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Proof Committee Hansard

JOINT STANDING COMMITTEE ON TREATIES

**Agreement with France on the Future Submarine program, Maritime
arrangements with Timor-Leste**

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[PROOF COPY]

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[14:26]

Consequences of termination of the Treaty between Australia and the Democratic Republic of Timor Leste on Certain Maritime Arrangements in the Timor Sea

CHAIR: The committee will now hear evidence on the amendments to the agreement on certain maritime arrangements in the Timor Sea. I welcome representatives from the Department of Foreign Affairs and Trade, the Attorney-General's Department, and the Department of Industry, Innovation and Science to give evidence. Although the committee does not require you to give evidence under oath, I should advise you the hearing is a legal proceeding of the parliament and therefore has the same standing as proceedings of the respective houses. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by Hansard and attracts parliamentary privilege.

I particularly draw the attention of officers to an order of the Senate of 30 May 2009 specifying the process by which a claim of public interest immunity should be raised.

The extract read as follows—

Public interest immunity claims

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

Copies are available from the secretariat.

The Senate has also resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. There being no minister, the superior officer is Ms Cooper. The resolution prohibits only questions asking for opinions on matters of policy, and does not preclude questions asking for explanation of policies or factual questions about when and how policies were adopted. If in doubt, I will let you know.

I remind committee members and witnesses that the committee agreed to an expedited consideration of this treaty action. To facilitate an early consideration, the committee will require answers to questions on notice within three business days—and I will not give an extension. I now invite you to make a brief opening statement before we proceed to discussion.

Ms Cooper: I will make a brief opening statement. On 10 January 2017, Timor-Leste advised Australia that it would unilaterally terminate the CMATS treaty. Timor-Leste's decision to terminate the CMATS treaty was in accordance with article 12 item 2 of that treaty, which gives either party the power to terminate the treaty should the parties fail to reach an agreement on a development plan for the Greater Sunrise unit area six years after the date that the CMATS treaty entered into force. The Greater Sunrise unit area is a petroleum resource that straddles the top right-hand corner of the Joint Petroleum Development Area.

The right to terminate the CMATS treaty has been available to either party since February 2013. As a result of Timor-Leste's notification, the treaty will cease to be in force three months from the date that Timor-Leste informed us of its intention to terminate it. That date is 10 April 2017. However, the reason we are here today is not to discuss Timor-Leste's decision to terminate, but rather to propose an amendment to the treaty prior to its termination on 10 April 2017. Essentially, we are proposing to amend the terms on which the treaty will terminate. This amendment is part of a package of confidence-building measures agreed with Timor-Leste. The consequence of the proposed treaty action would be that all provisions of the treaty will terminate when the treaty ceases to be in force on 10 April 2017.

In the absence of these amendments there would be two significant consequences. Firstly, the provisions listed in article 12(4) would survive termination and, secondly, in accordance with article 12(3) of the CMATS, the CMATS treaty as a whole would come back into force in the event that future petroleum production were to take place in the Greater Sunrise Unit Area. In addition, we are also seeking to explicitly confirm an agreement between Australia and Timor-Leste that once the CMATS treaty ends the Timor Sea Treaty will remain in force between the parties in its original form. This will provide certainty to companies and investors operating in the Timor Sea. Article 3 of the CMATS treaty amended the Timor Sea Treaty to provide that the duration of the Timor Sea Treaty was the same as that of the CMATS treaty. Under article 12 of the CMATS treaty the treaty is to remain in force until the date 50 years after its entry into force or until the date five years after the exploitation of the Greater Sunrise Unit Area, whichever is sooner.

The proposed exchange of notes between Timor-Leste and Australia confirms that following the termination of the CMATS treaty the Timor Sea Treaty will revert to its original duration. This is Australia's understanding of what would happen as a matter of law. However, to avoid any uncertainty, Australia and Timor-Leste wish to explicitly confirm this agreement in the exchange of notes. I will now turn to why the proposed amendment and the agreement on the duration of the Timor Sea Treaty is in Australia's national interest. Given that a full explanation is set out in our national interest analysis I intend only to highlight the key points.

Australia and Timor-Leste are engaged in a conciliation under the United Nations Convention on the Law of the Sea. The function of the conciliation commission, as set out in article 6 of annex 5 of UNCLOS, is to hear the parties examine their claims and objections and make proposals to the parties with a view to reaching an amicable settlement. As part of the conciliation, Australia and Timor-Leste agreed to an integrated package of confidence-

building measures proposed by the conciliation commission. These agreed measures have been set out by the parties and the commission in recent press releases.

The package was proposed by the commission to facilitate the reaching of a maritime boundary agreement between Australia and Timor-Leste. It is the government's assessment that the package of confidence-building measures is in Australia's national interest as it will assist us to move forward in a positive and constructive way in the conciliation.

For the benefit of the committee I will set out the agreed confidence-building measures, which form the package that was agreed by the commission and the parties. No. 1, Timor-Leste would terminate the CMATS treaty, as it had stated clearly that it had intended to do and as is its right under the treaty; No. 2, both parties would confirm that the Timor Sea Treaty would continue in its original form; No. 3, the termination of the CMATS treaty would include termination of all its terms; and No. 4, Timor-Leste would withdraw the two arbitrations it had commenced against Australia. Implementing these commitments is a critical part of the conciliation process.

The proposed amendment and the agreement on the duration of the Timor Sea Treaty will allow us to move forward in a positive way to seek to reach an agreement with Timor-Leste while, at the same time, providing certainty and stability for investors in the Timor Sea.

CHAIR: Article 12(3) of the agreement makes the point that either East Timor or Australia can terminate most of it if the development plan for the Greater Sunrise field is not approved within six years after entry into force, and my understanding is it was not, or if production of petroleum from the field does not commence within 10 years after the date of entry into force of the treaty. In terms of Timor's action, in this space, was any of it precipitated by the lack of development of a plan and lack of production of petroleum?

Ms Cooper: The two are important but, I think, separate. The termination of the CMATS treaty is part of the package of confidence-building measures that was agreed with the commission, so it is in the context that Timor advised us it intended to terminate the treaty.

CHAIR: I know, but they are the ones who have said, 'We are out.' We did not raise it. We did not say, 'Hey, you should get out.'

Ms Cooper: No.

CHAIR: My understanding is that they raised it.

Ms Cooper: That is correct.

CHAIR: And, whilst the package of measures is designed to end well, it did not start as a package of measures. My understanding is that it started with East Timor saying, 'We are out of here.'

Ms Cooper: I think, in terms of the sequencing, Timor-Leste had indicated on a number of occasions that it intended to terminate the CMATS treaty, but the actual notification of the termination did not happen prior to the package. It was part of the package.

CHAIR: Well said. That is fine. We all agree. It then begs the question: why do you think East Timor wants to leave what is supposed to be a 50-year agreement?

Ms Cooper: Are you asking me to comment on what Timor-Leste thinks?

CHAIR: No. I am asking you to provide any details of fact on what they have communicated, especially in the open public, in terms of their rationale, because I cannot ask you for an opinion.

Ms Cooper: Their rationale on why they have decided to terminate the treaty?

CHAIR: To leave.

Ms Cooper: The treaty was designed to facilitate the development of the Greater Sunrise Unit Area. That development has not happened.

CHAIR: Correct.

Ms Cooper: And the treaty was framed in such a way, as you have said, Chair, as to enable either party to leave that treaty or to terminate that treaty if that development had not occurred within six years after the treaty coming into force. So the critical point would be that the Greater Sunrise Unit Area has not yet been developed.

CHAIR: Has East Timor made any public statements regarding its withdrawal from CMATS?

Ms Cooper: There have been some public statements that have been issued jointly with the commission. There are three of those, and those talk specifically about the package of confidence-building measures and refer explicitly to Timor-Leste's decision to terminate the treaty.

CHAIR: But have any East Timorese ministers or their department made any public statements outside of the current process with respect to their withdrawal from East Timor?

Ms Cooper: Not that I am aware of, but I will confer with my colleagues from the bilateral area. No. We are not aware of Timor-Leste having made any public comments on their actual decision to terminate the CMATS treaty, although, as I mentioned earlier, they had flagged on a number of occasions previously that they may terminate the CMATS treaty.

Mr DANBY: But they have not done that without explanation too. They felt that their treatment in that area was unfair.

CHAIR: Is that a question or a statement?

Mr DANBY: I am saying that is what I understood from my reading of the media over the last few years: that Timor-Leste's representatives have said that they think that the proposed commercial exploitation of this area was not in accordance with their wishes.

CHAIR: Is that a public statement that they made?

Mr DANBY: I am pretty sure it is. I do not have the media reports here, but it was to be undertaken by the American company ConocoPhillips—is that right?

Ms Cooper: The CMATS treaty that we are talking about today is in relation to the Greater Sunrise Unit Area and the exploitation of that unit. There is a joint venture that has the rights to do that. That does include ConocoPhillips. It also includes Woodside, Shell and Osaka Gas. There has not been any development of that resource, so there have been no comments about the equity or otherwise of the development of that resource, because there has not been any development of the resource. There have been developments of other resources within the Timor Sea, but not of the particular field.

Mr DANBY: So it is not because Timor-Leste feels that the joint development should be on their coast in Suai rather than in Australia?

CHAIR: You are asking for an opinion.

Mr DANBY: It is not an opinion; it is a factual question. You have not raised that. I was sure they had.

CHAIR: Hence my first question: is there anything on the public record about what they have raised as to the reason they will withdraw? That is the same question you are asking.

Ms Cooper: There is nothing on the public record about the reason for the termination of their treaty, but there have been many, many comments over the years—as you might be referring to, Mr Danby—about the exploitation of resources generally.

CHAIR: Can the department provide to the committee a nice synopsis of public comments made by East Timorese officials and/or government ministers with respect to their view of their treatment or otherwise in the Greater Sunrise Unit Area? Are you happy with that, Michael?

Mr DANBY: Yes. I am not criticising them or us; I am just saying that that is what I understood to be the genesis of their concerns.

CHAIR: That is one of three treaties for the exploration of oil and gas ostensibly in that wider East Timor gap, and the intent was always that you read them as a package. Now that one of the three is disappearing, is there any impact on the Timor Sea Treaty 2002 and the Sunrise International Unitisation Agreement?

Ms Cooper: No. As I explained, we will make an agreement explicit about the duration of the Timor Sea Treaty for any avoidance of doubt. But you are right: there are three treaties which govern arrangements in the Timor Sea. The first is the Timor Sea Treaty 2002. That established the Joint Petroleum Development Area and it provides a regulatory framework for the petroleum operations within that area—and that speaks about petrol production of 90 to 10 in favour of Timor-Leste. And, as you referred to, there is the International Unitisation Agreement 2003. That provides the regulatory framework for the development of the Greater Sunrise resources. That is the big resource that straddles the JPDA and an area of Australian jurisdiction. There is a third treaty, which is the CMATS treaty, which we are here discussing today. That was designed to allow for the development of Greater Sunrise and provide for longer term stability for petroleum activities in the Timor Sea. So that relates specifically to that Greater Sunrise Unit Area.

CHAIR: The question was: is there any impact on those other two treaties from the dissolution of CMATS? And I am hearing no is the answer.

Ms Cooper: Correct.

CHAIR: The IA states that both Timor-Leste and Australia are committed to negotiating maritime boundaries under the auspices of the Conciliation Commission—the boundaries of which have not yet been agreed. How are those negotiations progressing? It has only been 15 years, hasn't it?

Ms Cooper: Discussions under the auspices of the Conciliation Commission commenced late last year and they will run until September this year. We have had a few rounds of discussions to date and we will have more before September. The content of those discussions are confidential, so that we can create the atmosphere necessary to try to reach an agreement.

CHAIR: Well, let's all agree that they are going well then. In terms of the commission, are we bound by its recommendations? What is our legal position within the Conciliation Commission?

Ms Cooper: The Conciliation Commission is not an arbitration, as such, so there will not be a determination or a finding. But there will be one of two things. If there is an agreement, then the agreement will be recorded by the commission. If there is no agreement, then a report will be issued which will include recommendations. So it is not a binding decision, as such, but there will be recommendations that will be issued for the parties to consider.

CHAIR: In our opening remarks to the commission, we stated that 'significant reputational harm would be caused by disregarding the treaties'—on page 103 of the transcript—which begs the question: what reputational harm is being caused by the termination of the CMATS treaty?

Ms Cooper: Reputational harm to Australia?

CHAIR: Yes.

Ms Cooper: I would say that there is no reputational harm to Australia from the termination of the CMATS treaty, because it is a proper exercise of a sovereign country's right under a treaty.

CHAIR: And we did not ask for it.

Mr DANBY: But doesn't it implicitly imply that Timor-Leste thinks it was being unfairly treated?

CHAIR: You are asking for opinions there. Do you want to rephrase that?

Mr DANBY: No.

Mr CREWITHER: Thank you for your evidence today. In the negotiations for a permanent maritime boundary in the Timor Sea, what interest and potential legal claims might Indonesia seek?

Ms Cooper: Is it the conciliation commission specifically that you are asking about?

Mr CREWITHER: Yes. For example, have there been any discussions between Australia and Indonesia regarding the maritime boundaries as a result of the negotiations with Timor-Leste?

Ms Cooper: The conciliation commission is a bilateral process so it will consider the interests of Timor-Leste and Australia and seek to help Australia and Timor-Leste come to an agreement.

Senator KITCHING: Is the foreign aid that Australia gives a factor that is considered in the conciliation process?

Ms Cooper: The short answer to that is 'no'. The objective of the conciliation commission, as I said before—and it is set out in the UNCLOS treaty—is to try and bring the parties together in areas of dispute. Our development and our other associations with Timor-Leste are not part of the dispute we have with Timor-Leste. My colleague here from the bilateral area can speak to our bilateral development program if you would like but it is delinked from the conciliation commission process.

Senator KITCHING: I was wondering if—I could loosely term it as goodwill—being a good neighbour helps in those negotiations? But if it does not then it does not.

Ms Cooper: Certainly there is a broader relationship between Timor-Leste and Australia, obviously, than this dispute. Many aspects of that continue, and it is a very close partnership on a range of issues.

Senator KITCHING: I know ACCI, for example, has been helping with the development of some of its government departments as has VCCI in Victoria and the Victorian government.

Ms Lawson: The strong relationships with a lot of those states outside the official development program continue unaffected.

CHAIR: We have a number of entities and Australian companies—you have named two of them—that are operating in the region. What impact is the withdrawal—not that we have a choice—from CMATS going to have on our resource companies operating in the area? Does it change their legal position for what they are doing in seeking and searching for resource?

Ms Cooper: I will pass that question to my colleague Lisa Schofield.

Ms Schofield: The existing arrangements around the Timor Sea treaty provide that those companies, those explorers, the resource companies that are doing work now can continue to do the work that they are doing under the existing arrangements, so there is no impact on their day-to-day business through the termination CMATS.

CHAIR: So Woodside can continue working in the Australian zone and in the shared zone. What about the Timor zone?

Ms Schofield: Yes.

CHAIR: They can?

Ms Schofield: Yes.

CHAIR: So even though CMATS will no longer have effect, you are saying to the committee there is no tangible impact upon companies like Woodside for their prospective research in the area?

Ms Schofield: That is correct.

CHAIR: And they have legal standing in that northern part of the greater —let's call it the East Timor part. Is that what you are saying to the committee?

Ms Schofield: The Greater Sunrise resource straddles the Joint Petroleum Development Area and Australian waters and they can continue the activity that they have under those arrangements in both spaces.

Mr DANBY: How much is the Greater Sunrise area anticipated to be worth?

Ms Schofield: We do not have an answer to that. There is a development that is underway. The government does not have data necessarily on what would be coming out because we do not yet know what type of production activity will be taking place.

Senator KITCHING: In the background briefing, it says it is estimated that the Greater Sunrise resource is worth A\$40 billion. Does that help? I am looking on page 40 of 50.

Ms Schofield: There are numbers that have come out from the companies about the way that they would value the resource, but the government has not necessarily put a value on the resource.

CHAIR: We will get to the bottom of that. Has any company JORCed a resource in that area and therefore is there a legitimate report that a resource can be based on?

Ms Schofield: The companies are confident that there is resource in that area to be developed.

CHAIR: I will take that as a no to a JORC report and a yes to a prospective, and a share price is important. Good; so we have clarified our legal position in terms of where companies operate and where they are sitting. Has there been any response from companies like Woodside to this issue of CMATS withdrawal? Does industry have a stated position? Have they stated whether this is good, bad, indifferent, has no impact or has an impact?

Ms Schofield: I know that there have been public statements from Woodside. I will have a look through my papers and try and find the quote. I think the general sense is that the companies recognise that these discussions and negotiations are ongoing, and they have also been pleased to see that the joint statements, which Ms Cooper mentioned before, that have come out from both governments and the commission have been really clear about recognising stability for companies to continue day-to-day operations and the need for transitional arrangements, should there be any changes down the track. There have been public statements by—

Ms Cooper: There was one statement by Woodside—of which we are aware—from the operator of Greater Sunrise, as we have said. They welcomed the announcement and said they looked forward to an agreement that allows for the earliest commercialisation of the Greater Sunrise fields, which promises great benefits for all parties

CHAIR: They are looking forward to an agreement? What agreement are they referring to?

Ms Cooper: An agreement that would allow for Greater Sunrise to be commercialised.

CHAIR: What has that got to do, though, with the withdrawal from CMATS?

Ms Cooper: Well, CMATS would facilitate the commercialisation but it can, as Lisa said, go ahead without CMATS.

CHAIR: So why ask Ms Schofield regarding the legal position of people prospectively searching in those waters without CMATS, and if there is no change to the legal position—and you cannot comment on their behalf—but I do not understand their statement that they are welcoming an agreement for the Greater Sunrise if the withdrawal of CMATS has no legal ramification upon them. Or am I reading this incorrectly?

Ms Schofield: We might need to take that on notice, because we only have a snippet of the quote from Woodside, but I think the agreement that they were referring to was the broader maritime boundaries agreement.

CHAIR: I think it is, as opposed to CMATS—

Ms Schofield: But I will take that on notice.

CHAIR: because the maritime boundary issue has a direct impact on their capacity under Australian law to search for resource.

Ms Schofield: Potentially.

CHAIR: Yes. Excellent; you will do that.

Senator FAWCETT: That is a good segue to the broader issue of maritime boundaries. Clearly, in regard to East Timor, Australia has changed its position by agreeing to enter into discussions with them. More broadly though, has Australia changed its preference for the natural prolongation principle?

Ms Cooper: What you are asking about now is what Australia's position is in relation to the maritime boundary discussions that we are having within the Conciliation Commission, and they are confidential. But there is no secret that Australia has always maintained that natural prolongation of our continental shelf is relevant to these discussions.

Senator FAWCETT: It is also relevant more broadly, because East Timor is not the only nation where that principle impacts on where maritime boundaries are currently recognised. Hence, more broadly, it is a relevant question, not just in those negotiations, but to understand if Australia is still maintaining its position around the principle of natural prolongation.

Ms Cooper: Is the question: have we changed our approach more broadly to the question of natural prolongation of our continental shelf?

Senator FAWCETT: Yes.

Ms Cooper: The answer to that is no.

Senator FAWCETT: Thank you.

CHAIR: For the benefit of the committee: I am informed by my erstwhile secretariat that the \$40 billion figure was stated in January 2017 by Dr Rebecca Strating, from La Trobe University, who I believe is one of our next witnesses, so there will be the opportunity, Senator Kitching, to speak to Rebecca Strating about that.

Mr DANBY: I have a broader strategic question. Ms Cooper, in negotiations for a permanent maritime boundary in the Timor Sea, what interests and potential legal claim might Indonesia seek, and have any discussions taken place between Australia and Indonesia regarding maritime boundaries as a result of those negotiations and the withdrawal from CMATS of Timor-Leste?

Ms Cooper: The conciliation commission is a bilateral process in which only Timor-Leste and Australia are engaged. Australia has already concluded maritime boundary agreements with Indonesia.

Mr DANBY: So there is no possibility of them now re-entering this area and claiming part of this as their area of economic interest?

Ms Cooper: That would really be a question, I suppose, for Indonesia, but in the context of conciliation it is a bilateral process, and we are in discussions with Timor-Leste about the bilateral maritime boundary.

CHAIR: Are you referring to the 1972 seabed boundary line?

Mr DANBY: Not in particular. I was just concerned that the opening up again of this area has the danger—a small one—of leading to pre-existing problems—

CHAIR: That is a good question. Is there any impact by this on the 1972 Australia-Indonesia seabed boundary law?

Ms Cooper: In terms of the conciliation commission?

CHAIR: In terms of the CMATS expiry and the conciliation commission—do either of those two have any impact on the 1972 Australia-Indonesia seabed boundary?

Ms Cooper: The CMATS treaty was a bilateral treaty between Timor-Leste and Australia, which was specific to the Greater Sunrise unit, so that is a no.

CHAIR: So that is an answer of no on that one.

Ms Cooper: In terms of the conciliation, I will just go back to my earlier response that we are in a bilateral process with Timor-Leste, and anything further than that would be hypothetical.

Mr DANBY: We will take a note about that.

CHAIR: Yes. As there are no further questions, thank you for your attendance here today. If you have been asked to provide any information, which you have been, you have three working days to get it to the secretariat. You will be sent a copy of the transcript of evidence and will have an opportunity to request corrections to transcription errors. Otherwise, thank you for your time. It is very much appreciated.

SCHOFIELD, Professor Clive, Director of Research, Australian National Centre for Ocean Research and Security; and Challenge Lead, Sustaining Coastal and Marine Zones, Global Challenges Program, University of Wollongong

STRATING, Dr Rebecca, Lecturer, La Trobe University

[14:58]

CHAIR: I now welcome participants in the academic expert panel to give evidence. Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceeding of the parliament and therefore has the same standing as proceedings of the respective houses. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by *Hansard* and attracts parliamentary privilege. I now invite you to make a brief opening statement before we proceed to a wider discussion.

Prof. Schofield: Rebecca, please.

Dr Strating: Thank you. My research examines Timor-Leste's foreign policy broadly. As part of that project, I look at the Timor Sea dispute. In my statement I will be discussing why Timor-Leste's government came to reject the CMATS. I think, Mr Danby, your question about the oil industrialisation is something that I will be covering in my statement.

On Timor-Leste's side, the CMATS negotiations were driven in 2005 and 2006 by the then foreign minister, Dr Jose Ramos-Horta, who took a pragmatic approach to the dispute in order to expedite the development of Greater Sunrise. In order to reach a development agreement, Australia and Timor-Leste put aside disagreements, first about how the Greater Sunrise gas field should be developed and, second, about if or where a permanent maritime boundary should be drawn. The shift to a new government, led by Xanana Gusmao, in 2007 contributed to Timor-Leste changing its approach to the CMATS. The CMATS did not really solve any of the disagreements; the CMATS just sort of put them aside for another day. Those disagreements are still obviously present. Initially, the new Gusmao-led government sought to work within the CMATS regime and promoted its plans to build a pipeline from Greater Sunrise to Timor's south coast to process the gas in Timor-Leste.

Timor-Leste's rejection of the CMATS can really be traced back to Woodside's decision to pursue an LNG floating platform for developing the gas, rather than establishing this pipeline that the Gusmao government was pursuing. Since 2012 Timor-Leste's government has employed a public diplomacy campaign and various international legal proceedings to extract itself from the CMATS agreement. Here is where we see the re-emergence of narratives around sovereignty and permanent maritime boundaries and this idea that in order to complete the independent struggle Timor-Leste needs to have these permanent boundaries.

Timor-Leste's current foreign policy is really driven by three primary goals. The first is to secure permanent maritime boundaries, the second is to take possession of Greater Sunrise, and the third is to establish an export pipeline for processing gas in Timor-Leste. But I think it is really important to distinguish between these goals of Timor-Leste, because the success of future negotiations will depend upon which goal is paramount. These are not perfectly compatible goals. If the policy is driven by access to resources, that might produce one kind of outcome, but if it is about drawing a line and it is all about permanent maritime boundaries, this might affect negotiations in a different way.

I believe that there are these dominant narratives that emphasise the need for boundaries to complete sovereignty, but the policy shift was initially motivated by access to resources. Timorese representatives argue that onshore processing will allow Timor-Leste to develop its economy through petroleum industrialisation. So there is an ambitious economic plan underway to establish onshore processing on the south coast. This plant is called Tasi Mane. This is promoted by the Timorese government, the current government, as being one of its highest priorities. This goal of establishing Tasi Mane is paramount. If this is the driving motivation that is underpinning their foreign policy approach, then it seems unlikely that the current Timorese government would support a permanent boundary that does not give it most, if not all, of Greater Sunrise, because gaining control of all of Greater Sunrise would allow Timor-Leste to build its pipeline and justify its Tasi Mane investment.

Prof. Schofield: My comments really will relate to maritime delimitation, which is my area of interest. I understand the objective of this discussion and the amendments to CMATS are, in a way, to prevent the treaty rising from the grave and continuing beyond the agreement of the parties to terminate it. I actually lament the demise of CMATS, because I believe that it delivered quite a balanced sharing of resources—a fifty-fifty split of revenues—derived from the CMATS so-called unit area; the complex of fields that are composed of Greater Sunrise. One thing that is clear is that CMATS included a moratorium on maritime delimitation and that will be extinguished by means of cancellation of that treaty. That paves the way for maritime delimitation negotiations to,

in a sense, be restarted afresh. But it is also worth noting—and I think this has already come up—that Indonesia and Timor-Leste are already in negotiations on maritime delimitation. The progress of those is unclear, but the Timorese I have spoken to are very positive about that negotiation. I suspect it will be actually quite problematic for Indonesia and Timor-Leste to reach an agreement, particularly in relation to the Oecussi enclave within West Timor, which is locked within Indonesia's archipelagic baselines, so there is a clear cut off, if you like, of Indonesian territory in maritime jurisdiction from access to the high seas, and that will be a particularly problematic point.

We also lack final confirmation of the termini of the land boundaries between Timor-Leste and Indonesia on the coast, which of course would be the starting point from which a maritime delimitation would proceed. With the concept that the land dominates the sea, one needs land territory and then that gives rights over maritime space, one needs to agree the terminal point where the land boundary actually hits the coast in order to start that process, which will be again part of the quite complex negotiations I anticipate between Indonesia and Timor-Leste.

In reference to the continental shelf boundaries that were mentioned in the previous session, the 1971 and 1972 seabed boundaries remain in force and were based on the natural prolongation concept. That was an ideal piece of timing on Australia's part because those negotiations were just subsequent to the influential 1969 North Sea cases in which the International Court of Justice pronounced that natural prolongation should be a factor in the determination of the course of a maritime boundary. The law of ocean boundary making has since evolved considerably. The drafting of the United Nations Convention on the Law of the Sea took nine years to complete and was opened for signature in 1982. In a subsequent case in 1985 between Libya and Malta the International Court of Justice, on the basis of UNCLOS being introduced, dismissed geophysical factors in delimitation—that is, the geomorphology or the shape of the continental shelf and also the geology factor, so within 200 miles—that is, within 400 miles of opposite states—geophysical factors, natural prolongation principles, would no longer apply. The ICJ's wording was that they would be 'irrelevant to maritime delimitation'. So we have had a considerable shift away from natural prolongation which may cause issues for Australia in any delimitation negotiation with Timor-Leste if Australia's position still rests on natural prolongation.

We have now something of a road map from International Court of Justice cases and other international tribunals. From 2009 in the Black Sea case between Ukraine and Romania the International Court of Justice introduced what has been termed the three-stage process, which develops from previous cases where there were two stages. The three stages really are: first, to define a provisional delimitation line based on equidistance unless it is unfeasible to do so; secondly, to look at factors that might lead you to shift that line one way or the other, such as the concavity of the coastline so that a country's jurisdiction is, if you like, squeezed off by neighbouring states; and, thirdly, to undertake what is termed a disproportionality test.

That testing phase I think is rather illusory. It is designed as a check on the possibly adjusted maritime boundary. The idea is to look at the ratio of relevant coast between two states and then look at the ratio of maritime space each gets. If there is a big disproportion between those two ratios then one should reflect, go back and potentially change the line. In every single case that an international court or tribunal has applied the disproportionality test it has found that yes, its boundary was perfectly okay and it did not need to be changed because of the ratio. So, in actual fact, that third stage has not been influential. But, certainly, even in unpromising geographical circumstances, courts have applied the three-stage process, and often in negotiations the first thing that one would do is draw a strict equidistance line between the two coasts in question and see if that produces an equitable result, which is the aim of maritime delimitation in accordance with the Law of the Sea Convention.

Now, in terms of the geographical factors that we have in the Timor Sea, in actual fact, the opposite equidistance line is reflected in the southern boundary of the Joint Petroleum Development Area, which you can see on the map that has been provided, I hope, describes a broad arrow shape as a consequence of the deep embayment that is the Bonaparte Gulf on Australia's coastline. So, in actual fact, Australia is somewhat disadvantaged if one applies a strict equidistance line in the opposite delimitation scenario, and that is a basis perhaps for Australia to argue for some compensation. Whether that arrowhead is really enough of a departure from equidistance to justify the shift is open to some question.

What is probably the most important part of the delimitation is really the lateral lines between Indonesia and Timor-Leste and then Australia and Timor-Leste. Here we have a circumstance where Australia cannot really negotiate those seaward lateral lines without Indonesia and Timor-Leste having already delimited their lateral lines from the terminus of the land boundary between West Timor and Timor-Leste and between the island of Timor and the Leti island group. The basis of Timor-Leste's position is that it is in a cut-off scenario. It is being squeezed. The coastal facade of Timor-Leste facing Australia is about 140 nautical miles in length, whereas the

Timor Gap between the 1971 and '72 treaties is only about 120 nautical miles. So there is a squeezing effect as a result of the Tanjong We Toh promontory on West Timor. To the east, the Indonesian islands to the east of Timor-Leste also have an impact on an equidistance line. That narrows the Timor Gap in the central part of the Timor Sea, and the Timor-Leste argument is that there should be some relief from this cut-off effect of the promontory in West Timor and the Indonesian islands to the east. I think that is probably a problematic argument that the Indonesians will certainly resist. All of these islands are enclosed within Indonesia's archipelagic baseline system, to which, to my knowledge, Timor-Leste has not protested, particularly on the southern side of the Timor Sea.

In terms of attempting to argue reduced effect for the Indonesian islands to the east of Timor-Leste, these are not small features. They are inhabited features. In particular, Leti island itself is around 90 kilometres squared and it is populated, with at least nine villages located on it.

CHAIR: Where is Leti island in relation to the JPDA?

Prof. Schofield: It is a group of islands directly to the north-east of the tip of Timor-Leste. The relevance of the South China Sea arbitration award comes into play here. Strictly speaking, of course, Australia and Timor-Leste are not bound by that ruling. Nonetheless, it was a unanimous ruling of that arbitration tribunal, which gives it legal weight, and it provides a clearer interpretation of the regime of islands contained in article 121 of the Law of the Sea Convention. It really articulates a way in which islands can be classified as mere rocks entitled to just a 12-mile territorial sea versus an island that can project the full suite of maritime claims, including the 200-mile exclusive economic zone, which would be the zone which would be delimited in any negotiations between Australia and Timor-Leste. While I would suggest that a negotiation would start for the opposite delimitation with an equidistance line, the lateral delimitation negotiations are likely to be significantly more complex as a consequence of the involvement of three states rather than most bilateral negotiations.

Finally, I would comment on the question of industry participation and the concerns of Woodside and partners. Here, I would say that the oil industry favours fiscal and legal certainty and stability. So the dissolution of the CMATS treaty gives the appearance of instability. So there may be some impacts on the decision by the oil companies involved on whether to go ahead with the billions of dollars that are required to commercialise the Greater Sunrise.

CHAIR: I have a quick question regarding where East Timor is going to. The Joint Petroleum Development Area gives East Timor 90 per cent of revenue. But, as we know, the single Bayu-Undan site is coming to an end. The Department of Industry, Innovation and Science believe that in the GS unit area there is something like 5.1 trillion cubic feet of LNG and 226 million barrels of condensate—which, I gather, is where you drive your number from, Dr Strating.

Dr Strating: That number is a very well-cited figure in the commentary. I can take the question on notice as to who developed the \$40 billion—

CHAIR: That would be great. Sometimes, numbers become well used and no-one knows where they came from.

Dr Strating: I will go back over that.

CHAIR: That would be good. So what the department tells me: there is 5.1 trillion cubic feet of LNG and 226 million barrels of condensate in the Greater Sunrise area, which right now is shared 50-50 under CMATS. In article 9 of the Timor Sea Treaty, Timor-Leste and Australia agreed that for any deposit that extends beyond the boundary the JPDA would be developed as a single entity for management. So Woodside announced a number of years ago a floating platform. This is my question: would it be treated as a single area under the Timor Sea Treaty, but would Australia get 50 per cent of the revenue from the Greater Sunrise bit and only 10 per cent from the JPDA? Or how would article 9 of the Timor Sea Treaty outplay itself on the Woodside development in the Greater Sunrise?

Dr Strating: I am not an international lawyer. I am not quite sure that I can provide an answer for you on that question. But maybe Professor Schofield would—

Prof. Schofield: Thank you, Rebecca. My thoughts on that would be: if CMATS is dissolved, then we revert to the situation that we had prior to the CMATS negotiation, where 80 per cent of the Greater Sunrise unit area lies on the Australian side of the line. That means of the 20 per cent, Timor-Leste gains 90 per cent of the 20 per cent. Therefore, the Timorese share is 18 per cent of the Greater Sunrise complex in total.

CHAIR: That is the way I read. Ipso facto, a cynic—and I am not a cynic, luckily—would suggest that perhaps East Timor is withdrawing from CMATS because the Bayu-Undan is coming to an end. Under current arrangements, they would get 90 per cent of 18 per cent. Whereas, if they shoot CMATS and go hard themselves,

the right to mine for both sides exists, and they have an opportunity to get 100 per cent of something rather than 90 per cent of 18 per cent.

Prof. Schofield: I think I follow you percentages—yes.

CHAIR: Is that a cogent line for cynicism? If that is the case, it is just a straight commercial outcome, and there is nothing wrong with a commercial outcome. But, on the surface of it, that looks plausible.

Prof. Schofield: It does, although we must remember that the CMATS treaty has been in place since 2006 and no development has gone ahead. It has not been deemed by the Woodside consortium to be commercially viable, particularly at the current price of oil and gas.

CHAIR: Let's say that is true, what then is driving East Timor's move away from CMATS?

Prof. Schofield: I still think it is seeking a greater share in Greater Sunrise should that be developed. That is a real—

CHAIR: So back to my original contention—

Prof. Schofield: The really intriguing thing about the potential negotiation with Australia is shifting the critical line, which is that eastern lateral line, by giving it a partial effect to Indonesian based buoyance.

Mr DANBY: Can you develop that bit more.

Prof. Schofield: It follows the thinking that the land dominates the sea, so it makes more sense to limit the territorial sea boundary close in shore than the exclusive economic zone and continental shelf. That negotiation for the first part of the eastern lateral line must be between Timor-Leste and Indonesia. Only at that point would, in theory, Australia and Timor-Leste continue that line that has been initiated by Indonesia and Timor-Leste. There is nothing perhaps to stop Australia and Timor-Leste simply negotiating their own line but, if there is any shift away from equidistance, that would amputate the end of the 1971 continental shelf boundary with Indonesia and create potentially a step-like effect which would be unique, I would say.

CHAIR: My understanding from the department is that there is no prohibition—that may be the wrong word—on Australian or Timor-Leste companies searching for and seeking a resource in the wider area. Therefore, there is no downside for companies such as Woodside. Do you agree with that?

Prof. Schofield: Partially I do. In theory, there is nothing to stop Greater Sunrise from being developed on the exclusively Australian side of the line, yet the oil companies have chosen not to because of the perceived instability of the agreements in the Timor Sea. We know now that with CMATS being dissolved there is strong pressure for a permanent maritime boundary. I am not an oil company individual, but I would suspect that the oil companies would wait until they have stability and a permanent maritime boundary.

Dr Strating: I agree. I think that the oil corporations so far have been interested in seeing a stable agreement between Australia and Timor-Leste. I think it was in 2015 that Woodside essentially shelved the project because of concerns around the bilateral relationship and how the disagreements were going to resolve themselves. So, theoretically, as Professor Schofield said, that might be possible but it seems doubtful. On the Timor-Leste side too, it seems doubtful that Timor-Leste would be able to convince investors to go ahead with any kind of development without an agreement with Australia.

Prof. Schofield: I think it is safe to say that international oil and gas companies are very risk averse. So I would think it is unlikely that development will take place while permanent maritime boundary negotiations are ongoing.

CHAIR: Professor Schofield, you wrote in *The Guardian* on 9 January 2017—and if I am paraphrasing you incorrectly I am sure you will pull me up—that with the uncertainty over Greater Sunrise and the direction of the pipeline from the field the time for profitable exploration of reserves has already passed.

Prof. Schofield: At current oil and gas prices, I would suspect that it is not entirely likely that a decision to commercialise will take place. We have low oil and gas prices. I suspect the asset, as it were, will be put on the shelf until such time as gas prices in particular rise sufficiently to make it viable. The numbers are large but also the status of exploration efforts by the oil and gas industry in the past year or two, as a consequence of the plunge in the price of oil, has had a major downturn impact.

The other issue around the pipeline is that while it may be technically feasible to construct a pipeline that goes to Timor-Leste rather than to Australia, one has to negotiate the Timor Trough in order to do so. A pipeline heading to Timor-Leste is likely to be significantly more expensive than one running along a relatively shallow continental shelf over to Darwin, for example, where there is already infrastructure in place.

Mr DANBY: Can you technically do it down a 3½ kilometre trough and up?

Prof. Schofield: I am not a pipeline engineer either, I must admit, but I would suspect that it may be technically possible—but it would be extremely expensive to achieve.

CHAIR: So is East Timor kidding itself about the actual viability of a pipeline gas and condensate program or project from anywhere in the JPDA let alone the Greater Sunrise area through to East Timor proper?

Prof. Schofield: Rebecca, would you like to add a word?

Dr Strating: I think there are a series of motivations underpinning Timor-Leste's approach here. The oil industrialisation idea is a central plank in their economic ambitions. It is part of their strategic development plan that came out in 2011 and there is a lot of political capital that has been invested, in this idea, in the domestic political circle. You also have to take into consideration who is driving this kind of idea. This is a pet project of Xanana Gusmao, who retains considerable influence in Timor-Leste. Even though he has stood down as Prime Minister he is still a member of the cabinet. This is a project he has invested a lot of political will into. And in a budget sense you can see that this has been prioritised.

Whether or not we can answer whether they are kidding themselves, maybe they are and maybe they are not. Certainly, the information that I have seen, the independent analysis provided, suggests that it is a very risky prospect, that there has not been a proper cost-benefit analysis conducted or provided by the Timorese government and that this has partly contributed to Woodside shelving the project in 2015 because there is a reluctance on behalf of Timorese representatives to let go of the pipeline idea. Maybe it is a white elephant, a fantasy project, this oil industrialisation plant, but that is beside the point. This is the driving motivation, according to my research, and so it will have to be negotiated.

Mr DANBY: You mentioned this Tasi Mane projected plant, which I think is near Suai on the coast. It is a phantom project. It is a Potemkin village. What is it? Does it exist? Are there people working there? Has there been a plant constructed?

Dr Strating: They are really important questions. To date, budget execution has been slow on this project. It is three industrial clusters on the south coast. Suai is one of them and there are two others. There are also plans to build an airport and a 155-kilometre highway connecting these areas on the south coast.

Mr DANBY: Linking them to Dili?

Dr Strating: No, across the three sites on the south coast. Betano is another one. Baucau is another site. This is a highway. And we are talking about an area that is not well-inhabited. There are not a lot of people living in this particular area.

In 2016 the state budget included \$193 million for work on Tasi Mane. But budgets have projected from 2015 to 2020 that over \$1.4 billion will be spent on Tasi Mane. To put this into perspective, the whole budget for 2016 was under \$2 billion. The actual tendering process for some of these projects has been a bit fraught. South Korea's Hyundai pulled out of one contract, I believe. As I said, the budget execution is quite slow. This has not been a huge development that has started up quite quickly, but you can tell from these figures and from the budget figures that this is a significant area of priority. In comparison, the 2016 budget, on the areas of health, education and agriculture, was about \$200 million. So, this remains a central plank in the development plans.

Mr DANBY: I have been to Timor twice, and each time—two years ago and I think four years ago—there was support from the UN and other institutions for the responsible way in which the Timorese government had been keeping the money that it had put in escrow from their revenues and were spending that only in a responsible way. Has that changed with this project? Or are you suggesting that there is a lot of pressure in this area, when you use the word 'fraught' to go beyond the kinds of guidelines they adopted before?

Dr Strating: Last year, and I can provide the correct figures after this session, Timor Leste spent around three times its estimated sustainable income, so, three times above the amount of money that, as part of the 2005 legislation around the petroleum, it is supposed to spend—it ceiling that it can spend year to year out of the petroleum wealth fund—and this has been a sort of successive experience.

Mr DANBY: For how long?

Dr Strating: I will have to check the budget figures, but I can get that back to you.

Mr DANBY: Was there a sudden change in the way Timor Leste was spending its petroleum money? And was it related to this project?

Dr Strating: No, the criticisms around spending above the estimated sustainable income has been around for quite some time; the 2012 budget was one of the largest budgets. And there has been criticism among independent monitoring organisations in Timor Leste around the spending. There have been reports by the Asian Development Bank. One was released in 2015, I think, called *Growing the non-oil economy*, which also criticised spending.

There have been IMF reports that have criticised the spending above the estimated sustainable income. I think there is a distinction that needs to be drawn between the design of the petroleum wealth fund as being approved by the international community and how that wealth fund is actually being used on the ground. So, there have been some off-budget decisions as well that have not necessarily conformed with what the vision of the petroleum wealth fund would be.

Prof. Schofield: I concur with Dr Strating's comments. Where I was going with the issue of potentially missing the boat, in the *Guardian* quotation, really was the fact that Bayu-Undan is what is driving the sovereign wealth fund currently, and it is dwindling.

To my mind, what Timor-Leste really needed to do was to facilitate greater Sunrise development in order to take over from Bayu-Undan as that diminishes. That window has closed, partially because of the price of gas but also because it takes of the order of five years from first oil, as it were, until you gain production—you start producing. And then it is a relatively steep curve; as a traditional outline, it is a skewed bell curve of production from an oil field. You would need a further five years, perhaps, until you reached peak production. So you have a decade-long pathway, even if you resolved Sunrise and Woodside proceeds immediately. By that stage, Bayu-Undan will be gone.

CHAIR: You seem to indicate that Timor-Leste's overt desire, driven by personalities, to have the pipeline go to Timor-Leste means they may well have been the architect of their own demise, which is why in the last decade no-one has developed anything.

Mr DANBY: I think you are over-interpreting the remarks.

CHAIR: Well, I put it to her: she did not say I was over-interpreting.

Dr Strating: I think that, paradoxically, Timor-Leste's ambitions to secure its sovereignty, and to secure its economic sovereignty as well, through economic development are undermining its capacity to develop. We see this in a number of fragile resource-wealthy post-conflict states: the resource curse. There are a number of indications that suggest Timor-Leste is resource cursed. Its institutions for good governance and its oversight capacities—even its democratic credentials—have been eroding since 2014. They are declining from a number of decisions.

To go back to that idea of being the architect of their own demise, it is very possible that they could be. But we do not know what is going to happen in the future. There are elections this year; a change in government or a change in personalities might produce a government that is willing to think a little more laterally or flexibly around the interests in the Timor Sea. But since 2012 it seems to me that this pursuit of independence may actually create a failed state in Timor-Leste.

Senator KITCHING: Thank you very much for coming today. I noticed in your profile, Professor Schofield, that it says you have been appointed as a Peacebuilding Adviser on behalf of the United Nations and the World Bank. Could you give an outline of what that is?

Prof. Schofield: It sounds a grand title, doesn't it! That is in relation to the Bansamoro conflict in the southern Philippines, where I was asked to provide advice on how the autonomous entity that would be created from that peace process, which has now disintegrated, would actually have maritime jurisdiction within the Philippines. So—

Senator KITCHING: So nothing to do with—

Prof. Schofield: Nothing to do with this particular issue, but it did produce an agreement between the Philippines government and the Moro Islamic Liberation Front in those negotiations.

Senator KITCHING: That is very interesting—that is another topic for another day!

Prof. Schofield: That is far away!

Senator KITCHING: I think it was you, Dr Strating, who said that its democratic credentials have been eroded. Is there a lot of corruption is what I really want to ask you.

Dr Strating: I might take that on notice.

Senator KITCHING: The reason I ask that is if there was \$16.6 billion approximately in the wealth fund at last year's date—is that right? Yes—you were saying that really that could just be dissipated by the time there might be exploration in the Greater Sunrise area.

Dr Strating: That is certainly what the figures are suggesting.

Senator KITCHING: If there is a failed state, what does that do to their relations or their ability to deal with Indonesia?

Dr Strating: I will start with the concept of the failed state. The issue here is that the oil from the Joint Petroleum Development Area is expected—though there are disagreements on this—to run out by 2020 to 2022. There is not a lot of time, and 90 per cent or so of that oil and gas is gone. The Petroleum Wealth Fund is expected, on current figures, to last until maybe 2025 or 2028 at the latest. So we are talking a decade of both the oil from the Joint Petroleum Development Area and the Petroleum Wealth Fund. At the moment, depending on what figures you use, the oil from the Joint Petroleum Development Area furnishes 90 per cent to 95 per cent of the state budget. So, if Timor-Leste has no Petroleum Wealth Fund and no oil revenues coming in from the Joint Petroleum Development Area, it has no way of enacting a state budget. Around 80 per cent of the GDP—and that is probably a generous figure—is derived from oil revenue. So it would be a monumental hit to Timor's economy. Its capacity to provide health, education, and infrastructure and to support the livelihoods of its citizens would be significantly eroded. So, when I talk about a failed state, I do not mean to use hyperbole; I am very serious that, if there is no agreement on Greater Sunrise, it will create an aid dependent state in Timor-Leste.

If your question goes to the heart of whether or not Indonesia will take over Timor again if it is vulnerable and fragile, I doubt it. But it does get to the heart of Australia's interests in ensuring that Timor does not fail. Australia has its national interests in maritime boundaries and in making sure that Indonesia does not get too involved in the negotiations on Greater Sunrise in protecting its 1971-72 maritime boundaries. But, at the same time, Australia has an interest in ensuring that Timor does not fail. But I would suspect that, unless the international political environment changes substantially, Indonesia is not eyeing off Timor to reoccupy.

Prof. Schofield: I agree with Dr Strating, but the issue here is in the negotiation between Timor-Leste and Indonesia. The Greater Sunrise complex of fields is the salvation for Timor-Leste in terms of the sovereign wealth fund and therefore funding the GDP and the government's budget. But, in order to achieve stability and certainty in the Timor Sea, which is what the oil companies desire, we are facing a complex and potentially trilateral negotiation involving all of the three parties—Australia, Timor-Leste and Indonesia. And Indonesia holds the cards in terms of a bilateral negotiation between Indonesia and Timor-Leste.

I have been involved in one negotiation involving Indonesia, and they were very impressive. They have negotiated over 20 maritime treaties and they are well practiced and very strong in their negotiating stance. Their forward positions on their official maps are certainly liberal in their interpretation of where their lines should be. I would anticipate that the negotiation with Timor-Leste and Indonesia will not be simple, particularly because of the Oecusse enclave but also the positioning of the archipelagic baselines near two Timorese islands north of the main island of Timor. So there are a couple of real obstacles to Timor-Leste and Indonesia reaching an agreement on the maritime boundaries overall but also on the lateral boundaries. Indonesia has been particularly strong in wishing to see its archipelagic baselines recognised by other states in negotiations with, for example, Singapore and also the Philippines.

Senator KITCHING: So there is a prolonged period of uncertainty for exploration companies?

Prof. Schofield: That is right. We have a very strong narrative around Timor-Leste wanting to set its borders as part of its statehood. Similarly, for Indonesia, the archipelagic concept is crucial to binding Indonesia's 15,000 islands together as a whole, and therefore Indonesia is very likely to strongly reject any diminishment of the role of its archipelagic baselines, including those that enclose the islands to the north-east of Timor-Leste, which are the crucial ones for the eastern lateral.

CHAIR: Transparency International has East Timor ranked 101 out of 176, with a score of 35 out of 100 and the average in the world being 43, just to answer your question.

Prof. Schofield: Could I add one more thing. I know we are on time now. There was discussion earlier on the outcomes of conciliation and whether they are binding. I can only think of one example of a maritime jurisdictional conciliation process, and that was between Norway with Jan Mayen island and Iceland. The conciliation commission produced a report and that was followed exactly by the two parties. They drew a boundary and included a maritime joint development zone, which was unevenly distributed across the line. So the conciliation commission has the potential to come up with a solution rather similar to what we are in the midst of dismissing.

CHAIR: I note the Philippines and China have not reached a similar outcome.

Prof. Schofield: I am afraid not.

CHAIR: Dr Strating, the CMATS will expire. What does East Timor then do?

Dr Strating: It continues to be involved in the compulsory conciliation proceedings with Australia that are confidential. A report should be produced, I think, by September or October this year, and negotiations will

continue. If that is your question and you want to know what East Timor is going to do in terms of the negotiations—

CHAIR: I am not concerned about the conciliation commission. Let us work on the premise that, in your experience, you cannot think of a player that is going to put a pipeline across a 3½-kilometre trench.

Dr Strating: I am not an oil industry consultant, but in everything that I have read on this topic, of all of the things that I have read, the tendency has been that, yes, it might be technically, theoretically viable but that in fact it is a pipedream.

CHAIR: But shareholders would go nuts.

Prof. Schofield: This is why Woodside proposed a floating terminal as a compromise scenario.

CHAIR: Of course. So, having said that, Woodside have made it very clear that they are not going forward, for a raft of reasons. The budget position of East Timor is declining. The JPDA is coming to an end. There is uncertainty and perhaps a limit on what exploration will occur. How does this end for East Timor?

Dr Strating: As I have been arguing, particularly now that the CMATS will be dissolved, the only way that this is going to work out is if Australia and East Timor find some way through, and that requires compromise on both sides.

CHAIR: We have seen that with fifty-fifty.

Dr Strating: Yes.

CHAIR: So you are looking for some way through?

Dr Strating: Yes.

CHAIR: There it is.

Dr Strating: Look, I agree with you.

CHAIR: How is that for an idea? We just go halves.

Dr Strating: I agree with Professor Schofield that the agreement was a good agreement. At the time it was sold by the Timorese government as being a fair deal. It was promoted as being mutually beneficial, but because of this pipeline, because of the oil industrialisation ambitions and because of some various rent-seeking activities—there are those sorts of interests at work in Timor-Leste—this deal, which was seen as being fair and reasonable and cut fifty-fifty, is longer perceived as being fair and reasonable.

CHAIR: Australia went from the 1972 line to 90 per cent on the JPDA and 50 per cent on the much smaller Greater Sunrise, but suddenly that is not good enough.

Dr Strating: The 90 per cent was a quid pro quo for getting the Darwin processing plant as well as Australia's attempts to preserve its interests in Greater Sunrise. It was prepared to do that deal. The deal was designed not to prejudice Australia's maritime boundary claims, but that 90 per cent is reflective of Australia's interests in Greater Sunrise, which is what makes this such a difficult issue with both sides being unwilling to compromise a great deal on that. While, yes, it seems that fifty-fifty is a good deal, that is not how the Timorese see it.

Prof. Schofield: I agree with that, and I think Timor-Leste—to answer your question—is taking a huge risk compared to the certainty of a fifty-fifty split of the CMATS unit area. We now, potentially, have a long negotiation ahead of us until we can reach an agreement. To achieve anything better than that fifty-fifty split, to put the whole of Greater Sunrise on the Timorese side of the line, is drawing a long bow. It is very difficult to think of the factors in maritime delimitation that would lead to that level of shift in that lateral boundary.

CHAIR: Why does Australia have to do anything?

Prof. Schofield: At base, it does not. Australia benefits from a whole series of fields in the North West Shelf. Australia could leave things be. The Greater Sunrise, whilst it would be nice to have the government revenue from that development, is not critical to the Australian economy.

CHAIR: But, if we did nothing, Woodside, as an example, or any resource company, could still go and develop it—noting the uncertainty—could move a pipeline into Australia or floating position and could pay revenue to the Australian government, if the Australian government enforces the 1972 boundary?

Dr Strating: I imagine that would be taken by the public as being a particularly bad-faith act on behalf of Australia. As I said before, Australia's interests are in seeing a prosperous Timor-Leste, and that is not going to happen without some sort of agreement on Greater Sunrise.

Prof. Schofield: It is extremely doubtful that the oil companies, particularly Woodside, would go ahead whilst the conciliation process is ongoing. In terms of the conciliation outcome, yes, it is non-binding, but the reputational cost, internationally, to Australia for rejecting it would be high.

CHAIR: Tremendous. Most enlightening. 'The architect of their own demise' is my favourite statement for the day. Thank you, Dr Strating.

Dr Strating: It is depressing, but if there is not some sort of compromise then that—

CHAIR: Like fifty-fifty?

Dr Strating: This is precisely why Australia has maintained, for a long period of time, its belief that the CMATS should be maintained, but—

CHAIR: Quite rightly.

Prof. Schofield: I would say that one of the key drivers for Timor-Leste's view of the CMATS agreement no longer being fair is that the entirety of the CMATS unit area is on the Timor-Leste side of the median line.

Dr Strating: Yes.

CHAIR: Yes, and on the Australian side of the 1972 Indonesian line. On that note, thank you for your time today.

Prof. Schofield: Thank you.

Dr Strating: Thank you.

CHAIR: If you have been asked to provide any additional information, which you have been, would you please forward it to my erstwhile secretariat within seven working days. You will be sent a copy of the transcript of your evidence and will have an opportunity to request corrections to transcription errors. Can I say: it is not normally a pleasant experience to have academic experts, but today it has been marvellous. Thank you all for your time.

Committee adjourned at 15:55