



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

JOINT STANDING COMMITTEE ON TREATIES

Comprehensive and progressive agreement for trans-Pacific partnership, Peru-Australia free trade agreement, European Union framework agreement; Timor treaty on maritime boundaries

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JOINT STANDING COMMITTEE ON TREATIES

Monday, 7 May 2018

Members in attendance: Senators Hanson-Young, Keneally, Ian Macdonald and Ms Marino, Mr Robert, Ms Templeman, Mr Wallace, Mr Josh Wilson.

Terms of Reference for the Inquiry:

To inquire into and report on:

- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11) (Santiago, 8 March 2018).
- Free Trade Agreement between Australia and the Republic of Peru (Peru FTA) (Canberra, 12 February 2018).
- Framework Agreement between Australia, of the one part, and the European Union and its Member States, of the other part (EU Framework Agreement) (Manila, 7 August 2017).
- Treaty between Australia and the Democratic Republic of Timor-Leste establishing their Maritime Boundaries in the Timor Sea (Timor Treaty) (New York, 6 March 2018).

BRUER, Mr Jeremy, Assistant Secretary, South-East Asia Maritime Branch, South-East Asia Division, Department of Foreign Affairs and Trade

LARSEN, Mr James, Chief Legal Officer, Legal Division, Department of Foreign Affairs and Trade

SCHOFIELD, Ms Lisa, Acting Head of Resources Division, Department of Industry, Innovation and Science

SHEEHAN, Ms Anne, Acting First Assistant Secretary, Office of International Law, Attorney-General's Department

WHYATT, Mr Justin, Assistant Secretary, Transnational and Sea Law Branch, Legal Division, Department of Foreign Affairs and Trade

[12:21]

Treaty between Australia and the Democratic Republic of Timor-Leste establishing their Maritime Boundaries in the Timor Sea

CHAIR: Welcome. Although the committee does not require you to give evidence under oath, I should advise you that 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 will be regarded as a contempt. The evidence given today will be recorded by Hansard and attracts privilege. Mr Larsen, I now invite you to make a brief opening statement before we proceed to a wider committee discussion.

Mr Larsen: We welcome this opportunity to introduce the maritime boundary treaty with Timor-Leste. The treaty was signed by the Minister for Foreign Affairs at the United Nations in New York on 6 March this year. As the national interest analysis summarises, the treaty will (1) establish permanent maritime boundaries between Australia and Timor-Leste, (2) establish the Greater Sunrise Special Regime for the joint development, exploitation and management of the Greater Sunrise petroleum deposits and (3) provide for transitional arrangements that will ensure stability and certainty for affected companies with investments in the Timor Sea.

All the elements of the treaty are inextricably linked and collectively comprise, in Australia's view, a fair and balanced outcome. This means that the treaty forms part of a package, and its individual elements cannot be severed one from the other. The treaty is in Australia's national interest, in the sense that it resolves differences between Australia and Timor-Leste on permanent maritime boundaries, providing a foundation to revitalise our bilateral relations. The treaty will increase stability and certainty for both countries, business and investors. Both Australia and Timor-Leste will receive benefits from any exploitation of Greater Sunrise and other fields in the Timor Sea. The treaty provides the best pathway for the development of the Greater Sunrise fields. Permanent boundaries and a pathway to develop the Greater Sunrise fields will support Timor-Leste's economic development by providing additional revenue streams from resource development in the Timor Sea. A stable and prosperous Timor-Leste is in Australia's national interest.

Finally, the treaty upholds Australia's commitment to international law and reinforces peaceful dispute resolution norms, particularly those contained in the United Nations Convention on the Law of the Sea. Importantly also, the permanent boundaries to be established under this treaty complement Australia's existing maritime boundaries with Indonesia.

In considering the key obligations in the treaty, there are several which we would like to bring to the committee's attention. First, the settlement in this treaty is based on a mutual accommodation between the parties without prejudice to their respective legal positions. This is made clear in the preamble of the treaty. Two, articles 2 to 5 of the treaty establish permanent maritime boundaries. The western and eastern lateral boundaries can be adjusted following agreement between Timor-Leste and Indonesia on their maritime boundaries but only once resources in those areas have been commercially depleted. Three, the treaty establishes the Greater Sunrise Special Regime and a special regime area. Four, within the special regime area, Australia and Timor-Leste will jointly exercise their rights over the continental shelf as coastal states consistent with the terms of the United Nations Convention on the Law of the Sea. Five, the purpose of the special regime is joint development, exploitation and management for the benefit of both parties. Six, the treaty provides that upstream revenue from the exploitation of the Greater Sunrise resource will be shared between the parties either on a 30-70 or 20-80 basis in Timor-Leste's favour, depending on whether the resource is to be developed in Timor-Leste or Australia. Once Timor-Leste and Australia have agreed a development concept, annex B of the treaty provides a framework for the approval of a development plan and for the day-to-day management and regulation of activities conducted under that development plan. We anticipate that further discussions on the development concept will continue after the Timorese elections which are to be held later this week. Seven, transitional arrangements in annex D of

the treaty aim to ensure affected companies in the Timor Sea can continue their existing operations as smoothly as possible, including those that will transfer from Australia to Timorese jurisdiction. They do this by requiring the parties to provide the companies with conditions equivalent to the current arrangements consistent with obligations in the Timor Sea treaty and the international unitisation agreement.

The treaty provides significant benefits for both Australia and Timor-Leste. It resolves a longstanding dispute between our two countries and, for the first time, establishes permanent maritime boundaries with Timor-Leste. It demonstrates Australia's commitment to international law and peaceful dispute resolution. It delivers permanent maritime boundaries which provide certainty and stability for business and investors in the Timor Sea. The new treaty provides a greater chance of developing Greater Sunrise and is a result for Australia and Timor-Leste to gain revenue from that development. Finally, any development of Greater Sunrise would see a return to Australia of either 20 or 30 per cent of the revenue flowing from the Greater Sunrise area, depending on which development concept is selected.

The treaty contemplates that Timor-Leste will receive future upstream revenue from fields that lie within its exclusive jurisdiction, including the Buffalo, Kitan and Bayu-Undan gas fields. The cost of participating in the governance of the Greater Sunrise special regime will be absorbed by the Department of Industry, Innovation and Science. Those costs largely mirror existing arrangements for the joint petroleum development area, and the day-to-day regulator of the Greater Sunrise Special Regime will be financed from fees collected under the applicable mining code and Greater Sunrise production-sharing contract.

On implementation, the government aims to fulfil its requirements to bring the treaty into force as soon as possible. The Department of Industry, Innovation and Science is the lead agency coordinating legislative changes to implement the treaty obligations. Subject to parliamentary processes, the department of industry is coordinating a legislative package to be ready for introduction to parliament later this year. We are also working with Timor-Leste to ensure necessary transitional arrangements are in place before the treaty enters into force. This will involve continued close consultation with the affected companies in the Timor Sea.

With that, I'll conclude my opening remarks. We have representatives here, evidently, from the bilateral area of the Department of Foreign Affairs and Trade, department of industry experts and the Attorney-General's Department. We'll be pleased to answer any questions.

CHAIR: Thank you. When this agreement was signed, monitoring the response from the Timor-Leste president and parliamentarians, their response seemed to indicate a degree of jubilation and words to that extent were used. Is that a fair summation of how Timor-Leste has perceived this outcome—that they believe it's not only fair but very favourable to them?

Mr Larsen: I think it was a treaty negotiated within the context of the conciliation process. That conciliation process was undertaken pursuant to the United Nations Convention on the Law of the Sea. We felt that the result evidenced in the treaty is a fair result for both sides. I think the Timorese side were very satisfied with the outcome of the negotiations. In particular, they were very satisfied to have resolved the maritime boundary. I believe they found elements of the package favourable, in the sense that they were pleased with the outcome. As you would know, Chair, there were other elements in the outcome, including in relation to the development concept, which they were less satisfied with. Overall, the treaty represents a satisfactory package for both sides, and, yes, absolutely, on the Timorese side, I think they were very pleased to finally settle on an agreed boundary.

CHAIR: Does the boundary now run along the 1972 boundary and then the reverse top hat and along? Is that the final boundary?

Mr Larsen: The boundary is defined by the eastern lateral lines going from Timor-Leste southwards—that's the seabed boundary—and then you have a seabed and water column boundary along the southwards line.

Senator KENEALLY: Thank you for your time today. This is a rather unique treaty, isn't it, because it doesn't just involve the two states? It involves the Greater Sunrise joint venture partners: Woodside, ConocoPhillips, Shell and Osaka Gas. Is that correct?

Mr Larsen: I think it's important to remember that the treaty itself is, in one sense, a conventional bilateral treaty, so it's a treaty between Australia and Timor-Leste. Importantly, the treaty was negotiated under the auspices of the conciliation commission. The conciliation commission was established pursuant to the United Nations Convention on the Law of the Sea, and you had a group of international commissioners who acted as the conciliators between the parties with a view to supporting the parties to reach that treaty outcome. Certainly, there are very important and ongoing commercial interests in relation to the area subject to the treaty and, particularly in the latter part of the conciliation proceedings where the discussion was about the development options for the Greater Sunrise resource, the companies were closely involved in the discussions about the development concept.

But, in an important way, those companies were not involved in the negotiations of the treaty itself, although, of course, the companies are affected by the terms of the treaty.

Senator KENEALLY: The outstanding issue seems to be the location of the LNG processing plant. As you alluded to in your opening statement, the split of revenue for Timor will depend on whether there's a pipeline to an Australian LNG processing plant or a pipeline that runs to Timor. Essentially, Timor gets a greater share of the upstream revenue if the pipeline comes to Australia—correct?

Mr Larsen: Correct.

Senator KENEALLY: That's ultimately a commercial decision, isn't it?

Mr Larsen: Correct.

Senator KENEALLY: So those commercial parties will presumably have a great deal of say in making that decision.

Mr Larsen: They will do because, of course, Australia and Timor-Leste have to agree on which development concept is prosecuted. But a development concept can only be prosecuted if the money and resources are there to do that, and that requires the input from the companies. I invite my industry colleague to make some further observations, if appropriate.

Ms Schofield: I don't think there's anything else to add. I'm happy to take some more questions.

Senator KENEALLY: Do we have any sense of when that decision might be made?

Ms Schofield: As Mr Larsen flagged, there were some discussions during the conciliation process itself. The parties agreed earlier in the conciliation process about some criteria for thinking about that development concept. We didn't land that as part of the conciliation commission, which was a shame. But, as Mr Larsen flagged, there will be conversations ongoing with Timor post their election on 12 May.

CHAIR: Senator, just to help you out, we spent four or five months as a committee dealing with CMATS and the end of this and got briefings and so on. My understanding—correct me if I'm wrong, for the benefit of everyone—is that Timor wants the pipeline to come to there. They've put aside an entire area to deal with that, but there is a three-kilometre trench between us and Timor that is actually quite wide. It could be either cost-prohibitive or impossible to put a pipeline across it.

Mr Larsen: I think if you look at the competing options—taking the pipeline down to Australia or taking the pipeline up to Timor-Leste—the crunch is in Timor-Leste you have to build a greenfield LNG plant. The cost of a greenfield LNG plant varies somewhere between \$4 billion and \$8 billion. If you take the pipeline down to Darwin, which is one of the commercial proposals, you don't have to build a new greenfield plant. That's the guts of it. That's where the saving of money is.

Senator KENEALLY: Thank you.

Senator HANSON-YOUNG: I have some questions in relation to the economic value of extractions to date. Do we have any information as to the economic value to date under the prior treaties and prior arrangements before this new arrangement goes forward?

Ms Schofield: I will take that on notice to make sure that I can provide the committee with the exact numbers. To the best of my memory, there's been about \$20 billion from Bayu-Undan. I just can't remember whether that's also inclusive of Kitan. Of that, about \$18 billion has accrued to Timor-Leste, and about \$2 billion to Australia.

Senator HANSON-YOUNG: What about what the Australian government has received from the 10 per cent of government revenue taken from the Bayu-Undan field in particular?

Ms Schofield: As I said, I think the \$20 billion just Bayu-Undan. As I said, I will take that on notice and make sure I get correct advice to the committee.

Senator HANSON-YOUNG: So you think it's possibly about \$2 billion?

Ms Schofield: Correct.

Senator HANSON-YOUNG: Throughout this process, has there been any discussion about Australia repaying East Timor revenue that effectively now, under this arrangement, would not have come to Australia and would have gone to East Timor? There's an argument that we've robbed them.

Mr Larsen: The treaty does deal with that. There is no compensation payable. The treaty deals with matters going forward; it doesn't seek to undo arrangements entered into in the past. If I might make the observation, I think the Australian government, and successive Australian governments, very strongly would not take the view that there was anything wrongful with the previous arrangements. Clearly, however, the new treaty reflects the arrangement entered into by agreement between the two parties pursuant to the conciliation.

Senator HANSON-YOUNG: So there's been no consideration by Australia, even if there's no official compensation—I realise that—within the treaty. As the foreign affairs department you also, of course, look at other areas of support for places like East Timor. Are you telling me that no extra money is being put on the table to in some way deal with the fact that revenue has come to Australia instead of East Timor, not just from the previous gas field but also from the Buffalo field?

Mr Larsen: I think the answer to that is no. Australia, of course, continues to be a generous provider of development assistance to Timor-Leste. Again, the terms of this treaty and the 80-20 or 70-30 split and various other aspects of this treaty reflect what we think is a fair compromise position which gives Timor-Leste certainty in terms of its maritime boundary and provides a mechanism for the development of the additional Greater Sunrise resources.

Senator HANSON-YOUNG: So there's no appetite beyond this for paying any type of compensation?

Mr Larsen: No.

Senator HANSON-YOUNG: Will there be an apology to the East Timorese people for the way this arrangement had to come about, from the Australian government?

Mr Larsen: I think the notion of an apology would completely undermine what's been achieved through the Conciliation Commission. Through the Conciliation Commission we have a mandated international process. Australia has contributed to that process absolutely in good faith. The deal that has been reached I think is a deal that Timor-Leste is very satisfied with. It also meets Australia's requirements. It gives Australia certainty. It provides a pathway for the development of the Greater Sunrise resource. It appropriately deals with the existing resources that are currently being exploited. So, it's a package approach that resolves a longstanding bilateral dispute that had, as you know, gone on for a very long time. All the indications we have from the Timor-Leste side are that they're very satisfied with that outcome, and I believe they are very satisfied, and their public statements indicate that they're satisfied that Australia also came to the table in good faith and engaged.

Senator HANSON-YOUNG: There have been some recommendations put to this committee in relation to the Australian government amending our national security laws to make sure that things like spying and using intelligence services and be utilised only for matters of national security and not for negotiating economic outcomes and arrangements and treaties. Have you had any conversations with other departments within the government in relation to this recommendation?

CHAIR: Hang on—stop: what recommendation, Senator?

Senator HANSON-YOUNG: It's a recommendation put forward—

CHAIR: From whom?

Senator HANSON-YOUNG: It is from the East Timor justice campaign; it's in their submission to this committee.

CHAIR: So, they've put a submission to this committee. And what do the recommendations say?

Senator HANSON-YOUNG: The recommendation is:

That the Australian Government amend national security laws to ensure Australian intelligence services can only be utilised for matters relating to national security and not for the seeking of economic gain.

CHAIR: You can't ask the department for an opinion on a submission to our committee, unless the submission went to the department.

Senator HANSON-YOUNG: I'm asking whether this issue, which has been canvassed in the public—given the Witness K reports, surely the department has to have had some conversation or thought about the use of intelligence surveillance.

CHAIR: Well, let's rephrase the question, and I'll help you out here: Mr Larsen, has the department reviewed that issue that Senator Hanson-Young has raised?

Mr Larsen: The department is aware of the contents of the submission. I'm not aware of us having reviewed that matter.

Senator HANSON-YOUNG: Are you aware as to whether any of the Australian government departments—whether your department or anybody else's—in relation to their return of the passport of the former intelligence officer known as Witness K—

CHAIR: Stop: is that material to this particular treaty, Senator?

Senator HANSON-YOUNG: Yes, it is, because it's in relation to the intelligence issue.

CHAIR: No—

Senator HANSON-YOUNG: Yes, it is.

CHAIR: Can you explain to me how that's material to this particular treaty?

Senator HANSON-YOUNG: Well, I've asked the question of the department. It's in relation to the intelligence reports and the leaking and spying of the negotiations in relation to this treaty. I think it's very relevant as to whether—I'm asking the department whether they have had any conversation or are aware of any advice about returning the passport to Witness K.

CHAIR: Well, first of all, Mr Larsen, is this issue of Witness K relevant to the treaty we're talking about today, in your view?

Mr Larsen: In my opinion no.

CHAIR: That's my view as well. Mr Wallace.

Mr WALLACE: Mr Larsen, 70 per cent of Timor-Leste's GDP arises out of petroleum revenue. In fact, 90 per cent of government revenue—or almost 90 per cent of government revenue—arises out of petroleum revenues. The comment has been that the stability of Timor-Leste is very important to the national security of Australia. What is being done to assist Timor-Leste to further or to look at avenues for revenue other than very heavily weighted to petroleum revenue? Are we doing anything to help them look at other revenue streams?

Mr Larsen: I'll invite my colleague Jeremy Bruer on the bilateral side to talk about that, but of course that's a consideration. That's something we were very mindful of when we looked at this particular treaty and arrangement: the importance not only of the development of the resource but also of the question of diversification.

Mr Bruer: We're Timor-Leste's largest economic partner and its largest bilateral aid donor. We will be giving around \$96 million in ODA this financial year. Among the objectives of that assistance is supporting Timor-Leste in its objective of achieving economic diversification and private sector growth, which we do particularly with our labour mobility scheme, among other things. We would hope that the kinds of policy development that can be achieved as a result of that would help them to move away, somewhat, from their dependence on those revenues.

Mr WALLACE: How in particular do we propose to assist them?

Mr Bruer: We assist with the economic integration into the region through a trilateral economic process, which we're involved in with the governments of Timor-Leste and Indonesia. There's an economic triangle arrangement between the eastern part of Indonesia, the northern part of Australia and Timor-Leste. We work on things like skills acquisition on education to build up the capacity of the workforce and the people of Timor-Leste to contribute more substantially to the economy. We work with Timor-Leste to support capacity development in areas of infrastructure development and those kinds of things, so there are a variety of activities that we're involved in.

Mr WALLACE: More broadly, does this agreement impact in anyway on Australia's relationship with Indonesia or on Timor-Leste's relationship with Indonesia?

Mr Larsen: I can make some remarks on the basis of the legal terms of the treaty. The treaty is quite expressly without prejudice to the interests of any other party, and that includes Indonesia. Elements of the boundary lines of course were drawn, with a key consideration being the interests of Indonesia with respect to both seabed and water column boundaries. Indonesia's interests are preserved by the treaty, and the treaty is without prejudice to them. The treaty expressly contemplates that there will be engagement between Timor-Leste and Indonesia in relation to their own boundaries, and the treaty allows for an adjustment to the boundaries set out in the Australia and Timor-Leste treaty to accommodate the outcome of negotiations between Indonesia and Timor-Leste.

Ms TEMPLEMAN: In March, *The Sydney Morning Herald* reported:

... the director-general of legal affairs and international treaties at Indonesia's Foreign Ministry, Damos Agusman, has said—

... that Jakarta wanted new talks over the Perth Treaty, signed in 1997.

That was obviously never ratified to identify the border between Australia and Indonesia. What concerns do you have about the implications of this agreement for that existing unratified border agreement? What steps has the department taken to consider any possible consequences?

Mr Larsen: I'll invite my colleague Justin Whyatt to speak on the specific terms of the Indonesian treaty in a moment, but I think that throughout the process we have been very mindful of Indonesia's interests and of the existing arrangements between Indonesia and Australia. Indonesia was kept regularly informed of our

negotiations with Timor-Leste, and Indonesia was briefed in advance of the treaty being released in the public domain. My overriding remark is that Indonesia has been very much brought on board through this process. Justin will have some observations on the existing legal arrangements with Indonesia.

Mr Whyatt: To echo what Mr Larsen said, the Indonesian interests were a key consideration for both parties and the commission when we came to this agreement. The official you have quoted has noted the need to look at the Perth treaty, but I would say that that requirement has been there since Timor-Leste's independence, because there is a need to excise the part of the boundary between Australia and Timor-Leste from the Perth treaty. I think that would need to happen, as a technical matter, to reflect the boundary between Australia and Timor-Leste. So, at some point you would need to do that.

Ms TEMPLEMAN: Have Indonesian officials formally advised you of the need for that to happen, or is this just an assumption that it will have to happen?

Mr Whyatt: They have suggested that we have technical discussions at some point in relation to the Perth treaty.

Ms TEMPLEMAN: Have they suggested that those discussions cover not just the bit that needs to be excised because of the Timor-Leste treaty, but deal with the different lines at which oil exploration can occur, as opposed to where fishing can occur, which can obviously occur in a lot larger area than oil and gas exploration can?

Mr Whyatt: We have a number of boundary treaties with Indonesia. We have the Perth treaty boundary, which is largely, though not exclusively, a water-column boundary. We also have the 1972 treaty, which is a seabed boundary. The Indonesian government has referenced technical discussions on the Perth treaty but I think also, in public remarks, has recognised that this boundary outcome respects the 1972 treaty.

Ms TEMPLEMAN: Are you saying you don't expect the 1972 treaty to be—

Mr Whyatt: From the Australian government's point of view that treaty has been in place for a very long time. There is no reason arising from our maritime boundary treaty with Timor-Leste to revisit that treaty. Boundary treaties have a special status under international law and are designed to be permanent.

Ms TEMPLEMAN: Is there any indication from Indonesia that they want to revisit the 1972 treaty?

Mr Whyatt: Not that I'm aware of—

Ms TEMPLEMAN: Only the Perth treaty?

Mr Whyatt: Not that I am aware of. They have raised—I think it was in the comments recently in March—the need for technical discussions on the Perth treaty.

Ms TEMPLEMAN: What does 'technical discussions' mean? How is that different from any other kind of discussion?

Mr Whyatt: We haven't had them yet. The scope of those discussions is something that we will obviously have to talk to the Indonesians about in due course. I previously mentioned that there is a need to amend the Perth treaty, before ratification, to excise the element where the maritime boundary is between Australia and Timor-Leste.

Ms TEMPLEMAN: A previous foreign minister has described any discussions with Indonesia as opening a can of worms. Is that a concern that the department shares in terms of where this treaty inevitably takes us?

CHAIR: Which treaty is that?

Ms TEMPLEMAN: The current treaty we are discussing and the consequences of it?

Mr Larsen: If I might respond to that. No, I don't think we have that concern. The various maritime boundary arrangements with Indonesia—the 1972 one, the seabed boundary, of course—is fully ratified and in force. The Perth treaty has not been ratified, but both sides have fully implemented its provisions. We believe that this treaty we have negotiated with Timor-Leste under the auspices of the Conciliation Commission very much takes into account, and is without prejudice to, Indonesia's interests. So, we are confident that that can be managed appropriately in our future engagement with Indonesia. We don't see this as being a reason to reopen existing treaty arrangements.

Ms TEMPLEMAN: What is your understanding of why it hasn't been ratified by Indonesia?

Mr Larsen: In our discussions with the Indonesians they indicate that they are giving further consideration as to how best to put it before the Indonesian parliament. That ultimately is a matter for the Indonesians, of course.

Senator IAN MACDONALD: Mr Larsen, I'm conscious that we have a very good relationship with Timor and that they recognise that if it weren't for Australia's diplomatic and, indeed, military help, they might not even be here. As Mr Bruer mentioned, we're one of the biggest donors, if not the biggest donor, to that wonderful

country. Can we go back in history. The original arrangements that were made with Indonesia or Timor in its early days had Australia getting a much bigger share of any revenue under the sea. This new agreement and agreements to take place have equalised that quite substantially. Is there a spoken-of figure on what percentage of wealth Australia would've got under the old arrangement compared with what it might be under the new arrangement? It's a very broad question, so I appreciate you can't be too precise, but is there a figure that's talked about?

Mr Larsen: I'll invite Justin Whyatt to comment on the specifics, but you are absolutely correct. There have been a series of different figures that have evolved over time under different arrangements. The figure in the current treaty is, in our view, a fair and favourable one with respect to Timor-Leste. Justin may have the specific details of previous arrangements.

Mr Whyatt: Under the Timor Gap Treaty of 1989, in the area which is now the Joint Petroleum Development Area, the revenue split between Australia and Indonesia was fifty-fifty in the central part. There was a box on the top and a box underneath—so three segments. The revenue split was ninety-ten in the top and the bottom segments—90 to Indonesia in the top, 10 to Australia in the reverse. The Timor Sea Treaty then—

Senator IAN MACDONALD: Sorry, what do you mean by 'in the reverse'?

Mr Whyatt: In the southern box sitting below the current JPDA—I can't remember whether it was box C or A—there was 90 to Australia, 10 to Indonesia. Under the then Timor Sea Treaty that established the Joint Petroleum Development Area, the title split in relation to that area was 90 per cent to Timor-Leste and 10 per cent to Australia.

Senator IAN MACDONALD: The southern box?

Mr Whyatt: The Timor Sea Treaty essentially got rid of the top box and the bottom box and kept the centre, which is the Joint Petroleum Development Area. The arrangement with Indonesia was fifty-fifty, and the arrangement with Timor-Leste under the Timor Sea Treaty was 90 per cent title to Timor-Leste and 10 per cent title to Australia.

Senator IAN MACDONALD: Are the remnants of the northern box and the southern box currently subject to any treaty?

Mr Whyatt: That fell away with the Timor Gap Treaty. What we have now is a permanent maritime boundary delimitation in the area.

Senator IAN MACDONALD: That was my next question. Is the boundary between Australia and Timor now settled in concrete?

Mr Whyatt: That's right. We've established it.

Senator IAN MACDONALD: And the boundary between Australia and Indonesia?

Mr Whyatt: We have seabed boundaries with Indonesia, which are settled. We have the Perth Treaty with Indonesia, which has been signed but not ratified. We have 20-odd years of settled practice under the treaty where both sides have respected that treaty in practice. But it is not yet ratified.

Senator IAN MACDONALD: Not yet ratified by Australia or by Indonesia or by both?

Mr Whyatt: We would both effectively need to move forward to ratify it. As Mr Larsen commented before, our understanding is that the Indonesian side has not been in a position to do that, and so those steps have not been taken.

Senator IAN MACDONALD: There's no immediate push by either Australia or Indonesia to alter what has been the arrangement for the last 20 years?

Mr Whyatt: Australia's view is that it's served us very well.

Senator IAN MACDONALD: Thank you.

Ms MARINO: Mr Larsen, you spoke at the end of your presentation about transitional arrangements. What transitional arrangements will you be working on from here? How much of a role will Australia have in those transitional arrangements?

Mr Larsen: I'll make some opening remarks and then invite my colleague Ms Schofield to elaborate. Transitional arrangements are obviously tremendously important, particularly because you have companies with existing commercial interests and some production interests in the affected area, so putting in place appropriate regimes to enable the continuity that the companies would expect is absolutely fundamental to being able to ratify this treaty. So we have signed the treaty but we need to in due course ratify it, and Australia is committed to doing

that as quickly as possible. There are a series of transitional measures which need to be put in place in order to do that. Ms Schofield can elaborate.

Ms Schofield: As Mr Larsen said, there are a number of companies currently operating inside the JPDA, the joint area, and there are obviously some projects and companies that are operating in the adjoining areas. The transitional arrangements obviously are to make sure that essentially those companies can keep doing business and so that the government-to-government negotiations and changes have no practical effect on the way that the companies are operating so that their projects are able to keep going. Australia is heavily involved in those discussions of course. We're working closely with Timor. We've probably had half a dozen or so meetings with Timor-Leste over the last four or five months.

Ms MARINO: And they're constructive?

Ms Schofield: Yes, they've been very constructive, as much as I would expect of any sort of partner. The two governments are sitting down to work through the very long list of issues that we need to resolve for each of the projects. Once the two governments have sorted through those we'll expect that then negotiations will commence between the two governments and the relevant companies for each of those projects to make sure that we can have those companies signed up to new arrangements so that they can be in place at the time of ratification.

Ms MARINO: Thanks.

Mr JOSH WILSON: I have one question. I apologise if this was covered in the part when I wasn't here. I'm advised it wasn't.

CHAIR: Advised by whom?

Mr JOSH WILSON: By my colleagues.

Senator KENEALLY: So if he's wrong, therefore, it is us who are wrong.

Mr JOSH WILSON: I'm not sure that I did myself any favours there. I understand that the Permanent Court of Arbitration said that it would release the full report in mid-April. I understand that it hasn't yet. I wonder if there is any advice on when we might see that.

Mr Larsen: The Conciliation Commission under the court has engaged in a process whereby they've provided a draft report to the two parties. We've had an opportunity to have a look at that report. We've made some comments. Timor-Leste may well have made some comments—we don't know. I'm expecting the report to be finalised very shortly. The maximum is within the next couple of weeks—that is the latest advice we have from the commission.

Mr JOSH WILSON: So the comments presumably went to differences of views, making sure that the report reflected the parties' views of things?

Mr Larsen: Absolutely. Because it was a conciliation as conciliators they're issuing a report that identifies the process of the conciliation and the outcome of the conciliation—a key outcome of the conciliation of course is this treaty that we're considering today. The report doesn't re-litigate the arguments made before the commission of course, but we've had some comments to make about minor factual corrections and we've shared perspectives on some elements of the report as to whether it's more appropriate that certain material be included or not included. So there have been discussions of that nature. Those have been very cooperative and collaborative discussions. I note that the chairman of the commission, Peter Taksoe-Jensen, is extremely keen to finalise the process and make the report public. As I said, I'm expecting that that will happen pretty shortly.

Mr JOSH WILSON: Thank you.

CHAIR: Tremendous. Thank you for your attendance here today. We're only a few minutes late. Well done all. If you've been asked to provide any additional information—I think there is some—could you please forward it to the secretary within seven working days. As stated in the opening remarks, it is the witnesses' responsibility to meet the deadline in a timely manner. The secretariat will help keep you honest. You'll be sent a copy of the transcript of the evidence when it becomes available and you'll have an opportunity to request corrections to transcription errors. Thank you for your time. I appreciate it.

Committee adjourned at 13:04