quoting from for that?

Mr Wesley-Smith—That is out of my head, but that is what he said.

CHAIR—They were words to that effect?

Mr Wesley-Smith—Yes. It could have been in my submission, but I am not sure. It is definitely in documents that I have put on the Web. In April I put out about 30 base documents about this issue. I worked very hard before the signing of the treaty and until three months after Australia withdrew from UNCLOS. At this point, I do not mind admitting that it is very hard to know where to go from here.

On the development options, I argue that evidence that Phillips gave in 1999 in this building has skewed a lot of the government consideration of development options. In front of the inquiry into East Timor, when asked about the possibility that infrastructure could be transferred to East Timor and away from the Northern Territory, Mr Godlove said:

From an engineering standpoint, no; it is not possible for us to take gas by pipeline from the Bayu-Undan field to Timor.

He already had a planning document which he had commissioned at that point, which said that it was perfectly possible to have a pipeline up to 28-inch size to Timor. It is not possible to have very large pipelines but it is quite possible to have modest size ones. That evidence was not true and it skewed the consideration by various governments. Even now Mari Alkatiri has taken that on board.

I am from an environment group that does not want the LNG on Wickham Point in Darwin Harbour. We think it is an absurd place to put it and it has a great deal of environmental disadvantage. We would also like to see East Timor getting some of its own energy reserves. At the moment, the place is being denuded by people cutting timber for firewood. We do not believe that it is necessary to have this approval in place by November. In fact, I hope it is not in place, because Phillips has come up with many deadlines which have passed and they are still involved. It is pressure. It is wrong to force something through in a short time, when there are a lot of considerations which have not been properly met.

Australia has learnt already that making deals which are unjust will unravel in time. The oil companies want a stable environment for this development. They will not get that if it is an unjust deal. You recently heard from Mr Pat Brazil on legal matters. His legal opinions were based on pre-1982 international law. His opinion was cursory and had no extensive analysis. He did not mention the 1997 Perth treaty about the water column boundary implying median line acceptance.

CHAIR—In terms of the timing of the ratification of this treaty, the treaty indicates that both Australia and East Timor have undertaken to conclude the unitisation agreement for Greater Sunrise by 31 December 2002. That would put in context that the treaty, whether or not you agree with the terms, also has a time frame for ratification by the end of the year at the latest.

Mr Wesley-Smith—Alexander Downer also said in a press comment that it could take up to a year. I do not have that in front of me, but he definitely said that recently. That is part of the context of pressure by the Australian government on East Timor to agree to the 80-20 split on the unitisation. I understand there are implications on maritime boundaries with this unitisation. The Australian government does not want to formally accept a median line with East Timor because it might imply other boundaries with Indonesia. The unitisation split is unacceptable. Greater Sunrise is much closer to East Timor than it is to Australia. There is no way that it is fair for Australia to take 80 per cent of the profits, royalties or the control of Greater Sunrise. If, in that negotiation, they decided to do that before they did the maritime boundaries and the EEZ issues and they had a 90-10 split to East Timor, that might be a way forward in the short term. Anything less than that is absolutely untenable.

CHAIR—Your position is that you want to see the maritime boundaries in their entirety determined before we get to a—

Mr Wesley-Smith—It would have been preferable.

CHAIR—To determine all of the maritime issues for this area, how many parties would be involved?

Mr Wesley-Smith—For the JPDA area, just the two: East Timor and Australia.

CHAIR—But the JPDA does not take into account Greater Sunrise, which is your concern.

Mr Wesley-Smith—That is right. A new country, such as East Timor, must have maritime boundaries. Obviously, there are areas that impinge on Indonesia, particularly the lateral boundaries would need to move across into Indonesia.

CHAIR—So we are talking about Australia, East Timor and Indonesia?

Mr Wesley-Smith—Yes. There is another way of dealing with this; the treaty could have just dealt with Bayu-Undan.

CHAIR—Redrawn the JPDA?

Mr Wesley-Smith—No, just deal with the Bayu-Undan project and there would have been no need for—

CHAIR—That would mean redrawing the boundaries over which the treaty—

Mr Wesley-Smith—No. Bayu-Undan is entirely within JPDA.

CHAIR—I understand that, but it would have meant redrawing the boundaries to exclude Greater Sunrise. Is that what you are saying?

Mr Wesley-Smith—Just deal with Greater Sunrise later, with another treaty. It is being done that way, including the unitisation, simply because Australia is trying to take advantage of a new nation that is not able to stand up for itself.

CHAIR—I understand what you are trying to say. But in practical terms, if you were to have a treaty that just dealt with Bayu-Undan, you would need to redraw the boundaries of the JPDA.

Mr Wesley-Smith—I do not understand that.

CHAIR—The treaty deals with an area that is defined. Currently it is the Joint Petroleum Development Area. If it were to deal with a different area—smaller, in this case—you would have to redraw the boundaries of this Joint Petroleum Development Area. What I am asking you is: would you draw it just around Bayu-Undan? What sort of boundaries would you be suggesting would have to be drawn?

Mr Wesley-Smith—I do not think you would need to draw boundaries literally but you would talk about the development of the Bayu-Undan project. Obviously there are other oil and gas deposits impinging in that area. In fact there are the oil ones on the western side of it.

CHAIR—The Northern Territory government showed us the PowerPoint demonstration this morning that had the Timor Sea gas fields. There are obviously a number of producing fields, shut down fields, discovered undeveloped fields and discovered undeveloped gasfields within that area.

Mr Wesley-Smith—I am primarily talking about Corallina-Laminaria.

CHAIR—Would you include them in your redrawn boundaries?

Mr Wesley-Smith—I would like them to be dealt with right from the start between Australia and East Timor because they are producing three times the budget of the nation now and it is all going to Australia. We say that money should be held in trust from 1999. I do not want to say whether it is part of this treaty. I think this treaty should be thrown out and we should start from scratch. I think it is wrong that it derives from an illegal treaty with Indonesia.

CHAIR—Be that as it may, the redrawing of maritime boundaries and the like are obviously highly contentious matters between countries generally with competing claims. Would you agree with that?

Mr Wesley-Smith—Yes.

CHAIR—It can be highly contentious.

Mr Wesley-Smith—That is why they should be done under UNCLOS.

CHAIR—Some of them—UNCLOS or otherwise—can take decades to resolve. In fact there are many boundary disputes around the world that are still to be resolved.

Mr Wesley-Smith—If there is not goodwill on both parties and they do not follow UNCLOS procedures—yes.

CHAIR—In any event, UNCLOS has not resolved every boundary dispute.

Mr Wesley-Smith—UNCLOS has only been around since 1982.

CHAIR—It has been around for 10 years, so we are talking about a 10-year timeframe and it has not resolved every dispute. That is no criticism, I am just saying that the fact is maritime boundary issues can take a decade to resolve. You would agree with the East Timorese Prime Minister that East Timor desperately needs the revenue?

Mr Wesley-Smith—Yes, very much.

CHAIR—This treaty is without prejudice to seabed delimitation and other boundary issues.

Mr Wesley-Smith—That is what some people say.

CHAIR—That is what the treaty says.

Mr Wesley-Smith—But there is a view that it prejudices Timor gaining its maritime boundaries because it is inherently recognising the JPDA boundaries as maritime boundaries.

CHAIR—But it specifically says it is without prejudice to seabed delimitation.

Mr Wesley-Smith—That does not mean that the International Court would find that that overrides that inherent recognition. I think there are international lawyers who argue that other case. It would be really good to hear from them.

CHAIR—So your position is that you would rather see that the revenues that are likely to flow from the development of this field, however flawed you believe its boundaries are—you would rather see the parties go back to the drawing board than have an interim scenario where East Timor could receive 90 per cent of the revenues from Bayu-Undan and 90 per cent of 20 per cent of Sunrise, should Sunrise get under way.

Mr Wesley-Smith—No. Sunrise will not get under way unless Australia is happy with the revenue split that they want. I am quite happy for Bayu-Undan to get under way. Exactly how it is done is a matter of debate. I think that it should get under way but, in particular, the revenue

stream that is coming from Corallina-Laminaria should go to the East Timor government. That would take a lot of pressure off the government in negotiating a treaty. Treaties and negotiations can take as long as the most difficult party wants them to, and Australia is starting from the standpoint that they did not want to let go of what they had negotiated with the occupier.

CHAIR—But we have not heard from the East Timorese government, so we are not in a position to say, if one went back to the drawing board, what they would be looking for either. We do not know whether the positions are so far apart—whether Australia is being bloody-minded or whether in fact East Timor is becoming so—that new negotiations would not drag this out for years. Surely, in the meantime, there is a treaty that has been agreed by the parties; it can be ratified as soon as this committee completes its inquiries; Phillips can get its contracts under way and revenues can start to flow, or the escrow account can release funds. Would that not be in East Timor's interests?

Mr Wesley-Smith—It might be. I do not know all the details of the treaty and some of the agreements within it. Basically, I am supporting a treaty. What seems to be surprising is that no-one seems to talk about modifying what we have; it is all or nothing. I do not see why annex E, which has the 20-80 split of Greater Sunrise, could not be dropped out of the thing. If it could, then go ahead. It is only a simple matter.

CHAIR—It is redrawing the boundary. I am not being pedantic—it is redrawing the boundary; this is part of the treaty.

Mr Wesley-Smith—It is because Australia insists that it is unitised in order to be developed as one unit and then they insist that, if this is to be the case, Australia gets 80 per cent of it. It is grossly unfair. As far as the Timor government's view goes, Jonathan Morrow, who is their lawyer who reports to Mari Alkatiri, addressed an NGO meeting in Dili recently and said there are two options for the Timor government: they could have some revenue and a maritime boundary dispute or no revenue and a maritime boundary dispute. That is the opinion of the Timor government, so they have gone for a little bit of revenue even though long term it is going to be to their disadvantage.

Senator TCHEN—Mr Wesley-Smith, in your written submission you refer to a seminar in Dili sponsored by an oil company. Which oil company is that?

Mr Wesley-Smith—That was Petrotimor that produced the map.

Senator TCHEN—The same company. Who is Petrotimor?

Mr Wesley-Smith—I do not particularly know. I know in general terms that they claim that they were given the rights to explore by Portugal—and I believe that to be the case—and they have claims in that area. I think this map shows the hatched area as their claim.

Senator TCHEN—I am wondering whether Petrotimor is the state petrol company of the East Timor government, or is it some other interest?

Mr Wesley-Smith—The 1975 or 1974 agreement for them to go in says that a percentage of their company or assets or whatever belongs to the East Timor government, but the East Timor government today does not recognise that and does not want to know about Petrotimor.

Senator TCHEN—But that would be the case with any company, would it not? For example in Bayu-Undan, Phillips would be paying 90 per cent of the royalty and taxation income to the East Timorese government.

Mr Wesley-Smith—I do not think it was a royalty issue.

Senator TCHEN—No, what I am interested to find out is whether you know who Petrotimor is, because I know who Petrotimor is.

Mr Wesley-Smith—You do.

Senator TCHEN—I am just trying to find out whether you are aware of it, because you are presenting information which is coming from Petrotimor as though it was an impartial party.

Mr Wesley-Smith—I disagree. I am using the information they presented, but you have to go to the authors. I am a scientist and I have written scientific papers; you have to go to the authors. These authors are arguably two of the three or four most prominent accepted experts in the world, and the other one is an Australian lawyer. I have not seen any argument against these boundaries. It is an issue that people, especially from the Australian government, do not want to talk about. They explained how these lateral boundaries are drawn. They are drawn from the boundary to the nearest point of Australia on the west side and, on the east side, it comes to Bathurst Island. Unless people can argue against that, I am accepting the expertise of the authors, not of the company.

I do not like the company. They are a shelf company, really; they are a very small company. I do not like any oil companies or big companies. They are after their own profits. If they do what they say they do, fine. I am friends with various people, like Blair, who is sitting over there—a good chap—but they are after profits. If you look at who is on their board and at some of the actions taken against East Timor's rights over the years, it is not good. I think we are entitled to take the expertise of people like Vaughan Lowe and the other people involved in drawing that map. If Australia can do better, why did they withdraw from UNCLOS? This is the question I honestly believe the committee should address.

Senator TCHEN—You have to ask a lawyer that. The only reason I raised this issue with you is that, during evidence, you presented the information from Petrotimor uncritically and I want to be clear on what sort of weight you put on it?

Mr Wesley-Smith—Sorry. I presented the evidence of their consultants, of the experts they employed to make the map—the first map that has been done.

Senator TCHEN—That has clarified it. Were you aware that just over a week ago a seminar was held in Melbourne and that this issue was one of the topics discussed? The committee has been informed that the consensus professional and academic opinion presented at the seminar generally regards the claim by Lowe and his colleagues as unsubstantiated?

Mr Wesley-Smith—That seminar was constructed with very conservative legal opinion, particularly from Professor Trigg, who generally supports the Foreign Affairs line.

Senator TCHEN—You were aware of the seminar?

Mr Wesley-Smith—Definitely.

Senator TCHEN—But a few minutes ago you were telling this committee that you knew of no opinion that opposes that view.

Mr Wesley-Smith—No, I did not say that.

Senator TCHEN—I am afraid that is the impression you gave me.

Mr CIOBO—And me.

Mr Wesley-Smith—Can I go back a week in giving that opinion. I went to a seminar in Canberra a couple of years ago. Professor Trigg's view is roundly considered to be back in the pre-1982 era, and it is the same with Pat Brazil. Their arguments do not stand up to the determinations by international courts on similar issues, of which about six have been precedents which will take precedence if Australia stays within that jurisdiction. I do not think Professor Trigg and Professor Prescott, whose view is that he is right and that no-one else has any right to say anything—

Senator TCHEN—It does seem to be the general opinion shared by most academics, doesn't it?

Mr Wesley-Smith—Maybe.

Senator TCHEN—Or attitude, I should say, and not opinion.

Mr Wesley-Smith—The people who drew this explained where the boundaries go, and they go to the cross-section of the nearest land mass. This map, which has been thoughtfully provided by Shell—I have hatched in those lines—goes to this point on Australia. This line, which is halfway or three-quarters of the way to the island of Leti, goes to this point on Melville Island. I do not think anyone else has explained where these JPDA lines go. I think, in the original JPDA determination, it was admitted that some of these points were a bit hairy. I would prefer to go with those boundaries and, if that is the case, Timor would gain this area. The lawyers who support the Foreign Affairs line do not want those boundaries to be acknowledged.

Senator TCHEN—And vice versa, of course.

Mr Wesley-Smith—I do not know about vice versa. It was Australia that withdrew from UNCLOS and Timor is in the process of signing up to it. That is the international court that makes rulings on these things if people cannot negotiate boundaries and they need to be determined under the umpire. We hear John Howard talking about the umpire a lot.

Senator TCHEN—Yet you also quoted—I think it was you—that the East Timorese Prime Minister actually indicated that boundary should be negotiated rather than—

Mr Wesley-Smith—I agree with that.

Senator TCHEN—But you were talking about an independent umpire earlier.

Mr Wesley-Smith—If they cannot agree. UNCLOS sets out negotiating procedures and encourages negotiation. I have definitely written that. I am not sure if it is in my submission but I have said it and written it many times.

Senator TCHEN—Thank you.

Mr CIOBO—Mr Wesley-Smith, as I understand it, your position is that it is not that you are supportive of Petrotimor; it is that you believe very solidly that the evidence from the consultants that that company has hired is accurate evidence and accurate information. Is that correct?

Mr Wesley-Smith—I prefer to call them independent experts who were employed to give an opinion on this. It tallies pretty much with other independent people.

Senator TCHEN—I am sorry to interrupt. How can someone be independent if he is retained for pay?

Mr Wesley-Smith—If you told Professor Lowe that in putting up a document to the world in his field of expertise he was biased because of who was paying him to give that opinion, I think he would very upset.

CHAIR—Isn't this for the purposes of a court case, a dispute between Petrotimor and someone else? This has been prepared for the purposes of a Federal Court case.

Mr Wesley-Smith—I do not know if that is the purpose of it.

CHAIR—There are competing claims between—

Mr Wesley-Smith—They may use it. I am not even very familiar exactly with what their court case is, but I know they want access to the original thing from 1975.

CHAIR—For the purpose of clarification, it is our understanding that that document has been prepared for the purposes of a Federal Court case where Petrotimor has a dispute with another company over its claims.

Mr Wesley-Smith—Perhaps I could amplify that. I am a scientist. I was employed by the Northern Territory government and if someone said to me that my scientific report was biased or fraudulent because I was employed by a government, I would be really upset.

Mr CIOBO—Sure. I understand.

Mr Wesley-Smith—I think that is why I lost my job with them: because I would not do it.

CHAIR—That is an area we will not go into.

Mr CIOBO—With respect to Petrotimor, leaving aside for the time being the fact that they were hired as consultants by Petrotimor, it is the fact that you consider the evidence to be worthy, relevant and accurate in its information.

Mr Wesley-Smith—Yes.

Mr CIOBO—You say in your submission that you were recently in East Timor as part of Petrotimor's seminar—

Mr Wesley-Smith—I attended their seminar.

Mr CIOBO—and that in that seminar Petrotimor also indicated that—I think it is a position that you support—the pipeline could be built from Bayu-Undan or from Greater Sunrise—I am not sure which—directly to East Timor?

Mr Wesley-Smith—Either place. The study was done from Bayu-Undan, but I am sure it would be fairly similar to Sunrise.

Mr CIOBO—Petrotimor's position was that a pipeline could be conducted from Bayu-Undan to East Timor.

Mr Wesley-Smith—That was actually Phillips's position, too, up to 28 inch in size—although they did not say that.

Mr CIOBO—This is what Petrotimor presented as part of the consultancy you were referring to?

Mr Wesley-Smith—I am not sure if they presented that at that seminar because I think since then they have launched their own study on the pipeline. That was available for that conference in Darwin and it was presented in Melbourne.

Mr CIOBO—You say here:

The Seminar in Dili sponsored by an Oil Company provided expertise in these issues which go way beyond the sponsors. Its accuracy was indicated by the subsequent withdrawal by Australia from UNCLOS. We also were told that an oil pipeline to East Timor is feasible and would cost only 75% of that to Darwin.

So I presume it is the same seminar.

Mr Wesley-Smith—That was the opinion of Mr John Inle. He said that.

Mr CIOBO—But it was the same seminar?

Mr Wesley-Smith—The same seminar, yes.

Mr CIOBO—Are you also aware, obviously and from evidence that has been put to me just recently, that East Timor and Australia are on two separate tectonic plates?

Mr Wesley-Smith—Yes.

Mr CIOBO—All the evidence this committee has received so far indicates that it would be infeasible and also dangerous to build a pipeline from Bayu-Undan across the Timor trench, including the pressures that are put on that pipeline given the water depth. I am intrigued as to how these experts could suggest that it is possible.

Mr Wesley-Smith—There are about three companies that deal with that sort of depth and difficulty. Two of them have done independent consultant reports saying that it is possible up to a certain size—I think it is 28 inches. They deal with those—

Mr CIOBO—Even allowing for the seismic activity?

Mr Wesley-Smith—Yes.

Mr CIOBO—It is my understanding that Petrotimor says that there is no seismic activity taking place in the region.

Mr Wesley-Smith—I do not think they would say that. Everyone knows that there is a lot of activity down there. On the other hand, a pipeline to Darwin is approximately 2½ times longer than any ever been built in the world before. That is out there in the far off realm as well.

CHAIR—Thank you, Mr Wesley-Smith, for your time and for your submission. We appreciate your evidence to us this morning.

[11.56 a.m.]

FREITAS, Mr Cecilio, Executive Director, East Timor National NGO Forum

NASCIMENTO, Mr Adriano, Timor Sea Project Coordinator, East Timor Institute for Reconstruction Monitoring and Analysis

AMARAL de CARVALHO, Mr Demetrio, East Timor Independent Information Centre for the Timor Sea

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I am obliged to advise you that the hearings are legal proceedings of the Australian parliament and warrant the same respect as proceedings of the House of Representatives and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the Australian parliament. I want to make sure that we have a submission from each of you. If we do not, then we can at least work out what we have in front of us. Your submission was on behalf of—

Mr Nascimento—The East Timor Institute for Reconstruction Monitoring and Analysis.

CHAIR—Yes, we have that one.

Mr Freitas—The East Timor National NGO Forum.

CHAIR—Yes, we have that one. Finally, it might be yours.

Mr Amaral de Carvalho—The East Timor Independence Centre.

CHAIR—We do not have anybody from the Labour Advocacy Institute of East Timor? That is a different submission from the one that I have. Would each of you like to make some introductory remarks about your submission to highlight the main points that you wish to bring to our attention, and then we will turn to questions?

Mr Nascimento—Thank you. On behalf of my organisation, I would like to express my gratitude to the Australian parliament in welcoming us to your sovereign country to testify our perception, concern, position and also our hope. As a people who struggled for truth, justice and peace for 450 years under the Portuguese and 24 years under Indonesia, we consider that the decision of this committee to listen to us is a unique and civilised decision. You are demonstrating the values of a democratic country and a democratic people. You are demonstrating the values of a civilised country and a civilised people. We appreciate the committee's willingness to listen to the voice of the voiceless.

The 20 May treaty was negotiated and signed too hastily and in an unbalanced manner. East Timor was totally forced by the international community, including Australia, to enter negotiations and to sign. There are three fundamental reasons for this statement. Firstly, East

Timor did not have its own maritime law, investment law, tax law and environment law when the treaty was signed. Secondly, in the treaty that was signed there is no clear statement to settle the maritime boundary with a clear mechanism and time frame. Thirdly, the JPDA border was never changed; it is still as Australia and Indonesia agreed in 1989.

Our concern is not 90 per cent or 10 per cent; it is more important for us to know what legal reference is used by the Australian and East Timorese governments to split the revenue 90 per cent to 10 per cent. In the treaty, both governments have agreed to do joint exploration for 30 years. Our question is: why should Australia and East Timor do joint exploration of oil and gas fields such as Bayu-Undan and Elang-Kakatua in the Timor Gap area but not of oil and gas fields such as Corallina-Laminaria and Buffalo in the area of the Timor Sea? The Sunrise field is very close to East Timor and both Australia and East Timor hope to benefit from it. Why should Australia and East Timor do joint exploration of the 20 per cent of Sunrise which lies in the Timor Gap but not of the 80 per cent that lies in the Timor Sea?

The division of oil and gas fields is like the one that Australia and Indonesia agreed to in 1989. How can we settle maritime boundaries if the boundaries of the division of oil and gas fields jeopardises East Timor's jurisdiction? In the 20 May treaty there is no clear statement and no clear mechanism and time frame. Why did the Australian and East Timorese governments not include a maritime boundary agreement in the 20 May treaty? We encourage the parliaments of both Australia and East Timor not to ratify the 20 May treaty. We encourage you to urge the Australian government to enter renegotiations which would include the settlement of a maritime boundary between the two countries with a clear mechanism, a clear time frame and clear legal principles or legal references that can be accepted by the international community, and the placement into an escrow account of the revenues from the disputed areas—both in the Timor Gap, including the JPDA area, and the Timor Sea—such as Sunrise, Corallina-Laminaria and Buffalo.

Firstly, our proposal is—if you can—please bring the people of Australia and East Timor into a new, abiding community of nations, under UNCLOS and the ICJ. Secondly, please demonstrate the civilisation of your people and your country, and the democracy and legal traditions that you now are demonstrating in front of us. We are watching and waiting to see from where it should go and to where it should go. Your civilisation will urge your government to see what we are talking about now. That is all.

CHAIR—Thank you. We will go through each one, because I think there are common areas of concern. Mr Freitas?

Mr Freitas—I am here on behalf of the East Timor National NGO Forum. That forum is an umbrella body for more than 237 national NGOs in East Timor, operating in different areas through the whole country. Before I go ahead, I would like to take this opportunity to congratulate the Australian government on its efforts to support East Timor in the past two years, when East Timor was facing a security and economic crisis after the referendum of 1999. The East Timor National NGO Forum also wants to take this opportunity to say a special thanks for the goodwill and political will of the Joint Standing Committee on Treaties in receiving our submission and receiving us today. This shows us that you have good political maturity and a big role in deciding on and approving the legislation and in ratifying the treaty of the Timor Sea. I want to be honest: many societies and also individual people in East Timor were still saying

that an unacceptable Timor Sea treaty had been signed for the second time by the Prime Minister of East Timor, Mr Mari Bin Alkatiri and the Prime Minister of Australia, Mr John Howard. That was the only reason, as far as we understood from legal instruction, that both countries should define and determine the maritime boundaries before having a memorandum of understanding on exploration and exploitation.

We have specific issues relating to the current treaty. Firstly, we have no defined EEZ and maritime boundaries; hence the ownership of resources and revenues cannot possibly be determined. Secondly, the Bayu-Undan project is being developed right now, with the extraction of liquids the first phase, and gas is to be pumped back into the reservoirs later. Negotiations accepted that 90 per cent of ownership and government revenues will flow to East Timor. This can be interpreted as implicit acceptance that the north-south boundary should be at the median point between the two neighbours. Thirdly, Laminaria, Corallina, Buffalo and other small oilfields close by are producing right now, with government revenues of around \$US300 million per year in the last two years flowing 100 per cent to Australia, yet this is in water and undersea boundaries claimed by East Timor. The revenues are more than enough to fund the early years of government of East Timor. We assert that these royalties should belong to East Timor, beginning approximately from the date of the independence ballot—that is, 30 August 1999. Australia should pay back the royalties so far received, and the future royalties should go to East Timor. At the least, all past and current royalties should be held in trust. But it would be fairer, and would remove pressure, for enough of these royalties to be paid now to East Timor to enable independent government.

The fourth issue relates to Greater Sunrise. The present treaty, in particular annex E, determines that 90 per cent of only 20 per cent of Greater Sunrise is deemed to belong to East Timor. This is based on existing JPDA boundaries which should have no meaning to the present situation between the independent nations of East Timor and Australia. This is the greatest unfairness in monetary terms. It is not outrageous to suggest that this will result in the theft of 80 per cent of East Timor's gas reserves from this area.

I turn now to our last suggestion. The East Timor National NGO Forum position inherently states that the treaty should be pending and includes some of the comments that we have mentioned. The first suggestion that we would like to make in this forum is a visit between the Australian parliament and the parliament of the Democratic Republic of East Timor to share ideas before ratifying the treaty. The second suggestion is that both countries deliver further public hearings, because the treaty has to be acceptable to the majority of people in both countries. The third suggestion is about the determination of maritime boundaries. There should be a legal determination of who the owner is of the two natural resources—gas and oil—to prevent new conflict between the two countries in the future. I think that is all we would like to say today.

CHAIR—We will proceed to the last summary and then go to questions. We do have a copy of the submission now, thank you.

Mr Amaral de Carvalho—It is my pleasure to be here to present our submission. First of all, I would like to apologise to all of you for my limited English. I will try to do my best. In talking about this treaty, we cannot separate it from our history. During the Second World War, the East Timorese people supported Australian soldiers. For 30 years after the Second World War,

Australians showed good support for the East Timorese people. The Indonesian government then illegally occupied East Timor for 24 years. The treaty which we are now discussing was born from this illegal occupation.

Because the annexation of East Timor was illegal, unilateral and never recognised by the United Nations, the 1989 treaty was an illegal treaty. For this reason, any agreement that uses the boundaries for the joint sharing of oil and gas used in the 1989 Timor Gap Treaty must also be viewed as illegal and in conflict with the principles of the international community, UNCLOS, other international laws, and the Constitution of the Democratic Republic of East Timor, which came into effect on 20 May 2002.

CHAIR—Mr Amaral de Carvalho, we have your submission so you do not need to read it; we have read it before. If there are some specific points which you want to bring to our attention then that is fine.

Mr Amaral de Carvalho—Based on the above problems, CIITT makes the following recommendations to the national parliament of Australia. I will read these from the submission.

CHAIR—These are the recommendations that you want us to take on board?

Mr Amaral de Carvalho—Yes. Our recommendations as listed in the submission are:

1. Do not ratify the Treaty which was signed by Australian Prime Minister John Howard and East Timorese Prime Minister Mari Alkatiri on 20 May 2002 in Dili.
2. Carry out a review of the 20 May 2002 Treaty with attention to the fact that East Timor should receive the oil and gas reserves in the Timor Sea in concordance with the rights and principles laid out by the international law of the sea.
3. Settle the question of maritime boundaries between the two nations in accordance with the principles of the UN Convention on the Law of the Sea (UNCLOS), accepting the decision of the International Court of Justice on matters related to international maritime law.
4. Ask the Governments of Australia and East Timor to agree that all revenues from oil and gas fields in disputed territory must be held in a Trust Fund until there is settlement of the boundaries.

CHAIR—Thank you. You mentioned that the treaty was signed on 20 May 2002 in Dili. We are now in October, some months later. Prime Minister Alkatiri has put the East Timor government's position as recently as September in an article that was published in the Australian national press, so we take it that this is Prime Minister Alkatiri's current position. On behalf of the East Timor government he has said that he wants this treaty ratified as soon as possible. He said that East Timor needs the revenue flow. Finally he said that he is content to leave the conclusion of the greater issue of the maritime boundaries to the parties through negotiation. I take it you do not agree with the East Timor government's position as stated by Prime Minister Alkatiri?

Mr Nascimento—Before I answer I would like to ask you what is the mechanism to solve this maritime boundary? When will it be settled? How will the East Timor government and Australia agree and put it in the treaty that they are going to settle this problem? We understand that this treaty is about JPDA, not about the maritime boundary. But we do not know yet about the status of the oil and gas in the Timor Sea. It is not important for us to get 90 per cent or 10

per cent, but what is very important to us is the legal reference that we use to says that this is yours, you will get 90 per cent because of this. I ask you: why does East Timor get 90 per cent? And why does Australia just get 10 per cent?

Mr KING—I will say something in response to this, with the permission of our chair. The issue of the boundaries is not covered by this treaty at all—you are quite right. But we are reliably informed that Australia and Indonesia are proceeding to resolve their boundary differences, which have been outstanding for many years. That treaty will be happening in the near future—as early as 12 months. I would have thought the issue that you have raised is directly related to that treaty, and that is the context in which you should be considering your position in relation to that issue.

The question that we are looking at here is quite a different question; it is the whole question of the petroleum activities in the JPDA. The other issues about EEZ, about where that line should be drawn, even the Australian fishing zone et cetera, are discrete questions. It is of no assistance to the finalisation of the treaty process that we are now involved in—a limited process—to be concerned about those other issues. That is not to say that they are not important; they are. But I am saying this to try and help you to understand or appreciate that this other issue you are talking about is not currently before us.

Mr Nascimento—My other question is: why can Australia and East Timor do joint exploration in the Timor Gap while in the Timor Sea they cannot? For example, in the Sunrise gas field, East Timor and Australia can have joint exploration from 20 per cent while East Timor cannot access the 80 per cent.

CHAIR—The point we are making is that the treaty that we are considering, which has been signed by the East Timorese government and the Australian government, deals with the Joint Petroleum Development Area, the JPDA. As you know, the boundaries of that JPDA only cover 20 per cent of Sunrise. Whether or not there should be a whole renegotiation of boundaries is another issue. This treaty is said to be without prejudice to a whole maritime boundary conclusion between Indonesia, Australia and East Timor. I want to get one thing clear from you. If we take the terms of this treaty—whether you agree with them or not—are you concerned about the 90-10 split within this treaty? Are you saying it should be a different percentage within this treaty? I am not talking about the 80 per cent of Sunrise; I am talking about the royalties from Bayu-Undan and whatever else is within this JPDA.

Mr Freitas—Our position from the early stage and until now has been that we first have to recognise East Timorese sovereignty. We have to defend it, because the treaty in our analysis is still based on the last treaty that Australia and Indonesia signed in 1989.

CHAIR—I understand that. I understand that you challenge the basis of the JPDA. That is clear to the committee. I am just trying to understand this: are you objecting to the 90-10 split?

Mr Freitas—I will answer it.

CHAIR—Okay, thank you.

Mr Freitas—Our first thinking is that we have to determine to which country those natural resources, gas and oil, belong. Whether it is 90 per cent or 10 per cent is only the possibility of the company which will be negotiating it. The country which has the legality to get the natural resources will go on to negotiate with the company which commits to exploit the gas and oil.

Mr Nascimento—As I stated before, whether it is 90-10 or 50-50, it is the same. But the question is—

CHAIR—What do you mean?

Mr Nascimento—I mean that our concern is not whether East Timor gets 90 per cent or 10 per cent but why we get that 90 per cent. On what legal basis or reference do we get 90 per cent?

Mr KING—Negotiations.

CHAIR—As you would be aware, when Australia and Indonesia were dealing with this joint petroleum development area it was split 50-50. When Australia negotiated with the new nation of East Timor it came down far more in favour of East Timor: 90-10. So it was a negotiated position improving on the 50-50, I suggest, that had been in existence with Indonesia. I understand that you do not recognise the Indonesian-Australian treaty as being the basis for this. I understand that point. But I am worried that you have a concern about 90-10.

Mr Nascimento—My concern is where 90 per cent comes from, and where 10 comes from.

CHAIR—It was a negotiated position between the East Timor government—

Mr Nascimento—I am asking about the legal reference. I am saying that, if you get 90 per cent—

CHAIR—No, East Timor gets 90 per cent.

Mr Nascimento—No, this is an example. If you get 90 per cent because of this; you get 10 per cent because of this.

CHAIR—I see, you are looking for a legal justification, an analysis or a—

Mr Nascimento—Yes.

Mr WILKIE—He is trying to analyse the 90 per cent.

CHAIR—That is something we can raise with the Attorney-General. It has been put to us that this was the negotiated position—I am sorry; we were not part of the negotiating team—so presumably the East Timorese were not happy with 50-50.

Mr Nascimento—We are not going to say that we are not happy or that we are happy. We are asking this so that we can say to our children that we got 90 per cent because of this legal reference.

CHAIR—We will clearly have to get some evidence from those who negotiated the treaty on the part of the East Timorese government.

Mr KING—This is clearly in default of the parties taking the matter to either the International Court of Justice or to the tribunal under UNCLOS. The leaders of the two countries decided that in the interests of resolving a dispute, it would be split 90-10 in favour of East Timor. That is the origin of the arrangement. It does not have a legal basis; it is an agreement, and that is what this treaty brings into effect. It is a compromise.

Mr Freitas—Another thing is that, even though the area from Elang-Kakatua to Laminaria is still in dispute, we have already agreed to divide it into 90 per cent and 10 per cent. We are looking for the legal basis on which both leaders were able to divide it with 90 per cent belonging to East Timor and 10 per cent belonging to Australia. Then later we will try to resolve under UNCLOS what happened.

CHAIR—To take this a little further, this treaty proposes to be an arrangement that allows the development of the petroleum resources to go ahead in the interim while the boundaries between Australia, East Timor and, in fact, Indonesia take place. So it provides a revenue stream to East Timor and to Australia. If this treaty were not to proceed now and that revenue stream did not eventuate, are you able to tell me what alternate revenue stream there would be for East Timor at this very significant time in its nation-building?

Mr Amaral de Carvalho—Talking about revenue is sometimes a dilemma for our government's position. But on the other hand we know very well that the Timor Sea also has some oil sources like Laminaria-Corallina that every year make revenue for the Australian government. If we really care about this relationship, I think we should also pay attention to disputed revenue from these oil sources that have been exploited.

Mr Nascimento—What we suggest is clear is that revenue from disputed areas both inside the JPDA—or what we call the Timor Gap; we still remember why it is called the Timor Gap—and outside the Timor Gap in the Timor Sea can be placed in escrow. Secondly, the Australian government and East Timor should agree and put it in the treaty, in what we call the renegotiation. The Australian and East Timor governments should agree that the two countries will settle maritime boundaries with a clear mechanism, with a time frame and with a clear principle of law that they are going to apply so that we can protect both Australian and East Timorese interests.

There are still questions about a clear mechanism, a clear time frame, and what law we are going to apply. We have not yet had our own law on maritime boundaries, or on investment or tax et cetera. The two governments must agree and put it in the treaty that they are going to settle this problem of the maritime boundary and the status of the oil and gas fields in the joint JPDA, Timor Gap and the Timor Sea.

CHAIR—In other words, you are saying that, if this treaty had included in it a time frame for all the other outstanding issues which would enable East Timor to introduce relevant laws and the like, you would be prepared for this treaty to go ahead so that the revenue stream could flow, but you would want to have incorporated in it a suggested time frame for all the other maritime boundary issues between the two countries.

Mr Nascimento—Yes, I say that because Australia has just withdrawn from ICJ and we are very concerned. Our struggle has lasted for hundreds of years and we just want to see justice, truth and peace. With Australia's withdrawal from the ICJ, we lose our view of these things. We have seen a demonstration of your civilisation and your democracy, and we want to follow this. You have already demonstrated this to our country by sending troops and humanitarian aid. We would like you to demonstrate these things in this case. Your civilisation is being tested in this.

CHAIR—So you would still want the opportunity for a revenue stream to start flowing as soon as possible as long as, contained in this treaty, there is some reference to the time frame.

Mr Nascimento—Together with Australia's agreement to follow the law, because we have not had law for 150 years, especially the last 25 years. We need law, we need justice, we need truth.

CHAIR—I understand your position.

Mr WILKIE—I think it has already been stated that, in article 2 of the treaty, without prejudice, it has been agreed that maritime borders can be discussed in the future; therefore that can be an ongoing process. I take it from Mr Freitas's submission that you are very disappointed that Foreign Minister Alexander Downer made the statement after the signing of the treaty that East Timor could talk all it likes but Australia would not change its maritime boundaries. On the one hand the treaty is saying that we will continue to negotiate boundaries but on the other hand the government is saying, despite that, we do not intend to. I understand from your submission that you are very concerned that Australia has withdrawn from the International Court of Justice, nullifying their ability to decide or determine maritime boundaries. The chair raised the comments made by Prime Minister Alkatiri about the need to ratify the treaty and his view that he would like to see negotiated boundary settlements come in rather than have it go to court. But it is my understanding that he went further: he would like to have things negotiated but he would also like to have open the option of going to a court to determine the dispute if Australia and East Timor could not come to some sort of negotiated settlement. I want to get your thoughts on that—whether that is your understanding of where he was coming from. I understand what you were saying about the 90-10 split; you believe that should be determined after the boundaries have been decided. But, given that the treaty will probably go through in some way, shape or form, and the boundaries will be determined later, do you think the 90-10 split in its current arrangement is fair?

Mr Freitas—I am saying it is depending on the treaty not being signed then there should be an increase in some of the clauses in the treaty that Adriano put strongly to you. Relating to your question, probably both countries will make a parallel application to UNCLOS and then we will see what happens in the future.

Mr WILKIE—Do you believe that the rule of law should apply when it comes to issues of maritime boundaries?

Mr Freitas—Yes.

Mr KING—Have you read the treaty?

Mr Nascimento—Yes.

Mr Freitas—Yes.

Mr KING—You would be aware then that article 13 deals with the taxation law of Australia and East Timor applying to the JPDA outcomes, that article 17 deals with the law relating to the operation of the various facilities and fields, and that article 14 deals with the criminal law. It seems to me that the treaty itself provides the legal regime you are concerned does not exist. What do you say about that?

Mr Nascimento—What I am saying is that we do not have our own law on tax yet. Because this treaty already existed, the division of the gas and oil fields was already there for us to follow. Companies are operating there. What we want is a guarantee that you can open a window for our law, because we have not formed our law yet. That is why I said that this treaty should apply in this. Again, this is not our main matter relating to this treaty. We are concerned that, firstly, we should know the status of the oil and gas. Who is the owner? Why are you the owner of some areas and why am I the owner of others? We should clarify this, and after that maybe we can come to other issues like tax et cetera.

Mr KING—The treaty actually specifies that very question. It says that East Timor shall be the owner of 90 per cent of the petroleum products and Australia 10 per cent.

Mr Nascimento—I was referring not to the revenue but to the status created by defining the maritime boundary for this mine and that mine. I give the example of Sunrise. Australia and East Timor can have a joint exploration of 20 per cent. East Timor will get 90 per cent of that 20 per cent, and Australia will get 10 per cent of that 20 per cent. Why is 80 per cent not East Timor's? That is because Australia thinks the status is clear: 80 per cent lies in Australian territory, while 20 per cent lies in the JPDA. Why does the JPDA exist? That is the question. It is because we have not had our own law and we have not had our own maritime boundary. That is why there is the JPDA. Australia already had an agreement with Indonesia, and 80 per cent belonged to Australia. It is even too difficult for our government to—I do not know the term. The East Timorese government is trying to get the whole area.

Mr KING—In relation to the maritime boundaries the treaty contemplates that, by the same process—that is, by a treaty between nations, which is what a treaty is all about—these borders will be settled by agreement. It is certainly the hope of most people I have had anything to do with in relation to this committee's inquiry that that will happen, and I do not see any reason why it will not. But I think it is important to focus on the fact that this treaty deals with a separate question, namely getting the petroleum activities up and running as soon as possible. What do you say about that?

Mr Freitas—At the moment, we are really concerned about focusing on the treaty and learning about what is inside the treaty. If we look back to when the treaty was run up by UNTAET and supported by Peter Galbraith, it was not in the United Nations mission that UNTAET should support and run up foreign economic negotiations before our constitution was stabilised. It was an unconstitutional process that UNTAET did in East Timor.

CHAIR—You are questioning UNTAET's transitional arrangements in taking over the Timor Gap treaty from Indonesia?

Mr Freitas—Yes.

CHAIR—Obviously the interested parties needed certainty and, once Indonesia was out, that was where UNTAET came in.

Mr Freitas—The main reason is that the UN mission was only to administratively prepare East Timor to be an independent nation, not to operate and manage the economic system in this area.

CHAIR—It took a transitional position. It stepped into the shoes of Indonesia and, had it not, there would not have been a—

Mr Freitas—Because our national legislation should be approved by parliament before a memorandum of understanding is signed off.

Mr Nascimento—Maybe I can conclude like this: we are concerned about the process of exploration in the Timor Sea. Firstly, we are concerned about what existed in 1989 between Indonesia and Australia. We are concerned about this because we were never involved in it. Secondly, we are also concerned about the process that happened during the transition period. Why? The reason is that we had not determined our constitution at that time but our government in this context—the UN—had negotiations about our natural resources with another country.

CHAIR—What are you suggesting should have happened or the UN should have done in the transitional period between the declaration of independence and the creation of the East Timorese government?

Mr Nascimento—We should look at what their mandate was. Maybe we all know what their mandate was. I do not know exactly what their mandate was for negotiating natural resources—maybe it was there. But we know that the UNTAET mandate was to prepare, administer and guide the East Timorese to their independence. Again, I do not know whether the UNTAET mandate was to negotiate with other countries.

Senator TCHEN—I would like to get one thing clear: is your position on this treaty different from Mr Alkatiri's?

Mr Freitas—We are not demonstrating a different position. We want to try to strengthen the position of Mari Alkatiri. That is why. We want to remind our prime minister to look back at the treaty that was signed as an unfair process because it was led by UNTAET. The signing was a

very political decision. It is still unacceptable to the independent civilian institutions and what many people still demand of them.

Mr WILKIE—You are obviously raising these issues with your own government. What sort of feedback are you getting from members of the government?

Mr Freitas—We tried to convince our government and our prime minister. We have discussed a lot about this treaty. This committee is demonstrating a good mechanism for consulting with people around this country. It is a very good process. It is one example we can tell our parliament that they should follow.

CHAIR—I recommend that the East Timorese parliament have a treaties committee.

Mr Freitas—We will have another seminar in October, which will be run by our government, not us. Again at the seminar we will try to convince them that it should be acceptable to the majority of East Timorese people; they should understand what the treaty means, what 90 per cent means and who has the ownership of these natural resources.

Senator TCHEN—On another issue, one of your recommendations is that the revenue should be held in an escrow account until disputes have been settled. Certainly Mr Nascimento mentioned that. Mr Freitas mentioned that as well. I am not sure about Mr de Carvalho. This is your recommendation. The problem is that this is modelled on something that is in the Timor Sea Treaty at the moment. If Bayu-Undan goes ahead, any revenue from it will be held in an escrow account until the treaty has been ratified. That is provided for in the treaty. We heard earlier today from Mr Coffey who described that particular approach as being a very onerous condition on the East Timorese government. But you are looking at this on a longer-term basis.

Mr Nascimento—I should clarify that our main demand is that, first, Australia and East Timor should agree—and this agreement should be put in a treaty—that the two countries will settle the maritime boundary with a clear mechanism, a clear time frame and what laws will be applied. They should both agree on this. Secondly, the revenue from the disputed area should be placed in escrow.

Senator TCHEN—I am not disputing your first issue, because all disputes should be resolved as quickly as possible. That is a matter of principle for how people and societies deal with each other, and there is no argument about that. But on your second point, we heard Mr Coffey describe the existing similar arrangement as ‘an onerous condition’ unfair to the East Timorese people. You are suggesting that we should continue with this type of fiscal arrangement. This puts us in a very difficult position.

CHAIR—We are suggesting it would be more beneficial to East Timor if revenues were to flow rather than having them held in an escrow account.

Mr Amaral de Carvalho—Our concern is if revenues were to flow and were used by both countries based on planning processes in both countries and later on the boundaries were decided, how could we dispute the income that has already been collected by both countries? How do you dispute this? To avoid this problem in the future, we propose to put it in an escrow account.

Senator TCHEN—I understand, but perhaps escrow accounts are not the best answer. Anyway, you made your point.

CHAIR—As there are no further questions, I would like to thank you on behalf of the committee for taking the time to be with us today. We thank you for the very detailed submission that you have lodged on behalf of a number of NGOs under your umbrella. We appreciate you being here, and we thank you for your forthright and frank evidence to us.

Mr Amaral de Carvalho—Thank you. As a last proposal from us, we would like to ask the committee to propose also a kind of parallel discussion with the East Timor parliament to see what kind of decision will be taken by both parliaments in terms of this treaty.

CHAIR—I think the Australian parliament and the East Timorese parliament will have a very long and productive working relationship, and I hope that this is just the beginning of it. If there is anything the Australian parliament can do, particularly by way of setting up mechanisms or assisting to set up mechanisms in East Timor that reflect some of the best aspects of the Australian parliament, we would certainly support that. Thank you for your time.

Resolved (on motion by **Mr Wilkie**, seconded by **Senator Tchen**):

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

Committee adjourned at 12.51 p.m.