



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

JOINT STANDING COMMITTEE ON TREATIES

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

MONDAY, 26 FEBRUARY 2007

CANBERRA

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**JOINT STANDING COMMITTEE ON  
TREATIES**

**Monday, 26 February 2007**

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

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

**Terms of reference for the inquiry:**

To inquire into and report on:

Treaties tabled on 6 December 2006 and 6 February 2007

[11.46 am]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Mr Grigson**—It has dealt with it.

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

**Mr Grigson**—Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Mr Hartwell**—Yes, indeed.

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

**Mr Hartwell**—Yes.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ACTING CHAIR**—Thank you.

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

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

**Committee adjourned at 12.10 pm**