



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

JOINT STANDING COMMITTEE ON TREATIES

**Reference: Treaties tabled in May and June 2003**

MONDAY, 23 JUNE 2003

CANBERRA

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## **JOINT COMMITTEE ON TREATIES**

**Monday, 23 June 2003**

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

**Senators and members in attendance:** Senators Kirk, Marshall, Mason, Stephens and Tchen and Mr Adams, Ms Julie Bishop, Mr Ciobo, Mr Martyn Evans, Mr King, Mr Wilkie

**Terms of reference for the inquiry:**

Treaties tabled in May and June 2003

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[11.51 a.m.]

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

**WALKER, Mr Ian, Manager, Timor Sea Team, Resources Division, Department of Industry, Tourism and Resources**

**BUCKLEY, Mr Michael Thomas, Manager, Business Income Division, Department of the Treasury**

**FEWSTER, Mr Alan, Executive Director, Treaties Secretariat, Legal Branch, Department of Foreign Affairs and Trade**

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**MORAITIS, Mr Chris, Senior Legal Adviser, Department of Foreign Affairs and Trade**

**SERDY, Mr Andrew, Executive Officer, Sea Law, Environmental Law and Antarctic Section, Department of Foreign Affairs and Trade**

**IRWIN, Ms Rebecca, Assistant Secretary, Public International Law Branch, Office of International Law, Attorney-General's Department**

**Agreement between the government of Australia and the government of the Democratic Republic of Timor-Leste relating to the unitisation of the Sunrise and Troubadour fields, done at Dili on 6 March 2003**

**CHAIR**—While the representatives are taking their places, I ask the members of the committee to consider the authorisation of two submissions in relation to this agreement that were received subsequent to our last meeting. There is a submission from Dr Andrew McNaughtan that has been sent to you and a submission from Matt Coffey, which was emailed to the secretariat this morning.

Resolved (on motion by **Mr Wilkie**):

That submissions Nos 11 and 12 be received as evidence and authorised for publication.

**CHAIR**—I welcome officers from a number of departments. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Would one of you like to make an introductory statement, and then we can proceed to questions?

**Mr Hartwell**—I would like to make an opening statement. Thank you for the opportunity to do so. The Greater Sunrise gas field, which composes the Sunrise and Troubadour deposits, lies in the Timor Sea, some 500 kilometres north-west of Darwin. A map of the area is available for members of the committee, should they wish. The field lies partly within the joint petroleum development area established under the Timor Sea Treaty and partly outside the joint petroleum development area into an area where Australia exercises jurisdiction. It should be noted, however, that East Timor also claims jurisdiction over this area outside the joint area.

The Greater Sunrise field is a world-class petroleum resource containing an estimated 8.4 trillion cubic feet of natural gas and 295 million barrels of condensate. It is estimated that 20.1 per cent of these resources lie within the JPDA—the joint petroleum development area—and 79.9 per cent lie outside it. This apportionment ratio was included in the Timor Sea Treaty. It is estimated that if the field is developed using a floating gas-to-liquids technology then revenues to Australia will be around \$8.5 billion over the life of the project with exports of around \$1.5 billion annually. Its development will also provide significant revenue to East Timor. The efficient development of a petroleum field requires that it be developed in an integrated way. A unitisation agreement achieves this. Article 9 of the Timor Sea Treaty deals with unitisation and states:

(a) Any reservoir of petroleum that extends across the boundary of the JPDA shall be treated as a single entity for management and development purposes.

(b) Australia and East Timor shall work expeditiously and in good faith to reach agreement on the manner in which the deposit will be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation.

The Timor Sea Treaty also deals explicitly with the unitisation of the Greater Sunrise in annex E, which specifies the 79.9-20.1 per cent initial apportionment ratio already referred to. Annex E also provides for the apportionment ratio to be altered by agreement between Australia and East Timor.

Negotiations on the international unitisation agreement were complex, especially in relation to ensuring that it was substantively without prejudice to either country's maritime boundary claims and in respect of fiscal arrangements. The final IUA therefore represents a negotiated outcome. The IUA was signed by East Timor and Australia on 6 March 2003. The IUA provides a comprehensive framework for the development of the Greater Sunrise field. It covers matters such as the administration of the unit area, taxation, the method and point of valuation for petroleum produced, the approval of development plans, employment and training, abandonment provisions, the use of facilities by other developments, occupational health and safety, environmental protection, customs, security and dispute resolution procedures. The IUA meets all of Australia's primary objectives. It provides for a single administrative system to apply across the whole unit area—and a map of the area is included in annex 1 of the IUA—both inside the JPDA and outside the JPDA with regard to such matters as health and safety and the environment which provides for administrative efficiency.

In other respects, where appropriate it provides for Australian law to apply in that part of the unit area outside the JPDA and for the regime established by the Timor Sea Treaty to apply within the JPDA, thus not prejudicing Australia's maritime boundary claims. It provides the comprehensive fiscal framework which was needed to provide investors with the certainty that

they need to make investment decisions. The fiscal terms defined in the IUA apply to that portion of the production attributed to the JPDA where 90 per cent of production is attributed to East Timor and 10 per cent to Australia. Normal Australian arrangements would apply to that portion of production attributed to Australia.

It is neutral in respect of development options allowing the field to be developed in the most cost-effective manner while meeting environmental, health and safety obligations. It provides a robust mechanism for review of the apportionment ratio should geological information suggest that such reapportionment is required. The IUA was developed in close consultation with the Sunrise joint venture partners to ensure that it would provide the certainty needed for investment decisions. This involved, when appropriate, exposure to drafts of the text and continued detailed discussion on issues. Madam Chair, that concludes my opening statement.

**CHAIR**—Thank you. One matter I want to ascertain before we go around the table for questions is the information that has been presented to the committee in relation to East Timor's economic situation. Attached to our papers was annex 3, which is a schedule with statistics drawn from a report that says May 2002 but it would appear that the economic indicators are actually 1999 figures or thereabouts. We are informed through some of the submissions that we have received that the economic situation in East Timor has changed dramatically since 1999. Are there more up-to-date figures available, particularly in the economic indicators of GDP, growth, unemployment and the like?

**Ms Klugman**—You have put your finger on a big problem that we encounter in many areas of our dealings with East Timor: the paucity of good statistics that show us the real picture. There are further problems, too, because the statistics that we do have tend to reflect what is going on in Dili, in the capital, and very little about what is going on outside Dili, where most of the people live and where poverty is a more serious problem. You are quite right in saying that the World Bank, the IMF and the Asian Development Bank are doing some work to bring those statistics up to date. The East Timor government proposes to move forward with a census and some associated basic information gathering, probably early next year. So our statistical understanding of what is happening in economic terms in East Timor is very much a work in progress.

**CHAIR**—Would you accept that the economic situation has changed drastically since 1999, since the statistics that we have been provided with?

**Ms Klugman**—The statistics we saw in the early period of the INTERFET intervention in East Timor in 1999 are very much skewed by our presence in East Timor. With the coming of independence on 20 May last year, and with the drawing down progressively of the UN mission presence in East Timor, you can see very quickly that growth is dropping away rapidly in East Timor. We are beginning to see what might be the real picture on the trade balance as well, which has been completely distorted by imports and exports associated with that UN mission. We are not there yet—the UN mission is still on the ground in East Timor, and the current mission is likely to be there until mid next year—so this is something that we will have to keep reviewing as we go forward. AusAID, too, are doing quite a lot of work on this as they move forward with their rethinking on their country aid strategy for East Timor to make sure that Australian aid is actually going where it is needed in East Timor.

**CHAIR**—Are there not more up-to-date projections or estimates from the World Bank that could be supplied to the committee? Obviously, when we report on this, we need to give an accurate assessment of the position of East Timor. I doubt that an unemployment rate of 7.8 per cent reflects reality. That figure could be misleading.

**Ms Klugman**—The East Timorese President is quite active on the issue of unemployment. He makes the point that those who create statistics on unemployment ignore the fact that a generation of income in East Timor, in a society like East Timor, generally falls underneath the radar of the World Bank and the IMF when they are developing their statistics. We will certainly see what we can draw together in cooperation with AusAID to give you a fuller picture of the current economic situation.

**CHAIR**—That would be useful. If we could receive it shortly, I am sure the secretariat will be very pleased. Mr Hartwell, could you confirm the status of the Timor Sea Treaty? It has been ratified?

**Mr Hartwell**—The Timor Sea Treaty has been ratified and the administrative apparatus under the Timor Sea Treaty is now in operation—that is, the establishment of the designated authority—and, as well, there is a joint commission.

**CHAIR**—Have any concerns been raised about the composition of the commission? Two members are nominated by Australia and one by East Timor.

**Mr Hartwell**—That is not the case in relation to the joint commission on the Timor Sea Treaty. There are two nominated representatives from East Timor and one from Australia.

**CHAIR**—In the Sunrise commission, though, it is the other way around.

**Mr Hartwell**—That is right.

**CHAIR**—Has any concern been raised in relation to the Sunrise commission?

**Mr Hartwell**—No, not that we are aware of.

**CHAIR**—By what mechanism will Australia ensure that the obligations of the regulatory authorities are observed by the joint venturers?

**Mr Hartwell**—I am sorry; could you repeat that for me?

**CHAIR**—In relation to the obligations of the regulatory authorities that are to be observed by the joint venturers—

**Mr Hartwell**—As the international unitisation agreement states, the area within the joint petroleum development area will be administered under the provisions of the Timor Sea Treaty, so the joint venture operators would have to comply with the provisions of the Timor Sea Treaty. Within the area outside the joint development of petroleum area, they would work under obligations related to the Australian Petroleum (Submerged Lands) Act. So there are two legal apparatus applying in that context.

**Mr WILKIE**—I see that this is probably the first unitisation agreement we have had for petroleum. What sorts of dispute resolution procedures do we have in place if parties cannot agree?

**Mr Hartwell**—There are dispute resolution mechanisms outlined in the IUA and there are also dispute resolution mechanisms outlined in the Timor Sea Treaty. Either of the regulatory authorities—that is, the regulatory authorities under the Timor Sea Treaty or under the Petroleum (Submerged Lands) Act in Australia—may refer disputes to the Sunrise commission in the first instance for resolution by consultation and negotiation. In the event that the dispute cannot be resolved by the commission, disputes can be submitted at the request of either Australia or East Timor to an arbitral tribunal according to annex IV of the agreement. The details of all of those dispute resolution mechanisms are outlined within the unitisation agreement itself and within the Timor Sea Treaty.

**Mr ADAMS**—We received a written submission from people in relation to the Timor association saying that we are basically ripping off East Timor as a country. What is the reply to that?

**Mr Hartwell**—My reply to that would be that both sides have signed on to the unitisation agreement. We believe, and I believe the East Timorese are in agreement, that the unitisation agreement is in the interests of both countries. It should be noted that important revenues will be going to East Timor under this arrangement.

**Mr ADAMS**—So you think it has been a fair process of negotiation and giving and taking to get to where we are, from our point of view?

**Mr Hartwell**—Yes. The negotiations were robust, but I think it has been a fair process and it is a fair outcome.

**Mr Moraitis**—The East Timorese government themselves, in introducing legislation in recent months, have been very positive and have welcomed the outcome for them. They are, as we are, very happy with the negotiated outcome. As Mr Hartwell said, it has been a robust process of negotiation and a very complex one involving a lot of resources—and obviously that is to be expected—but at the end of the day both sides sat down and worked out a mutually satisfactory arrangement which benefits both. Certainly East Timor and their government recognise that.

**Mr WILKIE**—I will just make the comment that I think ‘robust’ is very well understated.

**CHAIR**—That was not necessary. One matter that arose during our deliberations on the treaty was in relation to employment and training. Article 18 in this agreement provides for preference in employment and training to be given to nationals or permanent residents of Australia and East Timor. How are these people going to be recruited and what is going to be the nature of the training, particularly with respect to the East Timorese? What sort of employment prospects are there?

**Mr Hartwell**—In that context, obviously the training and employment will be considered somewhat in the future. We do not at this point in time have a development that—

**CHAIR**—We are looking at 2009, aren't we?

**Mr Hartwell**—Yes. We are looking at possibly the first time that you might get offtake from the petroleum developed there as being around 2009, but there are processes in place to ensure that the East Timorese do participate in the activities within the Sunrise area. Certainly the companies involved there have some training programs on the ground at the moment in East Timor. I do not know if my colleague Mr Walker, who is closer to this issue than I am, would like to comment.

**Mr Walker**—I think what Mr Hartwell has said largely covers it, but the exact mechanisms by which this will work will be very much in the hands of companies and exactly how that will transpire will depend to some extent on their development plans and how they take over their overall operations. As Mr Hartwell has already said, there is already some work going on in East Timor from the Sunrise joint venture partners. I would classify that as preliminary rather than highly substantive at this stage.

**CHAIR**—Given that the development is not likely to occur until some time in 2009, which just seems forever away, perhaps this is a hypothetical question but could somebody explain to me how the taxation regime will apply to the Greater Sunrise project if taxation within the JPDA is in accordance with the Timor Sea Treaty and taxation for Greater Sunrise outside the JPDA is in accordance with Australia's domestic taxation arrangements? How will that work for the joint venture partners?

**Mr Hartwell**—I could make some comments on that, but I call on my Treasury colleague, if he wants to take that one.

**Mr Buckley**—The arrangement is that the resource is divided virtually 80:20 between Australia and East Timor. Twenty per cent of the resource which is in the JPDA area is taxed under the principles of the Timor Sea Treaty, which means that 90 per cent of the tax revenues go to East Timor and 10 per cent of those revenues go to Australia. The resource which is allocated to Australia is taxed under Australian principles, so the petroleum resource rent tax applies to that part of the resource and company tax applies to the income derived from that. That is the essential split of the tax arrangements.

**CHAIR**—Did you have anything to add to that, Mr Hartwell, or does that cover it?

**Mr Hartwell**—No. That seems an appropriate answer.

**CHAIR**—My last question is in relation to the environment. Are there any environmental safeguards in place? How are we dealing with environmental issues under the unitisation agreement? Are there safeguards in place to ensure that the resource is depleted in an environmentally responsible fashion?

**Mr Hartwell**—Certainly that has been a major issue, and we and East Timor are both very conscious that any development that takes place within the unit area should have the highest environmental obligations. When you do have a unit area where you are applying two bits of law—as has been said, with Timor Sea Treaty obligations applying to 20.1 per cent within the joint area and then Australian law applying to 79.9 per cent—that obviously makes for a

challenge. We have agreed with the East Timorese that it would not be very sensible to have two different sets of environmental obligations on either side of that boundary. There will be a common approach to the environment. In Australian law, that is that the environmental regulations under the Petroleum (Submerged Lands) Act will apply.

**CHAIR**—Given the consideration that this committee had of the IUA during the review of the Timor Sea Treaty, I think that we have addressed most of the issues that are of concern.

**Mr KING**—I just had one. I just wanted to know about this split. Do you think it is a generous split to the East Timorese or not?

**Mr Buckley**—The split is determined by the geographic boundaries and—

**Mr KING**—There is an issue about the boundaries too, that the boundaries are actually determining the split.

**Mr Buckley**—The IUA was based on the existing boundaries. I think A-G's may be able to comment on that, but the IUA has been entered into without prejudice to those boundaries.

**Mr KING**—I guess I am really asking: how generous have we been?

**Mr Buckley**—But then if you go to the other side the resource which lies within the JPDA is allocated on a basis of 90 per cent to East Timor and 10 per cent to Australia .

**Mr KING**—I understand what you have said about that.

**Mr Buckley**—So a 90:10 split is the split which was viewed as very—

**Mr KING**—Yes, but 90 per cent of what?

**Mr Buckley**—Ninety per cent of the value of the resource.

**Mr KING**—It is really an 80:20 split Australia's way when you look at the—

**Mr Buckley**—If the resource is split 80:20, then the taxation can only follow the allocation of the resource.

**Mr Hartlett**—It should be said that we believe it is a fair split. Within the joint area, which again is an agreement to disagree because we have never been able to set a permanent maritime delimitation, we have agreed to give 90 per cent of the revenues to East Timor, as has been said. In relation to the unitisation agreement, the 20.1 per cent that lies within the joint area, 90 per cent of the revenues will go to East Timor and then Australia will claim the revenues on the other side, the 80.1 per cent, from the unit development in the Sunrise area because that is an area which is in Australian jurisdiction.

**Mr KING**—Is Sunrise being developed before Laminaria and Bayu-Undan?

**Mr Hartlett**—Sunrise will likely, as has been said, not come on stream before 2009. At the moment it is uncertain about what the development proposal will look like. Obviously the joint ventures are out there seeking markets, whether that be within Australia or whether that be overseas. Laminaria is a large-producing oil field on the west side of the joint area which has been in production for some time. Bayu is a proposal, project, totally within the area. The development approvals for that project have already been indicated, and that will come on stream for liquids in 2004 and gas hopefully around 2006. So one is already an existing producing facility; one is shortly to become one. They will be in advance of Sunrise.

**Mr KING**—Just in the long term, do you see the JPDA, the joint development area, as being a sensible arrangement? It seems to me that really what needs to be done in terms of planning on a diplomatic scale is to look at doing what Indonesia and Australia never could do; namely, arrive at an agreement as to where their boundaries should be limited.

**Mr Hartlett**—While permanent maritime delimitation might be the optimum in the longer run, these are very difficult and complex issues and they do take a long time to sort out.

**Mr KING**—Are you setting about doing that or not?

**Mr Hartwell**—There has been an agreement—and I might ask my Foreign Affairs colleague to comment on that in a moment—to look at the issue of permanent maritime delimitation. But, in the meantime, it would seem wasteful for us and, in particular, East Timor to miss the opportunity to exploit a rich hydrocarbon resource for the benefit of both of our countries. I think that having this joint administrative arrangement is certainly a sensible idea, given the complexities and difficulties that will emerge in trying to settle permanent maritime delimitation.

**Mr KING**—So it is expedient to live with the earlier diplomatic failure?

**Mr Moraitis**—It is mutually advantageous to take the opportunity. In the immediate future, we have resources that need to be exploited for the benefit of both sides. This arrangement is an agreement to disagree. Then, once this is up and running, and now the IUA is finalised, we can start looking at that bigger question of a maritime boundary. We fully recognise that, under our UNCLOS obligations, we have to sit down with all countries—not just East Timor but obviously with all partners—to work out our permanent boundaries. We have to have permanent boundaries, but it is a complex issue.

**Mr KING**—In the longer term, what is appropriate?

**Mr Moraitis**—That is what we will have to look at. Obviously, one side has maximalist claims and the other side has maximalist claims, and we will see—

**Mr KING**—I am just a bit concerned that we are fudging this and putting it off forever. These sorts of issues really ought not to be put off forever.

**Mr Moraitis**—No-one is expecting to put it off forever. In fact, it has always been understood that once the Timor Sea treaty and the IUA are finalised and ratified—and here we are before JSCOT on the IUA; hopefully we will have it ratified in the near future—we can then start on permanent boundary delimitation, which is a process that my department, Attorney-General's

and colleagues with an interest in these areas work on assiduously across the board, not just with East Timor but also with countries such as New Zealand, Indonesia and France. We have colleagues working in Paris today on this issue. So is an ongoing process. This, as I said, is an opportunity to finalise an immediate opportunity. That is what we have done. We are very happy with that outcome.

**Mr KING**—You have obviously worked very hard and successfully on that. Thank you.

**Mr WILKIE**—If negotiations on the seabed boundaries do not go our way down the track and, for example, Greater Sunrise came completely within Timor-Leste's jurisdiction, is there any opportunity for them to come back and sue us for loss of revenue or is that tied up in the agreement?

**Mr Hartwell**—That is difficult to answer. But, obviously, should there be a permanent maritime delimitation which changed the existing basis on which this IUA has been drawn up, this agreement would have to be revisited—that is logical. I really could not comment on legal action. I am not sure if Rebecca from Attorney-General's wants to have a go at that.

**Ms Irwin**—It would be difficult to speculate on how East Timor might want to pursue that, but article 27 of the IUA does make it clear that, in the event of a permanent maritime delimitation, the terms of this agreement would need to be reconsidered. Perhaps that would be an issue that East Timor may want to pursue, but I would point out that East Timor has signed up to this IUA at the moment and, like any country that signs up to an international agreement, one would expect that both sides fulfil their obligations under that agreement in good faith. If there comes a point in time when that agreement is no longer in force, countries may raise issues at that point in time.

**Mr WILKIE**—It just seems a bit of a loophole to me, because I know that the treaty itself talks about still being able to discuss the boundaries in good faith. Therefore, if in fact the boundaries did go the other way down the track, I would have thought it does leave it open for them to take action against us. I would have thought that might have been dealt with in IUA to prevent that occurring, but you are saying that it has not been dealt with. Thank you.

**CHAIR**—We congratulate you on the work that has been done in relation to both the Timor Sea Treaty and the international unitisation agreement. Thank you for your presence here this morning.

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

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

**Committee adjourned at 12.24 p.m.**