

PERMANENT COURT OF ARBITRATION  
CASE NO 2016-10

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CONCILIATION PROCEEDINGS BETWEEN

THE GOVERNMENT OF THE  
DEMOCRATIC REPUBLIC OF TIMOR-LESTE

AND

THE GOVERNMENT OF THE  
COMMONWEALTH OF AUSTRALIA

PURSUANT TO ARTICLE 298 AND ANNEX V OF THE  
UN CONVENTION OF THE LAW OF THE SEA

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OPENING SESSION

MONDAY 29 AUGUST 2016

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Commissioners:

HE Mr Peter Taksøe-Jensen (Chairman)  
Dr Rosalie Balkin  
Judge Abdul G Koroma  
Professor Donald McRae  
Judge Rüdiger Wolfrum

Registry:

Permanent Court of Arbitration

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**A P P E A R A N C E S**

Commissioners:

HE MR PETER TAKSØE-JENSEN (Chairman)  
DR ROSALIE BALKIN  
JUDGE ABDUL G KOROMA  
PROFESSOR DONALD McRAE  
JUDGE RÜDIGER WOLFRUM

Registry:

MR GARTH SCHOFIELD  
MR MARTIN DOE  
MS PEM CHHODEN

Court Reporter:

MRS DIANA BURDEN

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HE MINISTER HERMENEGILDO PEREIRA  
MS ELISABETH EXPOSTO  
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MS HELENA ARAUJO  
MS ERMELINDA MARIA CALAPES DA COSTA  
PROFESSOR VAUGHAN LOWE QC  
SIR MICHAEL WOOD KCMG  
MR ERAN STHOEGER  
MR ROBIN CLEVERLY  
MS JANET LEGRAND  
MR STEPHEN WEBB  
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MS AMELIA TELEC  
MR BENJAMIN HUNTLEY  
MS ANNA RANGOTT  
MR JUSTIN WHYATT  
MR TODD QUINN  
MR MARK ALCOCK  
MS ANGELA ROBINSON  
MS INDRA McCORMICK  
MS CHRISTINA HEY-NGUYEN

1 (9.30 am Monday, 29 August 2016)

2 OPENING SESSION

3 **THE CHAIRMAN:** Good morning, everybody.

4 I would like to extend a warm welcome to everybody  
5 here to the premises of the Permanent Court of  
6 Arbitration and the Peace Palace in the Hague for  
7 this hearing in the conciliation proceedings between  
8 the Government of the Democratic Republic of  
9 Timor-Leste and the Government of Commonwealth of  
10 Australia, pursuant to article 298 and Annex V of  
11 the United Nations Convention on the Law of the Sea  
12 conducted under the auspices of the PCA as PCA Case  
13 No 2016-10.

14 As we agreed last time and decided by the  
15 Commission following the procedural meeting we had  
16 in July, this opening session of this hearing is  
17 being broadcast live on the internet as we speak.  
18 The transcript and the video will also be made  
19 available on the PCA's website following the  
20 conclusion of this session.

21 I would offer a quick reminder, as I did  
22 last time, for everyone to be sure to use the  
23 microphones when speaking to ensure that we get you  
24 on the webcast and we record all the remarks that  
25 you make.

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1 I see a lot of familiar faces but also new 09:33  
2 faces from the procedural meeting of last month in  
3 this room. The delegation is a little bit larger  
4 this time around and I see some additional people,  
5 so therefore it would be useful to have a round of  
6 introductions before we go ahead.

7 For the Commission, on my right I have  
8 Professor Rüdiger Wolfrum and Judge Abdul Koroma.  
9 On my left we have Professor McRae and Dr Rosalie  
10 Balkin. At the end of the table we have able help.  
11 We have our registrar, Mr Garth Schofield to my  
12 right from the PCA, and Mr Martin Doe also from the  
13 PCA on my left. Finally, as you know, my name is  
14 Peter Taksøe-Jensen, and I have the honour to chair  
15 this Conciliation Commission.

16 May I now ask Timor-Leste to introduce the  
17 members of its delegation, please?

18 **MINISTER GUSMÃO:** I am Kay Rala Xanana  
19 Gusmão, Minister, member of my government and chief  
20 negotiator on behalf of Timor-Leste.

21 **PROFESSOR LOWE:** Vaughan Lowe, counsel  
22 Timor-Leste.

23 **SIR MICHAEL WOOD:** Michael Wood, counsel  
24 for Timor-Leste.

25 **MS EXPOSTO:** Elizabeth Exposto, CEO of the

1 Maritime Boundary Office and Deputy Agent.

09:35

2 **MINISTER PEREIRA:** Hermenegildo Pereira,  
3 agent for Timor-Leste and Minister of State and of  
4 the President's Counsel of Ministers of the  
5 Timor-Leste Government.

6 **MR WEBB:** Stephen Webb, legal adviser,  
7 partner at DLA Piper.

8 **MS LEGRAND:** Janet Legrand, partner, legal  
9 adviser, DLA Piper.

10 **THE CHAIRMAN:** Thank you very much.  
11 Australia, can I ask you to introduce the members of  
12 your delegation, please?

13 **MR REID:** Thank you, Chairman. My name is  
14 John Reid. I appear as agent for Australia in these  
15 proceedings again. Mr Chairman, Australia's opening  
16 statement this morning will be delivered by Mr Gary  
17 Quinlan, the deputy secretary for the Department of  
18 Foreign Affairs in Australia, and Mr Justin Gleeson  
19 SC, Solicitor-General of Australia. They are  
20 supported by counsel, Sir Daniel Bethlehem KCMG QC,  
21 Mr Bill Campbell QC, and Professor Chester Brown.  
22 Also appearing on the delegation is HE Brett Mason,  
23 Australia's Ambassador to the Netherlands, and Ms  
24 Katrina Cooper, my co-agent from the Department of  
25 Foreign Affairs and Trade. We are supported from

1 the Attorney General's department by Ms Amelia 09:36  
2 Telec, Mr Benjamin Huntley, Ms Anna Rangott, and  
3 from the Department of Foreign Affairs and Trade,  
4 Mr Justin Whyatt, Mr Todd Quinn, Ms Angela Robinson,  
5 Ms Indra McCormick and Ms Christina Hey-Nguyen, and  
6 from Geoscience Australia by Mr Mark Alcock.

7 **THE CHAIRMAN:** Thank you very much for  
8 that. I welcome all of you again.

9 I wish to recall, as I did at the opening  
10 of the procedural meeting, that this is  
11 a conciliation rather than an adversarial process,  
12 and therefore we have arranged the room in  
13 a slightly more informal manner and we hope that we  
14 can continue the very collegial atmosphere that  
15 prevailed at our procedural meeting.

16 I note that the purpose of this public  
17 opening session is to give each side an opportunity  
18 to put forward the background of the dispute between  
19 the parties and their opening positions, so to say,  
20 from which we would hope to move forward towards  
21 a compromise and agree certain matters over the  
22 course of the conciliation.

23 If they so wish, the parties may also  
24 address the question of the Commission's competence  
25 during the opening session. That question will also



1 be addressed in detail during the remainder of the 09:38  
2 hearing this week, following the conclusion of this  
3 opening session.

4 Just before we begin, I wish to take  
5 a moment to go over the schedule. Each side will  
6 have 90 minutes for its opening presentation.  
7 Timor-Leste will start and have until approximately  
8 11.15. Then we will have a 15 minute break and  
9 continue with the Australia presentation until about  
10 1 o'clock before concluding the opening portion of  
11 the hearing and breaking for lunch. That will end  
12 the public portion of this hearing.

13 For the remainder of the hearing, I note  
14 that we adjusted the schedule a bit last week at the  
15 request of Timor-Leste in order to fit everything we  
16 have to get done by the end of the day of Wednesday  
17 and leave Thursday for the Commission to meet and  
18 deliberate on its own. I note that the Commission  
19 remains flexible and we will stay a bit longer today  
20 and start earlier tomorrow and adjust our breaks if  
21 that would help to keep us within a reasonable end  
22 time tomorrow.

23 Is there any other preliminary matter that  
24 we need to deal with, then I would like to hear from  
25 the parties? That does not seem to be the case.

1 Then I give the floor to Timor-Leste for its opening 09:39  
2 presentation. You have the floor.

3 **MS EXPOSTO:** Mr Chairman, members of the  
4 Commission, it is a great honour to appear before  
5 you as Deputy Agent on behalf of my country, the  
6 Democratic Republic of Timor-Leste.

7 Timor-Leste is honoured to take part in  
8 this very first compulsory conciliation under the  
9 United Nations Convention of the Law of the Sea. We  
10 are also very appreciative of the Commission and the  
11 process led by it.

12 Timor-Leste's Statehood is a story of  
13 national perseverance, resolve, and hope. The  
14 people of Timor-Leste have paid an extremely high  
15 price for our independence, finally achieved 14  
16 years ago. Despite the brutal occupation and  
17 fighting we endured, we did not emerge vengeful or  
18 vindictive. Throughout our struggle, our leaders  
19 preached tolerance and respect towards others.

20 Though we do not forget our painful and  
21 difficult past, we are a resilient people that look  
22 forward, first and foremost. After our  
23 independence, the Timorese people opted for  
24 reconciliation and building a new and peaceful  
25 relationship with our former occupiers.

1           Now, times have changed, and the form of  
2 Timor-Leste's struggle has changed. With the  
3 majority of our population under the age of 25, our  
4 hope for nation-building lies in the future and it  
5 is up to the representatives of Timor-Leste to do  
6 their utmost to secure a better future for our young  
7 generation and their children.

8           It is a national priority to secure our  
9 sovereign rights over our surrounding seas and the  
10 resources that lie therein, which hold the promise  
11 of a transformational development for our country.  
12 The future for the next generations would look very  
13 different without access to our seas.

14           This is what brings us here today.  
15 Timor-Leste has initiated these proceedings to  
16 resolve our maritime dispute with our neighbour  
17 Australia in an amicable and collaborative way.

18           We are here to pursue our rights for the  
19 sake of our people and take on the responsibilities  
20 of statehood like any other nation would.

21 Timor-Leste may be young, but we are not naive. We  
22 will not shy away from claiming what is rightfully  
23 ours and we will persist until this is finally  
24 achieved.

25           We have faith that this Commission can

1 assist us to settle our differences with Australia 09:42  
2 in a just and fair manner, and we look forward to  
3 working with the Commission and Australia to bring  
4 our maritime dispute to its conclusion for our  
5 future generations.

6 Mr Chairman, members of the Commission, in  
7 today's opening session Timor-Leste will present to  
8 the Commission its overall position on the maritime  
9 dispute with Australia. We will provide you with  
10 the background and facts relevant to the dispute and  
11 outline Timor-Leste's position on its permanent  
12 maritime boundaries in the Timor Sea under  
13 international law.

14 Mr Chairman, members of the Commission,  
15 let me briefly introduce the members of the Timorese  
16 delegation to these proceedings.

17 Our presentation will be opened by  
18 a founding father of our nation, the leader of the  
19 Timorese resistance, the first President of the  
20 Republic, the former Prime Minister, and now  
21 Timor-Leste's chief negotiator, HE Minister Kay Rala  
22 Xanana Gusmão. His Excellency will be followed by  
23 Professor Vaughan Lowe, QC, who will provide the  
24 relevant background for these proceedings, and in  
25 particular the factual context that has given rise

1 to the dispute between the parties.

09:44

2 Then, Sir Michael Wood will present on  
3 Timor-Leste's maritime boundary under international  
4 law in the Timor Sea. Finally, Timor-Leste's agent,  
5 the Minister of State, and of the Presidency of the  
6 Council of Ministers, Minister Agio Pereira, will  
7 make our closing remarks for this session.

8 Mr Chairman, I ask you to invite Minister  
9 Gusmão to address the Commission. Thank you.

10 **MINISTER GUSMÃO:** Mr Chairman, members of  
11 the Commission, I would like to thank you for the  
12 opportunity to appear before you on behalf of the  
13 government and people of Timor-Leste. We greatly  
14 appreciate your commitment to assist in settling the  
15 long-running dispute between Timor-Leste and  
16 Australia, concerning the maritime boundary in the  
17 Timor Sea.

18 Mr Chairman, the independence of the  
19 Democratic Republic of Timor-Leste was restored  
20 in May 2002. Timor-Leste became the 191st member of  
21 the United Nations that September. But our story  
22 goes back long before that.

23 Legend has it that the Timorese are the  
24 grandchildren of the crocodile. The body of our  
25 spirit ancestor became the land of Timor-Leste - his

1 lumpy back forming the mountains and valleys that  
2 our people have been living on for hundreds of  
3 years. The surrounding waters were the habitat of  
4 our grandfather crocodile and have sustained us.  
5 They remained integral to our livelihoods, culture  
6 and way of life.

7           The Timorese people governed themselves  
8 before we were colonised by Portugal in the 1500s.  
9 After the Dutch colonised Indonesia, the island of  
10 Timor was divided in two, with the east administered  
11 by Portugal.

12           During the Second World War, despite  
13 Portugal's neutrality, Australian soldiers arrived  
14 in what was then Portuguese Timor. Close bonds of  
15 friendship were formed between the Timorese and the  
16 Australian soldiers, a legacy of solidarity that  
17 both countries hold dear, with Australian veterans  
18 continuing to support our cause.

19           The colonial era came to an end on  
20 28 November 1975, when FRETILIN declared the  
21 independence of Timor-Leste. Nine days later  
22 Indonesia invaded our country.

23           Over the next 24 years, our people endured  
24 a brutal occupation under the military dictatorship  
25 of the Indonesian regime. A resilient few mounted

1 a guerrilla campaign in the hills and valleys of our  
2 country to free our people from oppression. But the  
3 odds and strong western powers were against us.  
4 Australia twice closed down our only radio  
5 connection in Darwin. Cut off from the outside  
6 world, little did we know that Australia gave formal  
7 recognition in 1979 to Indonesia's illegal  
8 annexation of our country in defiance of numerous UN  
9 resolutions condemning the invasion, and affirming  
10 the right of the Timorese to self-determination.

11           Australia, however, went a step further.  
12 In 1989, it entered into an unlawful treaty with  
13 Indonesia to carve up the resources in the Timor Sea  
14 with total disregard for our sovereignty, which at  
15 that very time we were fighting and dying for. The  
16 image of the Australian and Indonesian foreign  
17 ministers flying over the Timor Sea while drinking  
18 Champagne to celebrate the signing of the 'Timor Gap  
19 treaty' filled us with much sadness, but it  
20 motivated us to continue our struggle.

21           With the sacrifices made by our people,  
22 our determination strengthened year after year,  
23 until our fight came to an end with the fall of the  
24 Indonesian regime.

25           On 30 August 1999, our people voted

1 overwhelmingly for independence in a UN-sponsored  
2 referendum which was held precisely 17 years ago  
3 tomorrow. This led to violence by militias and a  
4 'scorched earth' operation. Our country was burnt  
5 to the ground. Overall, the period of Indonesian  
6 occupation and its immediate aftermath led to more  
7 than 200,000 deaths, close to one third of our  
8 population.

9           Members of the Commission, rising above  
10 our troubled past, we have reconciled with  
11 Indonesia, which has also been freed from the grip  
12 of dictatorship and is now, like Timor-Leste,  
13 a democracy. Today, our nations have become  
14 a global model of reconciliation and friendship, and  
15 we have begun discussions to delimit our maritime  
16 boundaries.

17           Timor-Leste has much to be proud of. We  
18 have consolidated a democracy with open markets and  
19 the rule of law. Our petroleum fund handles every  
20 dollar of our resources revenue with transparency  
21 and accountability. We have built the foundations  
22 of a successful State, secured peace and stability,  
23 and have a 20-year strategic development plan for  
24 our future.

25           However, as a consequence of centuries of



1 colonisation and decades of occupation, we remain  
2 one of the least developed countries. Our people  
3 have limited access to clean water and face some of  
4 the worst malnutrition rates in the world. We did  
5 not meet even one of the eight Millennium  
6 Development Goals.

7           Timor-Leste has yet to be completely freed  
8 from its past. While we are no longer oppressed,  
9 our sovereignty remains challenged. During the  
10 negotiations, under the UN transitional  
11 administration we raised many times the need to  
12 discuss the maritime boundary issue, but Australia  
13 showed no interest. Instead, two months before the  
14 restoration of our independence, in March 2002,  
15 Australia withdrew from the binding dispute  
16 resolution mechanism under UNCLOS and the  
17 International Court of Justice, specifically on  
18 maritime boundaries.

19           On the very day of the restoration of our  
20 independence, we were faced with the indignity of  
21 having to sign the Timor Sea Treaty, the near mirror  
22 image of the 1989 Timor Gap treaty.

23           Mr Chairman, members of the Commission,  
24 you must understand that at the time Timor had  
25 nothing. Our land was scorched, our people killed

1 by the hundreds of thousands. More than 70 per cent 09:51  
2 of our infrastructure, including schools and  
3 hospitals, were burnt.

4 We had no money, forcing us to beg, every  
5 six months, to the international community for funds  
6 just to sustain the UN transitional administration  
7 and some basic services. This situation made us  
8 vulnerable to duress and exploitation. Yes, we had  
9 advice from the UN and elsewhere, but given the  
10 history leading to the restoration of independence,  
11 we were entirely in their hands and in no position  
12 to take informed decisions of our own.

13 Thereafter, we wanted to negotiate  
14 a permanent maritime boundary with Australia based  
15 on international law, a median line. Australia,  
16 however, refused to enter into serious discussions  
17 on a maritime boundary.

18 Inexperienced in negotiations, ignorant of  
19 our rights and desperate for revenue to rebuild our  
20 country from ruins, we succumbed to Australia's  
21 pressure and signed the CMATS treaty to facilitate  
22 the development of the Greater Sunrise field.

23 We were not aware at the time that, under  
24 the cover of an Australian aid programme renovating  
25 Timor-Leste government offices, Australia installed

1 listening devices to spy on the Timorese officials  
2 negotiating CMATS to maximise their advantage and  
3 commercial interest.

4           When this came to light we were shocked  
5 and appalled. I myself tried my best to persuade  
6 successive Australian governments to sit down, as  
7 friends, to discuss the problem and to work towards  
8 a maritime boundary agreement.

9           But they still refused.

10           I should mention that the Australian  
11 Opposition has recently committed to negotiate  
12 a maritime boundary with Timor-Leste and review  
13 Australia's jurisdictional carve-out.

14           Yet, even as recently as this month, the  
15 Australian Government has declined an invitation  
16 from Timor-Leste to negotiate.

17           Australia's refusal to negotiate maritime  
18 boundaries with us is difficult to explain.  
19 Australia's maritime areas are over 100 times  
20 greater than ours. Australia has the third largest  
21 maritime area in the world, with enormous resources  
22 and wealth. The area in question in the current  
23 dispute represents just 1.8 per cent of Australia's  
24 maritime area. Australia has settled its maritime  
25 boundaries with all its neighbours, all but

1 Timor-Leste.

2 Even today, Timor-Leste is willing, at any  
3 time, to submit our boundary dispute to an  
4 international tribunal or court. But, with its  
5 withdrawals, Australia turns its back on the law.

6 Members of the Commission, that is how we  
7 find ourselves in front of you today. We have not  
8 come to the Hague to ask for favours or special  
9 treatment. We have come to seek our rights under  
10 international law.

11 Even someone such as myself, educated in  
12 the jungles of Timor and in prison, understands that  
13 basic fairness and common sense, let alone  
14 international law, dictates that the maritime  
15 boundary between two opposite countries should stand  
16 halfway between them.

17 The story of our long struggle for  
18 sovereign rights over our seas is told in  
19 Timor-Leste's policy paper on maritime boundaries,  
20 which, I am pleased to note, the Prime Minister of  
21 Timor-Leste is launching today in Dili. This paper  
22 conveys the importance of maritime boundaries to our  
23 people and to the future of our nation. Copies are  
24 available.

25 Mr Chairman, members of the Commission,

1 the achievement of maritime boundaries in accordance 09:56  
2 with international law is a matter of national  
3 sovereignty and the sustainability of our country.  
4 It is Timor-Leste's top national priority.

5 So many Timorese people have fought and  
6 died for our sovereignty, our brothers and sisters,  
7 our family and our friends. It saddens us still to  
8 think of those times and the terrible sacrifices and  
9 choices that no person should ever have to make.

10 Securing our maritime rights will be the  
11 end of Timor-Leste's long struggle for sovereignty.  
12 We will then finally be able to enjoy, in peace and  
13 dignity, the rich and beautiful seas that are  
14 rightfully ours. Just as we fought so hard and  
15 suffered so much for our independence, we will not  
16 rest until we have our sovereign rights over both  
17 land and sea.

18 Mr Chairman, members of the Commission,  
19 Timor-Leste looks to your Commission to assist the  
20 parties to find a path towards agreement. We know  
21 that it will not be easy, but we approach the  
22 process constructively and in good faith.

23 We have confidence that our friends across  
24 the table and the seas will respect this process and  
25 co-operate with goodwill.

1           Mr Chairman, members of the Commission,  
2 I thank you very much and now ask you invite  
3 Professor Vaughan Lowe, counsel for Timor-Leste, to  
4 address the Commission. Thank you.

5           **PROFESSOR LOWE:** Thank you, Chairman.  
6 Thank you, members of the Commission. As you have  
7 heard from our chief negotiator, Timor-Leste is  
8 a small coastal country in Southeast Asia. To the  
9 north, west and east lies the Indonesian  
10 archipelago, and to the south lies Australia, about  
11 300 nautical miles across the Timor Sea.

12           The Island of Timor was ruled for  
13 centuries by two ancient kingdoms, one in the east  
14 and one in the west. Portuguese missionaries  
15 arrived on the Island of Timor in 1515, and Portugal  
16 later claimed the current territory of Timor-Leste  
17 and called it Portuguese Timor. The Dutch claimed  
18 the territory of West Timor, which is now part of  
19 Indonesia.

20           During that colonial period, no maritime  
21 boundaries had been fixed for Timor-Leste.

22           By the early 1970s, Australia was aware  
23 that both Portuguese Timor and Indonesia disputed  
24 Australia's right to issue exploration permits  
25 closer to Timor than to Australia. Portugal, which

1 then still governed Timor-Leste, approached  
2 Australia with requests to commence maritime  
3 boundary negotiations, but Australia rebuffed those  
4 approaches.

5           Instead, in 1971, Australia began  
6 negotiations on seabed boundaries with Indonesia to  
7 establish jurisdiction over the seabed and its  
8 resources. Portugal was excluded from the  
9 negotiations.

10           In May 1971, Australia and Indonesia  
11 signed a treaty creating a partial seabed boundary  
12 that covered the Arafura Sea and the eastern part of  
13 the Timor Sea, based on equidistance principles.

14           In October 1972, they signed a second  
15 treaty establishing permanent seabed boundaries in  
16 the Timor Sea, and that came into force on  
17 8 November 1973. As Portugal did not participate in  
18 those negotiations, the seabed boundary established  
19 by that agreement could not address the maritime  
20 boundary between Timor-Leste and Australia, thereby  
21 creating what came to be known as the Timor Gap.  
22 The size of the gap was determined by Australia and  
23 Indonesia, without Portugal's input.

24           In June 1974, less than two years after  
25 the signing of the second seabed treaty between

1 Australia and Indonesia, the Australian company  
2 Woodside drilled in an area north of the median line  
3 and just south of the 1972 boundary line, confirming  
4 the discovery of oil and gas reserves in the  
5 Greater Sunrise field.

6 By 1974, Portugal began the process of  
7 decolonisation, but in 1975, following internal  
8 strife, the Revolutionary Front for an Independent  
9 East Timor (FRETILIN) won control of the territory  
10 of the Timor-Leste, and on 28 November 1975 it  
11 declared the territory's independence.

12 Nine days later, in December 1975, in  
13 a gross violation of international law for which it  
14 was repeatedly condemned in the United Nations,  
15 Indonesia invaded Timor-Leste using armed force and  
16 occupied the country.

17 During the 24 years of occupation,  
18 Timorese freedom fighters ran a national resistance  
19 campaign. Close to one third of the population were  
20 killed, disappeared or died due to conflict-related  
21 hunger and illness during that occupation, and on  
22 14 February 1979, Australia announced its *de jure*  
23 recognition of Indonesian sovereignty over  
24 Timor-Leste.

25 Australia was the only state in the world



1 that purported to recognise that flagrant violation 10:03  
2 of international law. It did so in order to  
3 commence negotiations with Indonesia over the  
4 boundary in the Timor Gap.

5 Indonesia and Australia officially began  
6 attempts to close the Timor Gap, and Australia hoped  
7 to draw a line connecting the endpoints of the  
8 existing seabed boundaries with Indonesia (points  
9 A16 and A17 on the map). But Indonesia refused to  
10 agree and adopted Portugal's position, arguing for  
11 a median line boundary.

12 As Australia and Indonesia could not agree  
13 on a maritime boundary, they instead negotiated over  
14 the sharing of resources in the Timor Sea, and while  
15 Timor-Leste remained under Indonesian military  
16 control and occupation in contravention of numerous  
17 United Nations resolutions, Australia and Indonesia  
18 spent a decade negotiating together a joint  
19 arrangement to divide up the resources of  
20 Timor-Leste, illegally extracted from within  
21 a coffin-shaped area in the Timor Sea known as the  
22 "Zone of Cooperation".

23 This agreement, the 1989 Timor Gap Treaty,  
24 came into force on 9 February 1991. The boundaries  
25 of that zone left rich resources to Australia, north

1 of the median line and just outside the western and  
2 eastern boundaries of the Zone of Cooperation, in  
3 areas to which Timor-Leste had (and has) an obvious  
4 claim.

5           Less than two weeks later Portugal  
6 instituted proceedings against Australia in the  
7 International Court of Justice. Australia objected  
8 that the court had no jurisdiction, saying that  
9 there was no dispute between Portugal and Australia,  
10 but only a dispute between Portugal and Indonesia.  
11 Well, the court rejected that Australian objection,  
12 but held that the case could not proceed in the  
13 absence of Indonesia as an indispensable party, and  
14 so that case ended.

15           In 1994, the United Nations Convention on  
16 the Law of the Sea signed in 1982 came into force  
17 recognising the rights of coastal states to an  
18 exclusive economic zone up to 200 nautical miles and  
19 a continental shelf of at least 200 nautical miles  
20 from its baselines. Australia ratified UNCLOS on  
21 5 October 1994.

22           The 1972 Treaty between Australia and  
23 Indonesia had dealt only with the seabed boundary,  
24 not with sovereign rights over the water column and  
25 its resources, and in 1997 Australia and

1 Indonesia negotiated a further boundary treaty which 10:06  
2 delimited the exclusive economic zone, excluding  
3 seabed rights. In stark contrast to the 1972  
4 Australia-Indonesia seabed treaty, the 1997  
5 exclusive economic zone treaty followed an  
6 equidistance line, and this resulted in the  
7 remarkable phenomenon of split jurisdiction. There  
8 is a large area of the Timor Sea, Australia has,  
9 broadly speaking, rights over the seabed and  
10 concurrently Indonesia has rights over the water  
11 column.

12 The 1997 treaty was never ratified and is  
13 not in force, but a provision of CMATS stated that  
14 the split between seabed and water column  
15 jurisdiction would continue.

16 All of this occurred while Timor-Leste was  
17 under military occupation by bilateral agreement  
18 between Australia and the occupying State.

19 In late 1999, after its UN-sponsored  
20 independence referendum, Timor-Leste began the  
21 transition to statehood, and it is right to recall  
22 here the gratitude of the Timorese people for the  
23 courage and solidarity of the Australian troops who  
24 led the UN peacekeeping mission at that difficult  
25 time.

1                   The illegal 1989 Timor Gap Treaty between                   10:08  
2   Australia and Indonesia ceased to have any effect  
3   when Indonesia formally relinquished control over  
4   the territory, and the United Nations  
5   Security Council gave responsibility for the  
6   administration of the territory until independence  
7   to the United Nations Transitional Administration in  
8   East Timor - UNTAET.

9                   In early 2000, Australia and UNTAET  
10   concluded an exchange of notes which allowed  
11   Australia and Timor-Leste to continue petroleum  
12   activities in the Timor Sea. This was formalised  
13   in July 2001 in a Memorandum of Understanding in  
14   which Australia and the UN administration agreed  
15   that the Timor Sea arrangement would govern  
16   exploitation of the Joint Petroleum Development Area  
17   (JPDA) which succeeded the Timor Gap Treaty Zone of  
18   Cooperation upon Timor-Leste's independence.

19                   Two months before Timor-Leste formally  
20   regained its independence, Australia excluded  
21   maritime boundary disputes both from its acceptance  
22   of the jurisdiction of the International Court of  
23   Justice, and also from the binding dispute  
24   resolution bodies under UNCLOS, thus enabling  
25   Australia to refuse to allow any court to settle the

1 boundary with Timor-Leste in accordance with 10:10  
2 international law. And then, on 20 May 2002,  
3 Timor-Leste restored its independence.

4           On the day of its independence,  
5 Timor-Leste signed the 2002 Timor Sea Treaty with  
6 Australia. The Timor Sea Treaty set up  
7 a provisional temporary arrangement to govern the  
8 exploitation of oil and gas resources in the Joint  
9 Petroleum Development Area (JPDA) and the sharing of  
10 revenues, pending the final delimitation of maritime  
11 boundaries consistent with international law.  
12 Fields such as Bayu Undan, within the JPDA, would be  
13 within Timor's seabed if the boundary were drawn  
14 along the median line used in the 1997  
15 Australia-Indonesia EEZ treaty.

16           On the same day Australia and Timor-Leste  
17 signed a Memorandum of Understanding concerning an  
18 International Unitisation Agreement for the  
19 Greater Sunrise field.

20           The Greater Sunrise field straddled the  
21 eastern lateral side boundary of the JPDA, so the  
22 parties had to agree how the field would be jointly  
23 exploited. Australia and Timor-Leste signed an  
24 agreement to unitise Greater Sunrise in early 2003,  
25 which provided that 79.9 per cent of the field was

1 deemed to belong to Australia, and 20.1 per cent was 10:12  
2 deemed to fall within the JPDA. The Timor Sea  
3 treaty was ratified by Timor-Leste on December 17,  
4 2002, and entered into force on 2 April 2003, but is  
5 stipulated to have effect from the date of signature  
6 on 20 May 2002. The Unitisation Agreement did not  
7 come into force until 23 February 2007.

8 In April 2004, Timor-Leste and Australia  
9 commenced negotiations on a maritime boundary.  
10 Timor-Leste argued that the delimitation of the JPDA  
11 did not reflect international law as the boundary  
12 should be the median line, and the lateral lines,  
13 the lateral boundaries of the JPDA, should lie  
14 further west and east.

15 Australia offered billions of dollars in  
16 compensation for Greater Sunrise, but Timor-Leste  
17 declined. Australia then refused to negotiate  
18 a maritime boundary and was willing to consider only  
19 a provisional resource-sharing arrangement in the  
20 Timor Sea. Those talks resulted in the conclusion  
21 of the 2006 Treaty on Certain Maritime Arrangements  
22 in the Timor Sea (CMATS) which established a new  
23 temporary resource-sharing arrangement.

24 It was intended as a provisional  
25 arrangement that would enable the opening up of the

1 Greater Sunrise field. CMATS amended the Timor Sea 10:14  
2 Treaty to allow Timor-Leste a greater proportion of  
3 revenue from Greater Sunrise, but it also contained  
4 a moratorium on "asserting, pursuing, or furthering"  
5 its maritime boundary claim for the next 50 years.

6 Well that is a remarkably long time, long  
7 enough to reach beyond the end of the commercial  
8 life of the Greater Sunrise field, and in effect  
9 this provisional arrangement would be the only  
10 arrangement governing Greater Sunrise.

11 It was also provided in CMATS that CMATS  
12 itself, and by extension the Timor Sea Treaty, could  
13 be terminated unilaterally by either State if the  
14 development plan for Greater Sunrise had not been  
15 approved within six years after the entry into force  
16 of CMATS. That deadline passed on 24 February 2013,  
17 and since that date either State has been entitled  
18 to terminate CMATS.

19 CMATS failed as a treaty. It did not lead  
20 to the development of Greater Sunrise and it has  
21 outlived its usefulness. Exploitation has taken  
22 place elsewhere in the JPDA. The most lucrative  
23 field is Bayu Undan, which was discovered in 1995,  
24 and was estimated to hold around 400 million barrels  
25 of condensate and 3.4 trillion cubic feet of gas.

1 Condensate production commenced in 2004 and gas 10:16  
2 production commenced two years later, and  
3 a 500-kilometre sub-sea pipeline from Bayu Undan to  
4 Darwin, Australia, was completed in 2006. The  
5 Bayu Undan field is still actively producing.

6 Other oil and gas fields such as Kitan  
7 were discovered later within the JPDA, but these  
8 fields have now mostly been exhausted.

9 As is evident from this summary, there has  
10 never been any agreement on permanent maritime  
11 boundaries between Timor-Leste and Australia. The  
12 Timor Sea Treaty and CMATS were expressly conceived  
13 as temporary provisional arrangements pending  
14 agreement on permanent maritime boundaries and  
15 without prejudice to the location of those permanent  
16 boundaries.

17 Several years after CMATS was agreed,  
18 Timor-Leste received information from a former  
19 Australian intelligence officer that Australia had  
20 secretly installed listening devices in the offices  
21 of the Timorese Cabinet, under cover of an  
22 Australian aid programme, and had bugged discussions  
23 of the Timorese Government team negotiating the  
24 CMATS Treaty.

25 On the basis of this flagrant violation of



1 international law and Timorese sovereignty, and of 10:18  
2 the duty to negotiate treaties in good faith,  
3 Timor-Leste advised Australia that it considers  
4 CMATS to be null and void, and that the Timor Sea  
5 Treaty continues to operate unamended by CMATS.

6 Australia rejected that view and  
7 Timor-Leste commenced arbitration proceedings  
8 against Australia at the Permanent Court of  
9 Arbitration here in The Hague, under the Timor Sea  
10 Treaty, seeking a declaration that the Timor Sea  
11 Treaty has not been modified by CMATS.

12 While those proceedings were underway, on  
13 the night before the opening of the first hearing at  
14 The Hague, on 3 December 2013, Australian security  
15 intelligence officers raided the offices of one of  
16 Timor-Leste's lawyers in Canberra, and seized  
17 documents and data belonging to Timor-Leste. The  
18 documents contained internal legal advice for Timor.  
19 Despite Timor-Leste's requests, the Australian  
20 Government refused to return these materials.  
21 Timor-Leste promptly commenced proceedings in the  
22 international court, seeking, among other things,  
23 a declaration that the seizure and detention of  
24 those materials was unlawful.

25 In March 2014, the ICJ ordered Australia

1 to seal the seized documents and data and to keep  
2 them sealed until the court's final decision, and  
3 the court also directed by 15 votes to one that  
4 "Australia shall not interfere in any way in  
5 communications between Timor-Leste and its legal  
6 advisers in connection with the pending arbitration,  
7 with any future bilateral negotiations concerning  
8 maritime delimitation, or with any other related  
9 procedure between the two States".

10           The one dissentient was the  
11 Australian-appointed ad hoc judge.

12           Australia requested Timor-Leste to suspend  
13 the 'espionage' arbitration and the ICJ case in  
14 order to allow for bilateral consultations, and  
15 Timor-Leste agreed to do so.

16           As a gesture of goodwill, Timor-Leste  
17 subsequently terminated the ICJ case after Australia  
18 returned the documents that it had seized.  
19 Nonetheless, Australia refused to begin negotiations  
20 on permanent boundaries, and insisted that it would  
21 engage only in consultations with Timor-Leste.

22           During those consultations Timor-Leste  
23 proposed various steps to facilitate agreement on  
24 permanent boundaries, including a consensual  
25 conciliation process. Australia was unwilling to

1 agree to any such steps, and while the differences 10:21  
2 between the parties were clarified and the contours  
3 of the dispute became clear at this time, the  
4 "consultations" failed to achieve progress.

5 It was against this background that  
6 Timor-Leste decided that there is no course open to  
7 it in its efforts to persuade Australia to negotiate  
8 permanent maritime boundaries other than recourse to  
9 the compulsory conciliation under the Law of the Sea  
10 convention, and Timor-Leste accordingly initiated  
11 this conciliation process.

12 It has also informed Australia of its firm  
13 policy that CMATS will go, and go soon. It may be  
14 declared void by the TST tribunal, or, without  
15 prejudice to its position that CMATS is void as  
16 a consequence of Australia's unlawful spying on the  
17 Timorese negotiators, Timor-Leste will, if  
18 necessary, exercise its right to terminate it  
19 unilaterally.

20 CMATS was set up as a temporary  
21 arrangement enabling the opening up of the  
22 Greater Sunrise field. It failed in that aim, and  
23 no longer has any purpose.

24 Timor-Leste has made it very clear to  
25 Australia that it much prefers that the termination

1 of CMATS, and with it the termination of the Timor  
2 Sea Treaty, should be a step taken jointly with  
3 Australia. That would ensure a smooth transition  
4 for the benefit of both States, and also of the  
5 petroleum industry.

6 Timor-Leste is acutely conscious of the  
7 fact that it is a very young nation, emerging from  
8 a period of great fragility. Its handling of the  
9 Timor Sea question will colour its reputation among  
10 other States and among foreign investors for many  
11 years. If notice of termination is given according  
12 to article 12 of CMATS, there is only three months  
13 in which to establish transitional arrangements  
14 before CMATS ceases to have effect, and for this  
15 reason Timor-Leste will not be bounced into  
16 precipitating action to terminate CMATS. It will  
17 first do all within its power to ensure that proper  
18 provision is made for an orderly transition to  
19 permanent maritime boundaries and a new legal  
20 regime; and for that it needs the constructive  
21 engagement and co-operation of Australia, and the  
22 expert assistance of this Commission.

23 Timor-Leste has at present no permanent  
24 maritime boundary with Australia. It is the only  
25 neighbouring State with which Australia has no

1 maritime boundary, as the slide on the screen shows. 10:25

2           There will shortly be no provisional  
3 arrangements in place. And, in these circumstances,  
4 Timor-Leste comes to the Commission to explain what  
5 it believes its entitlement under international law  
6 to be.

7           We regret that Australia has raised  
8 jurisdictional objections to the work of the  
9 Conciliation Commission. We have no doubts  
10 concerning its competence, and we have already made  
11 our written response to Australia's arguments. That  
12 said, we fully accept that the wide competence of  
13 the Commission to consider, indeed that it is  
14 required to consider under the Law of the Sea  
15 Convention, Australia's points on the validity of  
16 CMATS and so on, are part of its remit.  
17 Conciliators inevitably have to deal with the  
18 situations and sensibilities of the disputing  
19 parties as they find them case by case.

20           With your permission, sir, Sir Michael  
21 Wood will now continue with Timor-Leste's opening  
22 statement.

23           **SIR MICHAEL WOOD:** Mr Chairman, members of  
24 the Commission, my task today is twofold. The main  
25 part of my statement will outline Timor-Leste's

1 position on where its maritime boundaries in the  
2 Timor Sea lie under international law. Then I will  
3 briefly set out how Timor-Leste sees the  
4 Commission's role. We will, of course, go into  
5 these matters in more detail at subsequent stages of  
6 the proceedings.

7           Timor-Leste and each of its neighbours,  
8 Australia and Indonesia, are parties to the  
9 United Nations Convention on the Law of the Sea  
10 (UNCLOS). It follows that the delimitation of the  
11 overlapping maritime entitlements of Timor-Leste and  
12 its neighbours is governed by the provisions of  
13 UNCLOS concerning the delimitation of the  
14 territorial sea, the exclusive economic zone, and  
15 the continental shelf, as applied in the case law of  
16 international courts and tribunals.

17           Of particular relevance for these  
18 conciliation proceedings are articles 74 and 83 of  
19 UNCLOS, which lay down the rule for the delimitation  
20 of the EEZ and continental shelf.

21           As you know, they provide for the  
22 delimitation of the EEZ and continental shelf  
23 between States with opposite and adjacent coasts  
24 "shall be effected by agreement on the basis of  
25 international law as referred to in article 38 of

1 the Statute of the International Court of Justice in 10:28  
2 order to achieve an equitable solution".

3 UNCLLOS goes on to provide that, "if no  
4 agreement can be reached within a reasonable period  
5 of time, the States concerned shall resort to the  
6 dispute settlement procedures provided for in Part  
7 XV (UNCLOS)".

8 Mr Chairman, members of the Commission, as  
9 you are very well aware, the international law on  
10 maritime delimitation has evolved significantly over  
11 the years. It has done so in parallel with the  
12 development of maritime entitlements that resulted  
13 from the negotiations at the Third United Nations  
14 Conference on the Law of the Sea, and it is  
15 important to bear in mind this evolution of the law  
16 when we consider developments in the Timor Sea.

17 In the early 1970s, when Australia was  
18 negotiating with Indonesia, under the Law of the Sea  
19 as it then stood, it might have been possible to  
20 construct a legal argument for extending Australia's  
21 shelf beyond the median line and even right up to  
22 the Timor Trough, but the law has changed. There is  
23 no such argument under the modern Law of the Sea,  
24 although Australia sometimes still seems to suggest  
25 otherwise.

1           The story is well known, and I do not need 10:30  
2 to go into the details. In essence, under the legal  
3 regime of the continental shelf as it stood in the  
4 early 1970s, a central concept was natural  
5 prolongation. Arguments about geomorphology, the  
6 shape of the seabed, used to play an important role  
7 in negotiations and litigation at that time.

8           States sought to argue that their  
9 continental shelves extended as far as a natural  
10 break in the seabed, but even at that time State  
11 practice did not accept such arguments, as is clear,  
12 for example, from the 1966 agreement between Norway  
13 and the United Kingdom over the North Sea.

14           Since those very early days the  
15 international law of maritime delimitation has  
16 changed radically. Negotiations at the Third Law of  
17 the Sea Conference led to the acceptance of 200-mile  
18 exclusive economic zones and a minimum 200-mile  
19 continental shelf entitlement.

20           The caselaw has taken these developments  
21 into account and established conclusively that  
22 within 200 miles of the coast natural breaks and  
23 geomorphology now have no legal relevance.

24           It is also now clear that in most  
25 circumstances international law prescribes



1 a three-stage methodology for achieving the  
2 equitable solution required by Articles 74 and 83 of  
3 UNCLOS. This three-stage approach has been  
4 developed in the case law of the International Court  
5 of Justice, and of the Law of the Sea Tribunal in  
6 Hamburg, as well as in a number of distinguished  
7 arbitral tribunals.

8           The three-stage methodology will be  
9 familiar to the members of the Commission, and I am  
10 sure I do not need to go into details. I will  
11 simply recall that at the first stage a provisional  
12 equidistance or median line is constructed.

13           At the second stage one looks to see if  
14 there are any relevant circumstances that might call  
15 for an adjustment of the provisional equidistance  
16 line in order to achieve an equitable solution.  
17 Such circumstances, for example, may be when a State  
18 is squeezed between another State or States and its  
19 maritime entitlements are cut-off, or when the  
20 delimitation is between the mainland coast of one  
21 State and another State's small islands which are to  
22 be given less weight in the delimitation process.

23           Then, at the last of the three stages,  
24 a disproportionality test is conducted to ensure  
25 that the effect of the line thus reached is such

1 that the parties' respective shares of the relevant 10:33  
2 area in contention are not grossly disproportionate  
3 to the ratio of their coastal lengths.

4 So that, Mr Chairman, is a very brief  
5 sketch of the law applicable to identifying  
6 Timor-Leste's maritime boundaries, and in particular  
7 its maritime boundaries with Australia. With that  
8 in mind, I will now sketch out the application of  
9 the law in the present case.

10 Based on the relevant coasts of  
11 Timor-Leste and Australia, and after identifying the  
12 relevant base points in each case, the calculation  
13 of the provisional equidistance line at the first  
14 stage of the three-stage methodology is  
15 a straightforward geometrical exercise.

16 The map on the screen shows the  
17 equidistance or median line with the construction  
18 lines connecting the base points on either side.  
19 The median line has been extended to the east and  
20 west without prejudice to the eventual delimitation  
21 with Indonesia.

22 The second stage is to consider whether  
23 there are any relevant circumstances that might  
24 require the adjustment of the provisional  
25 equidistance or median line. In the present case

1 there would seem to be no such relevant 10:34  
2 circumstances as regards the line on the screen.

3           However, Australia might take the position  
4 that at the first stage base points should be  
5 located on Holothuria Reefs which are now being  
6 pointed out on the screen. You can see them just  
7 north of the Australian coast, despite the fact  
8 that there are only a few very small rocks within  
9 those reefs above water at high tide.

10           If one were to do this at the first stage,  
11 then it is clear that the reefs would then have to  
12 be discounted at the second stage as a relevant  
13 circumstance.

14           I would, however, point out that because  
15 Australia has taken account of the Holothuria Reefs  
16 in determining a median line, its very recent  
17 acreage release covers areas of overlapping claims,  
18 and in fact encroaches on the area claimed by  
19 Timor-Leste, and you can see that with the slight  
20 sliver just above the median line on the screen.

21           This acreage release, which was made on  
22 11 August 2016 -- just 18 days ago -- stands in  
23 contrast to article 10(3) of the Commission's Rules  
24 of Procedure which provide that, "the parties shall  
25 refrain during the conciliation proceedings from any

1 measure which might aggravate or widen the dispute". 10:36

2 Mr Chairman, members of the Commission,  
3 a third stage, the final stage of the three-stage  
4 methodology, is the application of the  
5 disproportionality test, and in this case the median  
6 line that we have thus constructed creates  
7 a division of the relevant area that does not create  
8 any disproportionality requiring a shifting of the  
9 median line.

10 The result of applying the three-stage  
11 methodology required by international law, required  
12 by the case law, is to delimit the overlapping  
13 maritime entitlements of Timor-Leste and Australia  
14 in the Timor Sea in the way that you can see on the  
15 screen. That, we say, is the median line dictated  
16 by the provisions of UNCLOS, and it provides an  
17 equitable solution.

18 Mr Chairman, by way of background, and  
19 only by way of background, I shall now say a few  
20 words on how the methodology might apply to the  
21 lateral boundaries to the east and west, where  
22 Timor-Leste also shares a maritime boundary with  
23 Indonesia.

24 Of course, we have to bear in mind that  
25 Indonesia is not a participant in the present

1 conciliation which concerns only the maritime  
2 boundary between Timor-Leste and Australia.

10:38

3 As Minister Gusmão has explained,  
4 discussions on maritime boundaries are now underway  
5 with Indonesia, and nothing we say at this hearing  
6 is intended to affect, in any way, those  
7 negotiations.

8 In the west, a provisional equidistance  
9 line would be drawn at the first stage from the land  
10 boundary terminus between Timor-Leste in the east  
11 and Indonesia in the west.

12 At the second stage, there is, in  
13 Timor-Leste's view, a significant relevant  
14 circumstance. Timor-Leste's maritime entitlements  
15 are effectively cut off because of the concavity of  
16 its coast, squeezed between Indonesian entitlements  
17 from east and west, and due to this circumstance the  
18 equidistance line would be shifted to the west to  
19 provide an equitable solution.

20 It should be noted that over the years in  
21 this disputed area of overlapping claims, just west  
22 of the JPDA, Australia has developed and depleted  
23 three oil and gas fields, Laminaria, Corallina and  
24 Buffalo. The location of these fields is shown on  
25 the screen.

1           On a side note, I would comment that the  
2 acreage release of 11 August this year, which I have  
3 just mentioned, shows that Australia's habit of  
4 exploiting natural resources in disputed areas  
5 continues even while these proceedings are in train.

6           Mr Chairman, in the east of the Timor Sea,  
7 at the first stage, a provisional equidistance line  
8 would be drawn from a point between Timor-Leste's  
9 Jaco Island and the small Indonesian islands to the  
10 east.

11           At the second stage, the provisional  
12 equidistance line is to be adjusted to take account  
13 of relevant circumstances. In addition to the  
14 concavity of Timor-Leste's coast, the small and  
15 scattered Indonesian islands to the east of  
16 Timor-Leste, the Leti Islands, are also an important  
17 relevant circumstance. International judicial  
18 bodies have repeatedly found that islands such as  
19 these should be given significantly less weight than  
20 mainland coasts or major islands. Because they are  
21 small and scattered it would be inequitable to treat  
22 them in the same way as a mainland coast.

23           The effect of these relevant circumstances  
24 on the western lateral is that in order to achieve  
25 an equitable solution the provisional equidistance

1 line needs to be adjusted significantly towards the 10:41  
2 east.

3 Mr Chairman, at this stage it is important  
4 to recall that the 1972 agreement in place between  
5 Australia and Indonesia on the division of the  
6 seabed, or the continental shelf, which you now see  
7 represented as a black line on the screen. That  
8 bilateral treaty which, as we have seen squeezed  
9 Timor-Leste and created the Timor Gap, cannot in any  
10 way affect Timor-Leste's sovereign rights.

11 Though the exact location of the tri-point  
12 connecting the maritime boundaries of Australia,  
13 Indonesia and Timor-Leste cannot be finalised  
14 without the presence of all three States, the result  
15 of applying the three-stage methodology to the  
16 maritime areas in the Timor Sea is illustrated in  
17 broad terms on the map now on the screen.

18 This is the area of the Timor Sea claimed  
19 by Timor-Leste as subject to its exclusive sovereign  
20 rights under international law. I make the obvious  
21 point that the map only shows the claims in the  
22 Timor Sea, not to the north where delimitation will  
23 be between Timor-Leste and Indonesia.

24 Mr Chairman, members of the Commission,  
25 I will end my short statement with a few words about

1 how we see your role in assisting the parties in 10:43  
2 solving their maritime dispute. We see your task as  
3 threefold.

4 First, we hope that the Commission can  
5 assist the parties to reach an agreement on the  
6 delimitation of permanent maritime boundaries "on  
7 the basis of international law, as referred to in  
8 article 38 of the Statute of the International Court  
9 of Justice, in order to achieve an equitable  
10 solution", to refer once again to the language of  
11 UNCLOS.

12 The Commission is to hear the parties and  
13 make proposals to assist the parties to reach an  
14 amicable settlement to the issues at hand. The  
15 primary aim is to achieve an agreement between  
16 Timor-Leste and Australia on delimitation. However,  
17 if the Compulsory Conciliation process does not  
18 conclude with an agreement resolving the dispute,  
19 the Commission is then to issue a reasoned report on  
20 "all questions of fact or law relevant to the matter  
21 in dispute". The report is to include those  
22 recommendations the Commission finds appropriate for  
23 an amicable settlement of the dispute. According to  
24 UNCLOS, the parties are then required to negotiate  
25 in good faith an agreement on the basis of the



1 report.

10:45

2           In addition to the issue of permanent  
3 maritime boundaries, a second task for the  
4 Commission is to assist Australia and Timor-Leste to  
5 agree on appropriate transitional arrangements in  
6 the disputed maritime areas, to bring the parties  
7 from their current temporary arrangements to the  
8 full implementation of their newly agreed permanent  
9 maritime boundary.

10           Finally, a third task for the Commission,  
11 and one related to the issue of transitional  
12 arrangements, concerns the post-CMATS arrangements.  
13 With the expected termination of CMATS, and with it  
14 the Timor Sea Treaty, the parties will benefit from  
15 the assistance of the Commission in finding the  
16 optimal way to come to a mutual position on  
17 dissolving the joint institutions and arrangements  
18 found in those provisional arrangements, and moving  
19 on. Though CMATS can be terminated unilaterally, as  
20 previous speakers have already made clear, mutually  
21 agreed steps to bring the provisional arrangements  
22 to an end are not only beneficial for the parties  
23 vis-à-vis each other, but are essential for the  
24 treatment of the private contractors operating under  
25 the legal regime of the soon to be defunct JPDA.

1           Mr Chairman, members of the Commission,  
2 that concludes what I have to say and I would ask  
3 that you call upon the agent of Timor-Leste,  
4 HE Minister Agio Pereira, to conclude our  
5 presentation this morning. Thank you.

6           **MINISTER PEREIRA:** Mr Chairman, members of  
7 the Commission, I am honoured to be here before you  
8 to bring the presentation of Timor-Leste to a close  
9 today.

10           Initiating this conciliation process is  
11 a testimony to Timor-Leste's faith in an  
12 international legal order based on the rule of law.  
13 We ratified the United Nations Convention on the Law  
14 of the Sea in the belief that our maritime affairs,  
15 including the determination of our maritime  
16 boundaries, shall be governed by the rules of such  
17 a widely accepted multilateral treaty.

18           The preamble of the Law of the Sea  
19 Convention notes that its purpose is "to contribute  
20 to the realisation of a just and equitable  
21 international economic order which takes into  
22 account the interests and needs of mankind as  
23 a whole and, in particular, the special interests  
24 and needs of the developing countries".

25           As a nation modest in population and size,

1 surrounded by two powerful neighbours, Timor-Leste 10:48  
2 takes great comfort in the basic principle of  
3 equality of States and the fairness of the  
4 international system.

5 At the time of our independence in 2002,  
6 the United Nations Secretary General Kofi Annan  
7 said, "Never before has the world united with such  
8 firm resolve to help one small nation establish  
9 itself", and he also wisely observed that  
10 "independence is just the very beginning of the long  
11 process of nation-building".

12 Today we face an enormous challenge to  
13 provide our young people with the education,  
14 healthcare and jobs they deserve. Our desire to  
15 bring stability and certainty to our maritime areas  
16 is very much a matter of practical necessity for the  
17 sustainable development of our young nation.

18 Settling our permanent maritime boundaries  
19 in accordance with international law is the final  
20 stage in our struggle for sovereignty. A final  
21 mountain to climb in our journey to fulfil our right  
22 of self-determination.

23 And this, Mr Chairman, brings me to the  
24 second basic principle of the international legal  
25 order, one that is at the heart of Timor-Leste's

1 position: that sovereign States shall settle their  
2 disputes peacefully. In the context of the Law of  
3 the Sea, this settlement is to result in a fair and  
4 equitable solution.

5           Australia and Timor-Leste agreed to  
6 certain provisional arrangements in the Timor Sea  
7 Treaty and CMATS to operate in the period prior to  
8 agreement upon permanent maritime boundaries. It is  
9 not necessary for me now to go into the regrettable  
10 circumstances of the negotiation of the CMATS  
11 Treaty, which have done so much harm to the trust  
12 and respect that should exist between Timor-Leste  
13 and Australia. This is not a time for revisiting  
14 past mistakes and misgivings. We are looking to the  
15 future, so there is one point that I should  
16 emphasise.

17           The current provisional regime is near its  
18 end. CMATS is going. That is the policy of  
19 Timor-Leste. Even putting aside our views on the  
20 validity of CMATS, if we give notice of termination  
21 under article 12 of CMATS, CMATS and the Timor Sea  
22 Treaty cease to have effect three months later. It  
23 is our duty to ensure that proper transitional  
24 arrangements are in place before that happens.

25           In the last month, the Minister of Natural

1 Resources, Alfredo Pires and I, with our maritime  
2 boundary office and legal teams, have visited the  
3 oil companies with a stake in the Timor Sea. We  
4 have gone to see their senior executives personally  
5 to explain the situation and to seek their views.  
6 We have done so in Perth, in Houston, and here in  
7 The Hague. Those visits have been very well  
8 received and we are working on a post-termination  
9 plan to meet the investors' requirements. The  
10 provisional resource sharing treaties between  
11 Timor-Leste and Australia that have not served their  
12 purpose will be removed. But Timor-Leste can only  
13 do this when the necessary preparatory work has been  
14 completed.

15           And today, as we find ourselves here  
16 before you, we look to you, Mr Chairman, members of  
17 the Commission, to bring us together in a "spirit of  
18 mutual understanding and co-operation" in the words  
19 of the Law of the Sea Convention, with a view to  
20 assist us to amicably settle our maritime dispute.

21           This is for the sake of the young and  
22 future generations of Australian and Timorese  
23 people. They must be freed from the burden of this  
24 lingering dispute and face the future together,  
25 sharing friendship, peace and prosperity.

1           Mr Chairman, members of the Commission,  
2 this concludes the presentation of Timor-Leste  
3 today. I, along with the rest of the Timorese  
4 delegation, would like to thank you, the registrar,  
5 and our Australian counterparts, for the remarkable  
6 way in which the hearings today are being conducted.

7           Thank you.

8           **THE CHAIRMAN:** Thank you, honourable  
9 Minister, and thank you for the interventions from  
10 the Government of East Timor. I think we are  
11 running ahead of schedule. I really like that, so  
12 now I will call a break and ask everybody to come  
13 back and be ready for Australia's opening statement  
14 at 11.15 am. Thank you.

15           (10.55 am)

16           (Short break)

17           (11.16 am)

18           **THE CHAIRMAN:** Welcome back from the  
19 break. I think we are doing very well. We are  
20 already ten minutes ahead of schedule, so I am very  
21 optimistic for the rest of the morning.

22           Without further ado, I give the floor to  
23 Australia for their opening statement.

24           **MR QUINLAN:** Thank you, Mr Chairman, and  
25 members of the Commission, and good morning,

1 Distinguished representatives, and Counsel for  
2 Timor-Leste.

11:17

3 I would like in particular to acknowledge  
4 His Excellency Kay Rala Xanana Gusmão, well-known to  
5 all of us of course, Minister of Planning and  
6 Strategic Investment and Chief Negotiator for  
7 Maritime Boundaries.

8 We have listened very carefully to the  
9 statement made by our Timor-Leste colleagues this  
10 morning.

11 I am honoured to present Australia's  
12 opening statement before the Commission. In the  
13 course of these remarks I will be quoting from  
14 a number of documents which I will make available to  
15 the Commission and Timorese colleagues in accordance  
16 with the rules of procedure.

17 We are mindful of the historic  
18 significance of this first ever Annex V conciliation  
19 proceeding constituted under the UN Convention of  
20 the Law of the Sea, and we are very fortunate to  
21 have a Commission of eminence and experience, and we  
22 are confident that the Commission will afford to the  
23 arguments of both parties the very careful  
24 consideration they deserve.

25 These statements, of course, are being

1 webcast live, and for those watching the proceedings 11:18  
2 I think it is important that we speak plainly about  
3 the complex issues that are involved.

4           Australia will reserve the detail of our  
5 argument for hearings in coming days, but at the  
6 outset I should underline that, as we all know, we  
7 contest the competence of the Commission.  
8 Australia's view is that there is no proper basis on  
9 which Timor-Leste is entitled to bring this claim.  
10 Doing so violates treaty commitments, specifically  
11 the 2006 Treaty on Certain Maritime Arrangements in  
12 the Timor Sea -- we all know it as CMATS -- under  
13 which both countries have committed not to bring  
14 proceedings against each other on maritime  
15 boundaries.

16           This objection, I should say, is not  
17 driven by politics or legal formalism, and certainly  
18 not by any failure to accord engagement with  
19 Timor-Leste the importance it warrants. It is  
20 motivated by a serious regard for principle. We do  
21 not think that Timor-Leste should use compulsory  
22 conciliation in an effort to oust the express treaty  
23 commitments it has made.

24           Chairman, members of the Commission,  
25 Timor-Leste made a number of points this morning



1 which we will address during the course of our 11:19  
2 statement and in coming days, but there is one point  
3 I would like address upfront from the start.

4 Timor-Leste talked about alleged  
5 Australian espionage. Timor-Leste has brought  
6 a separate arbitration claiming that CMATS is  
7 invalid on these grounds. Australia does not accept  
8 Timor-Leste's claims and is defending the validity  
9 of the CMATS Treaty in those proceedings.

10 It would be inappropriate to prejudge the  
11 outcome or to ask this Commission to treat  
12 Timor-Leste's allegations as fact. This is not the  
13 appropriate forum in which to raise these  
14 allegations: they are being tested in another forum,  
15 where we are bound by strict rules of  
16 confidentiality, and I will respect those rules.

17 Let me turn now to the actual dispute. Of  
18 course, the rest of what follows is without  
19 prejudice to our position on competence. It is  
20 obvious that the difference of view between  
21 Timor-Leste and Australia on where our boundary in  
22 the Timor Sea should lie is significant. The  
23 dispute is not new. It has existed since 2002.

24 Timor-Leste and Australia tried to reach  
25 an agreement on maritime boundaries in 2003 and 2004

1 but we were unable to do so. Contrary to what has  
2 been said, that Australia pressured Timor-Leste to  
3 sign CMATS, it was in fact Timor-Leste itself that  
4 proposed that we defer maritime boundary  
5 delimitation in favour of what it described as a  
6 "creative solution". Australia initially wanted  
7 that creative solution to include delimitation of  
8 boundaries. Timor-Leste did not, and the agreement  
9 reached in 2006 in the CMATS Treaty includes  
10 a moratorium on boundary negotiations and  
11 a commitment not to take legal action on maritime  
12 boundaries.

13 Timor-Leste was a strong supporter of  
14 CMATS. In a media interview in 2006, then  
15 Timor-Leste's Prime Minister Alkatiri said that  
16 Australia and Timor-Leste had "found a creative way  
17 to benefit the two peoples" and that "Timor benefits  
18 much more than Australia". His Excellency Xanana  
19 Gusmão, then the President of Timor-Leste, provided  
20 his presidential approval for ratification of the  
21 CMATS Treaty.

22 But we are here today because Timor-Leste  
23 now wants a different deal. Australia's position is  
24 that the Commission should not disregard our  
25 treaties simply because one party has changed its

1 mind. The three treaties governing the Timor Sea 11:22  
2 were negotiated over several years and represent  
3 what we genuinely believe to be reasonable, agreed  
4 outcomes.

5 Under the Timor Sea Treaty, Timor-Leste is  
6 entitled to 90 per cent of the resources in our  
7 joint development zone, despite the area being  
8 claimed by both sides. Walking away from our treaty  
9 commitments would run counter to their purpose,  
10 which is to provide a stable framework for the joint  
11 development of resources.

12 What Timor-Leste is proposing would damage  
13 the reputation of the parties, both parties, for  
14 providing a stable and secure investment environment  
15 in the Timor Sea. Moreover, at a time when the  
16 rules-based order globally is under serious  
17 challenge, it is vital that countries stand by their  
18 treaty commitments.

19 Termination of CMATS, of course, is open  
20 to both parties, and Timor-Leste has said again this  
21 morning that CMATS will go, but Australia does not  
22 support its termination and certainly will not  
23 terminate it ourselves. We believe that CMATS and  
24 our other treaties in the Timor Sea are, as I have  
25 said, reasonable, agreed outcomes. They are the

1 best way to overcome a protracted boundary dispute. 11:24  
2 They are consistent with UNCLOS. They have  
3 delivered enormous benefit to both sides and they  
4 can continue to do so. We acknowledge obviously  
5 that Timor-Leste disagrees and we accept it is open  
6 to Timor-Leste to terminate CMATS, but we do not  
7 think that is the right path forward.

8 Mr Chairman, members of the Commission,  
9 Australia will set out for the Commission our views  
10 on the history of the disputes and the path forward.  
11 This statement will cover four areas:

12 First, it will put the dispute in the  
13 context of the relationship we have with  
14 Timor-Leste. This is important because, while our  
15 dispute on Timor Sea issues is significant and  
16 substantial, it does not reflect the totality of our  
17 very positive relationship, either past or present.

18 Second, it will set out in detail the  
19 treaty regime which governs our relationship in the  
20 Timor Sea. The treaties are fully consistent  
21 with -- and indeed encouraged by -- international  
22 law.

23 Third, it will seek to dispel some common  
24 misconceptions about boundaries in the Timor Sea and  
25 clarify what lies at the heart of the dispute.

1 Fourth, and finally, Australia will show  
2 why the best path forward is for Timor-Leste and  
3 Australia to work together as partners, respecting  
4 the existing treaties our two sovereign nations have  
5 concluded.

6 Before I close this introduction, I want  
7 to address two misconceptions. The first is that  
8 conciliation could not be objectionable. Why  
9 shouldn't neighbours be able to enlist the  
10 assistance of a third party to help them resolve  
11 their differences? That may be true in many cases,  
12 but I should demur that it is not a mark of good  
13 neighbourliness to initiate a compulsory procedure  
14 in breach of your own treaty commitments to that  
15 neighbour.

16 The second is that there may be a sense  
17 that these first Annex V proceedings should not  
18 stumble at a competence objection. But the systemic  
19 wellbeing of UNCLOS dispute settlement and future  
20 Annex V proceedings requires that the Commission  
21 signals early and clearly that compulsory  
22 conciliation must conform to the requirements of the  
23 Convention. Frankly, it is not a procedure in which  
24 a State instituting proceedings can simply craft its  
25 own process.

1 Mr Chairman, members of the Commission, 11:26

2 I will turn now to the relationship between our two  
3 countries. I do this to demonstrate three things:

4 First, to give the Commission a broader  
5 context beyond this dispute, and show that the sum  
6 total of our relationship is much greater than the  
7 issues that bring us here today, significant though  
8 they are.

9 Second, that the extensive co-operation  
10 between our countries over many years shows that we  
11 have a strong foundation for a relationship based on  
12 mutual understanding and respect.

13 Third, that although there are significant  
14 differences of opinion on Timor Sea issues,  
15 Timor-Leste is an especially important partner for  
16 Australia, and we are demonstrably committed to  
17 increasing our engagement.

18 Mr Chairman, members of the Commission,  
19 Australia and Timor-Leste are close neighbours and  
20 we will always be important to each other. The ties  
21 between the Australian and the Timorese people are  
22 ingrained in our shared and at times tumultuous  
23 history. Many Timorese died while supporting  
24 Australian forces during World War II in then  
25 Portuguese Timor. This is an indelible part of our

1 history, what Minister Xanana Gusmão described this 11:27  
2 morning as "a legacy of solidarity". We remember  
3 and honour the Timorese sacrifice.

4 We do not pretend that this history has  
5 been free of difficulties. It is a fact that,  
6 from December 1978 until the successful independence  
7 referendum in August 1999, Australia gave *de jure*  
8 recognition to Indonesian sovereignty over  
9 Timor-Leste. We are not seeking to avoid that fact.  
10 It is history.

11 But it is equally true that during the two  
12 and a half decades after 1975, Timor-Leste's  
13 resistance and struggle for independence were  
14 a matter of widespread public interest in Australia,  
15 certainly to my generation, and attracted the  
16 support of many Australians. It is also a fact that  
17 the contribution Australia made in the formative  
18 events of 1999 and afterwards in Timor-Leste deeply  
19 resonates in contemporary Australia. Australians  
20 are very conscious of the very high price that the  
21 Timorese people have paid for their independence.

22 Australia, of course, was instrumental in  
23 securing international support for the referendum  
24 process that led to independence. We provided  
25 significant financial and civilian police support

1 for the referendum. It was Australia which, despite 11:29  
2 the significant political obstacles -- as has been  
3 mentioned this morning -- built the international  
4 coalition and led the UN-mandated forces, INTERFET,  
5 which restored security and stability following the  
6 devastation unleashed on the country in the  
7 immediate lead-up to, and in the aftermath of, the  
8 referendum.

9 Timor-Leste speakers this morning have  
10 commented graciously on the courage and solidarity  
11 of the Australian defence personnel in INTERFET,  
12 over 5500 personnel in what was Australia's largest  
13 peacekeeping deployment ever. I myself made a very  
14 small contribution as the diplomat in our foreign  
15 Ministry given the job of co-ordinating Australia's  
16 operational response to the crisis.

17 In 2006, at the request of the Timor-Leste  
18 Government, Australia again deployed peacekeepers to  
19 help restore order and security following an  
20 outbreak of violence. Australian peacekeepers  
21 remained in Timor-Leste under the auspices of the  
22 International Stabilisation Force under UN mandate  
23 until December 2012. We took a lead in New York  
24 helping to ensure that that mandate continued in  
25 terms that Timor-Leste itself wanted.



1           Since independence, Timor-Leste has held  
2 three elections and made enviable progress in  
3 state-building, economic and human development and  
4 the development of its foreign relations. Its very  
5 active leadership, its admirable leadership, of the  
6 so-called G7-plus group of some 20 countries --  
7 emerging from conflict -- reflects the international  
8 respect for Timor-Leste's success as a post-conflict  
9 nation.

10           Australia's relationship with Timor-Leste  
11 today is expressed through multiple levels of  
12 engagement. Significantly, outside government, the  
13 Timorese and Australian communities make a strong  
14 contribution to community life in each of our  
15 countries. Hundreds of local government, school,  
16 church, university and community groups and  
17 individuals in both countries work together to help  
18 build stronger communities and a stronger  
19 partnership. Timor-Leste's history means that many  
20 Timorese and Australians have enduring personal  
21 bonds with each other.

22           At the government-to-government level,  
23 Australia is committed to supporting Timor-Leste's  
24 security, stability and growing prosperity, its  
25 integration into the Indo Pacific region and

1 building our bilateral regional and multilateral 11:31  
2 partnership. Our investment in Timor-Leste's  
3 success is demonstrated by our remaining  
4 Timor-Leste's largest security and development  
5 partner.

6 Australia works closely with the Timorese  
7 Government in implementing its Strategic Development  
8 Plan -- under the stewardship of Minister Xanana  
9 Gusmão -- focusing on improved livelihoods,  
10 enhancing human development, bringing basic services  
11 and building infrastructure, and strengthening  
12 governance and institutions. We have contributed  
13 over \$1.5 billion through our development  
14 co-operation programme since 1999.

15 Australia partners with Timor-Leste's  
16 Defence Force and the civilian Ministry of Defence  
17 through the defence cooperation programme, including  
18 by developing administrative capacity, strengthening  
19 engineering capabilities, and providing English  
20 language training. This is Australia's second  
21 largest defence co-operation programme with another  
22 country.

23 Equally important is the contribution we  
24 make to capacity building for the Timorese police  
25 through the Timor-Leste Police Development

1 programme. Again, this has been one of the largest 11:32  
2 policing programmes ever undertaken by Australia  
3 internationally.

4 So Australia's overriding objective is to  
5 work with Timor-Leste as a friend and partner to  
6 lock in the gains it has made since independence.  
7 We support Timor-Leste in its own plans to diversify  
8 its economy, ensure fiscal sustainability, and to  
9 promote human development.

10 The arrangements we have agreed in the  
11 Timor Sea have played a decisive part in enabling  
12 Timor-Leste to accumulate a Petroleum Fund of  
13 approximately 16 billion USD, which it uses to  
14 finance its state budget and which is almost eight  
15 times its annual GDP. That fund has helped to  
16 underpin peace, stability, and economic growth and  
17 made Timor-Leste a genuine model of success for  
18 post-conflict States.

19 However, as the International Monetary  
20 Fund and others have noted, Timor-Leste's fiscal  
21 situation is under strain, particularly with  
22 declining oil prices. Timor-Leste is the second  
23 most oil-dependent country in the world, and the IMF  
24 has stated that its oil production may cease by  
25 2023.

1           We bring these issues to the Commission's           11:34  
2 attention only to illustrate some of our wider  
3 concerns about the likely consequences of abandoning  
4 the current treaties in the Timor Sea. In  
5 particular, casting the CMATS treaty aside would, we  
6 think, create uncertainty and significant delay in  
7 the development of resources in the Timor Sea, and  
8 interrupt the flow of revenue.

9           I will stop here and not belabour these  
10 points. I make them only to show Timor-Leste's  
11 success as a nation able to realise its own vision  
12 for the prosperity and security of its people is  
13 a compelling interest that Australia shares.

14           Mr Chairman, if the Commission agrees,  
15 Mr Justin Gleeson, Australia's Solicitor-General,  
16 will continue our opening statement.

17           **MR GLEESON:** Thank you, Mr President. It  
18 is an honour to appear before the Commission.

19           As has been indicated, I will be dealing  
20 with the second and third of the four parts of the  
21 Australia's presentation. The second part concerns  
22 the historical background to this dispute, and seeks  
23 to establish that the existing treaties are  
24 reasonable, they are right, they are binding, and  
25 they reflect a legitimate position in international

1 law.

2           The third part of our presentation will  
3 look in some detail at the boundaries of the joint  
4 development area, and also illustrate those  
5 boundaries currently established are a reasonable  
6 negotiated solution consistent with international  
7 law. They are the two substantive matters I will  
8 cover.

9           As will be apparent, the territory I seek  
10 to cover to some extent relates to matters raised  
11 this morning by Professor Vaughan Lowe and  
12 Sir Michael Wood. I will address some of the  
13 matters they have raised, but not all of them, for  
14 obvious reasons.

15           It is appropriate, however, at the outset  
16 to address four matters that you have heard this  
17 morning from those two speakers. Could I just deal  
18 with them in summary form?

19           The first matter is that you have not  
20 heard a defence at law by Timor-Leste for why it  
21 brings these proceedings now in breach of article 4  
22 of CMATS and, we would submit, in breach of UNCLOS.  
23 You have not heard such a defence from  
24 Professor Vaughan Lowe or Sir Michael Wood, and the  
25 consequence of that is, even if, arguendo, which we

1 would deny everything they said this morning were 11:36  
2 correct, none of it defeats the proposition that  
3 these proceedings are premature.

4 The second matter I wish to refer to at  
5 the outset concerned something put forward to you by  
6 Sir Michael Wood at the tail end of his remarks.

7 You may recall he said that Timor-Leste  
8 perceives there are three purposes that you have as  
9 a Commission. It will not have escaped you that the  
10 second and the third purposes he mentioned are not  
11 only outside the notification by Timor-Leste which  
12 commenced the proceedings, they are also on any view  
13 outside article 298 of UNCLOS, because they do not  
14 concern the matters in that article, so  
15 unfortunately, far from you hearing a legal defence  
16 for why Timor has brought these proceedings  
17 prematurely in breach of article 4 of CMATS, you  
18 have in fact heard an attempt to broaden your  
19 jurisdiction beyond that which could be available on  
20 any view of the notification of article 298, and  
21 Australia opposes that attempt by Timor-Leste to  
22 expand your competence even further beyond what on  
23 any view it could possibly be.

24 The third of the four preliminary matters,  
25 is you heard again from Sir Michael Wood twice an

1 assertion that Australia has issued acreage permits 11:38  
2 in aggravation of this dispute and in breach of the  
3 procedural rules you issued so recently.

4 That allegation by Sir Michael is  
5 unfounded, it is rejected by Australia. Australia's  
6 conduct in this area, consistent with what has  
7 occurred for many years, is supported by article  
8 4(2) of the CMATS treaty, and by the side letters  
9 exchanged between the two States.

10 It was not something done just the other  
11 day under your nose. It was publicly announced  
12 in February 2016 that these further permits would be  
13 issued, and the area of those permits is not that  
14 which Sir Michael Wood showed you on the map, where  
15 he suggested it strayed into the JPDA. The permits  
16 are below and outside the southern boundary of the  
17 JPDA. We would ask you to place no reliance upon  
18 that assertion by Sir Michael Wood.

19 The fourth preliminary matter is that  
20 particularly in Professor Vaughan Lowe's if I may  
21 say comprehensive and helpful summary of the  
22 history, there were, however, a number of assertions  
23 of fact and of law which are either wrong or  
24 tendentious. It is not open to me within the  
25 current time-frame to respond to each of those, and

1 I won't do so, but I will simply make clear that we 11:40  
2 do not accept the entirety of what Professor Lowe  
3 put to you.

4 Just to illustrate three matters that he  
5 put to you which were wrong, three of a larger  
6 number, first of all, he submitted that Australia  
7 refused to negotiate maritime boundaries in the  
8 period leading up to CMATS. That is incorrect.  
9 Australia sought to negotiate maritime boundaries  
10 and Timor-Leste said it was its preference to put  
11 that to one side and negotiate a resource-sharing  
12 agreement.

13 Secondly, he submitted that the 50-year  
14 period of CMATS was, to use his words, "remarkably  
15 long" and somehow abnormal, and somehow to be  
16 questioned or criticised, or simply put to one side.  
17 The purposes for the 50-year period were agreed at  
18 the time by Timor-Leste and Australia as a period  
19 which was likely -- not certain but likely -- to  
20 allow for development of the Greater Sunrise field  
21 for the benefit of both nations on a 50/50 sharing  
22 basis. There was nothing abnormal or unreasonable  
23 about the 50-year period.

24 The third matter I simply wanted to  
25 mention was he submitted that CMATS has outlived its



1 usefulness; it has failed in its aim. As if you, 11:41  
2 a body solemnly charged with administering  
3 international law, could take a treaty and simply  
4 say on the submission of a party who no longer  
5 wished to be bound by it, oh, it is no longer  
6 useful, it has failed in its aim.

7 That proposition is incorrect. CMATS has,  
8 in fact, been observed and followed, save for its  
9 breach in these proceedings, to the benefit of both  
10 parties and that continues to be the case today.  
11 Australia's position is that CMATS continues to  
12 provide a stable and appropriate framework by which  
13 development could occur in the future in the  
14 Greater Sunrise field for the benefit of both  
15 nations.

16 Could I then move to what we have  
17 identified as the part of our presentation which  
18 establishes that the treaties are reasonable and  
19 they are right and they should be respected.

20 In this sense we will also offer you  
21 a slide presentation which to some extent will cover  
22 material you have seen this morning. It is not  
23 possible within the time-frame to deal with the  
24 entirety of this material, but let me offer you at  
25 least an introduction to how Australia would see

1 some of these important historical matters.

11:42

2           The place that we would start for this  
3 morning's purposes is to identify that there are  
4 three key treaties relating to the Timor Sea. This  
5 is not to minimise that there have been other  
6 treaties, but the three absolutely central treaties  
7 are the Timor Sea Treaty of 2002, the agreement for  
8 the Unitisation of Sunrise (2003) and CMATS (2006).

9           The first point we would make about the  
10 three treaties is that they resulted from  
11 negotiations which were negotiations in which  
12 formidable senior Timorese, and in the early cases  
13 United Nations officials, pursued Timorese interests  
14 strongly at the same time as Australia pursued its  
15 interests strongly.

16           It is important to note that Timor-Leste's  
17 first Prime Minister, Mari Alkatiri, and its first  
18 foreign minister, José Ramos-Horta, were closely  
19 involved in the negotiation process, and that  
20 Timor-Leste in relation to the first two treaties  
21 had the support of senior United Nations officials,  
22 including Former Ambassador Peter Galbraith, and  
23 external advisers providing significant technical  
24 advice and support.

25           Australia would reject any assertion that

1 the negotiation of the treaties was in any way 11:44  
2 one-sided, or I think the word was uttered this  
3 morning, done under duress. Australia would reject  
4 that as a characterisation of the negotiation of any  
5 of these treaties.

6           Could I turn, then, to the first of the  
7 three treaties, the Timor Sea Treaty 2002, building  
8 upon, as Professor Lowe told us this morning,  
9 agreements reached with the Transition  
10 Administration and Timorese representatives  
11 immediately leading up to independence.

12           For present purposes we would submit that  
13 there are five features of the Timor Sea Treaty that  
14 are important to note:

15           The first feature is that the Timor Sea  
16 Treaty establishes the Joint Petroleum Development  
17 Area in the Timor Sea in an area of overlapping  
18 seabed and water column claims. You will see before  
19 you in slide 1 the JPDA.

20           In terms of the boundaries of the JPDA, in  
21 summary what is critical to note is that the  
22 northern boundary lies halfway down the Australian  
23 continental slope in the Timor Trough. The southern  
24 boundary follows what has been described today as  
25 the median line between Australia and Timor-Leste,

1 and, importantly, and this traverses some matters  
2 raised by Sir Michael Wood, the eastern and the  
3 western boundaries are the equidistant or median  
4 lines projected from between Timor-Leste and  
5 Indonesia.

6           The important difference in the historical  
7 arrangement which the States came to, and that which  
8 Sir Michael Wood says Timor-Leste would now seek to  
9 argue for, is that the eastern and western  
10 boundaries are equidistant median lines which  
11 respect both Timor-Leste and Indonesia.

12           The second aspect of the TST is that it is  
13 a framework for the two States jointly to manage,  
14 control and exploit petroleum resources within the  
15 area for the benefit of both countries.

16           The third aspect, which is important, is  
17 that under the 2002 treaty, 90 per cent of the  
18 petroleum produced from the JPDA is allocated to  
19 Timor-Leste and only 10 per cent to Australia.

20           Fourthly, as Professor Lowe indicated this  
21 morning, the TST contemplated the parties would  
22 conclude a later agreement to manage resources that  
23 straddle the JPDA and the areas which were under  
24 Australia's exclusive jurisdiction, specifically  
25 Greater Sunrise.

1           If I can now show you figure 2, you will  
2 see there that the JPDA clearly captures the  
3 Bayu Undan reserve, which has been successfully  
4 exploited, and it captures about 20 per cent of  
5 Greater Sunrise with the balance of Greater Sunrise  
6 falling into Australia's exclusive jurisdiction, and  
7 that allocation, as Professor Lowe reminded you, of  
8 20 per cent to the JPDA and 80 per cent to Australia  
9 was effected by the TST. We might see on slide 3  
10 a close-up containing and confirm a divide of  
11 Greater Sunrise between the JPDA and the area of  
12 Australia's exclusive jurisdiction.

13           The fifth and final aspect of the TST is  
14 that it applied for 30 years until 2033, or until  
15 final maritime boundaries were agreed, and it was  
16 without prejudice to the parties' maritime claims in  
17 the area.

18           As I have indicated, the TST allocated the  
19 petroleum 90 per cent to Timor-Leste and 10 per cent  
20 to Australia. No doubt Australia pursued its  
21 interests in those negotiations, but it also  
22 recognised Australia's broader national interest in  
23 a stable, prosperous Timorese State.

24           The purpose of Timor-Leste receiving  
25 90 per cent of the petroleum included to provide for

1 a more favourable position to Timor-Leste than under 11:49  
2 the previous Timor Gap Treaty which has been  
3 criticised this morning by Professor Lowe which  
4 allocated the revenue 50/50.

5 It is important to remember that at the  
6 time -- June 2002 -- senior Timorese officials  
7 recognised the benefits of this treaty for Timor  
8 Leste. If I could remind you what Prime Minister  
9 Mari Alkatiri then said publicly, his words were  
10 these:

11 "...the treaty in the end is not just  
12 about the practical business of revenue sharing:  
13 the Treaty establishes East Timor's relationship  
14 with its partners and the world. First, the Treaty  
15 is a hallmark of East Timor's independence;  
16 secondly, it embodies a commitment to an attractive  
17 and stable investment climate; and thirdly, it is an  
18 undertaking by East Timor to work together in  
19 partnership and friendship with Australia.

20 It is well known that the negotiations  
21 between East Timor and Australia on the Treaty were  
22 difficult. Negotiations always are, but the outcome  
23 was an enormous success, and one which makes our  
24 relationship with Australia all the more solid".

25 In the light of those remarks, which are

1 accurate remarks, you will have some appreciation of 11:50  
2 Australia's approach to these treaties being  
3 treaties that are reasonable, treaties that are  
4 right, treaties that are binding and treaties that  
5 provide a stable future development of these  
6 resources for the benefit of both nations.

7           Could I then move to the second of the  
8 three treaties I mentioned which is the agreement to  
9 unitise the Greater Sunrise gas fields.

10           Professor Lowe told you that that was  
11 agreed in March 2003, which is correct. He said it  
12 did not come into force until 2007. We must observe  
13 that the reason for that was that Timor-Leste  
14 changed its mind and refused to ratify that treaty  
15 until 2007, by which time it had also achieved the  
16 benefits of the CMATS Treaty.

17           Can I then come to that third treaty, the  
18 CMATS treaty, which is obviously of central  
19 significance to these proceedings and to the  
20 competence objection made by Australia.

21           We would submit to you that there are four  
22 key facts which put the negotiation of the CMATS  
23 Treaty in its correct context. The first fact is  
24 that it was Timor-Leste which suggested deferral of  
25 maritime boundary limitation in favour of what it

1 called the "creative solution" reflected in the  
2 CMATS Treaty.

11:52

3 The second key fact is that the moratorium  
4 in CMATS does not sit on its own: it is a key part  
5 of an overall package deal, as was well appreciated  
6 on both sides.

7 The third fact is that at the time  
8 Timor-Leste was well satisfied with the outcome of  
9 that treaty because of its substantial benefits for  
10 Timor-Leste.

11 The fourth fact is that, since 2007,  
12 Timor-Leste has changed its mind about CMATS. The  
13 operative cause of its change of mind is that it has  
14 failed to secure its preferred development option of  
15 a pipeline to its south coast. That is the  
16 operative cause for why the Greater Sunrise fields  
17 have not been developed.

18 Could I just illustrate a few matters to  
19 bear out those four facts?

20 The first fact was that Timor-Leste  
21 suggested the deferral of the maritime boundary  
22 delimitation in favour of a creative solution. That  
23 came about because, in 2003, an exchange of letters  
24 between Prime Ministers of Australia and Timor-Leste  
25 agreed to commence delimitation of permanent



1 maritime boundaries. The first round of talks  
2 in April 2004 revealed the parties had significantly  
3 different positions and it would be difficult to  
4 reach an agreement on a permanent boundary.

5 As a result of those matters, Timor-Leste  
6 suggested the parties explore what was called by  
7 Timor-Leste a "creative solution". It is important  
8 to observe that, in September 2004, at the start of  
9 the second round of negotiations, Australia's  
10 position was that any creative solution would still  
11 need to deal with the delimitation of permanent  
12 maritime boundaries. That is the very thing  
13 Timor-Leste says it wishes today Australia was still  
14 seeking to deal with in September 2004.

15 Timor-Leste said it did not wish to  
16 discuss permanent maritime boundaries. It was for  
17 that reason that the parties moved to discuss  
18 a creative solution which had three key elements:

19 The first was long-term deferral of  
20 maritime claims.

21 The second was the extension of the  
22 duration of the Timor Sea Treaty from 30 to 50  
23 years.

24 The third, which is critical, was there  
25 would be a revenue adjustment in respect of

1 Greater Sunrise significantly in Timor-Leste's  
2 favour.

11:55

3           There were then a further three rounds of  
4 negotiations seeking to bring those principles to  
5 the form of a treaty. On 29 April 2005, after  
6 a further negotiating round, the Timorese then  
7 Foreign Minister, José Ramos-Horta, said the  
8 following in a media release:

9           "Timor-Leste proposed a creative solution  
10 which may involve a resource-sharing arrangement in  
11 lieu of hastily attempting to resolve complex and  
12 sensitive issues involved in agreeing to a permanent  
13 maritime boundary."

14           Mr Ramos-Horta went on to say he was  
15 "confident that we are on the brink of securing an  
16 agreement to handle for a long period our competing  
17 claims in the Timor Sea and in turn unlock the  
18 enormous hydrocarbon potential of this region".

19           Those were the negotiations which led to  
20 CMATS being signed on 12 January 2006.

21           Next, can I indicate the extent to which  
22 the CMATS Treaty was a package deal.

23           The moratorium sat as part of a package in  
24 which Timor-Leste, and this was acknowledged this  
25 morning correctly, increased its share of revenue in

1 the Greater Sunrise gas fields from 18 per cent to 11:56  
2 50 per cent.

3 The second element of the package was that  
4 Timor-Leste was given water column jurisdiction such  
5 as for fishing activities within the JPDA. That is  
6 just but one illustration of why it is incorrect to  
7 say CMATS has outlived its usefulness. CMATS today  
8 is being taken advantage of by Timor-Leste to  
9 exercise water column jurisdiction to grant fishing  
10 rights and licences in the JPDA.

11 The third element of the package, as  
12 I have mentioned, was the 50-year moratorium.

13 Let me say a little bit more about the  
14 moratorium. Obviously it is central to CMATS. Why  
15 was there a 50-year moratorium on maritime boundary  
16 claims, on legal proceedings and further  
17 negotiations? The reason was to provide certainty  
18 to investors about the legal and regulatory regime  
19 so that they could make their decisions  
20 expeditiously and allow the resource to be developed  
21 so revenues could also flow to the two States.

22 As I indicated a little earlier, the  
23 50-year period was designed and appreciated by both  
24 States as being a period likely -- not certain but  
25 likely -- to cover the utilisation of

1 Greater Sunrise to provide stability over the entire 11:58  
2 lifespan of the development.

3 If I could indicate to you again an  
4 appreciation of this at the time by Mr Ramos-Horta  
5 as Foreign Minister, he said this publicly  
6 in October 2005:

7 "It is the view of the two sides that we  
8 should observe a moratorium on maritime boundary  
9 delimitation for a period coinciding more or less  
10 with the life of Greater Sunrise while [at] the same  
11 time we would have a 50/50 per cent share of the  
12 resources".

13 So the deal which was rational, which was  
14 reasonable, which was right and which was binding,  
15 was Timor-Leste would increase its share of  
16 Greater Sunrise from 18 per cent to 50 per cent, it  
17 would obtain water column jurisdiction over the  
18 JPDA, and there would be a 50 year moratorium for  
19 the specific purpose of allowing exploitation of  
20 these resources so that benefits could flow to both  
21 countries.

22 The next fact I mentioned was that at the  
23 time -- 2006/2007 -- Timor-Leste was well satisfied  
24 with CMATS, recognising its substantial benefit.

25 Prime Minister Alkatiri said the following

1 in a press release. He described CMATS as  
2 a "win/win" outcome which "takes account of the  
3 essential interest of both Timor-Leste and  
4 Australia".

5 As Professor Lowe recognised, within the  
6 democratic system of Timor-Leste there were two  
7 further steps to CMATS coming into legal force. The  
8 first, it had to be considered by the Timorese  
9 Parliament. It was considered, achieved an  
10 overwhelming majority and, on 20 February 2007, the  
11 national Parliament passed the ratification  
12 resolution.

13 On 21 February 2007, His Excellency Xanana  
14 Gusmão, then President, provided, as we have heard,  
15 his presidential approval for ratification of the  
16 treaty. These are the reasons why, within the  
17 democratic system of Timor-Leste, the CMATS Treaty  
18 came into law, and it was also at that time, as  
19 I have mentioned, that the IUA was ratified.

20 Let me come to the final of the four facts  
21 I have submitted to you concerning CMATS, and that  
22 is that it was Timor-Leste which has subsequently  
23 changed its mind about this treaty after failing to  
24 secure its preferred development option of  
25 a pipeline to its south coast.

1                   Before doing that, I wish to confirm again       12:00  
2   that both parties have positively implemented  
3   various obligations under CMATS, including  
4   Timor-Leste exercising its right to exploit  
5   fisheries resources inside the JPDA by issuing  
6   fishing licences.

7                   What is it that occurred since 2007?

8                   The critical fact is that, since 2007,  
9   Timor-Leste began to submit that the only  
10   development option it would be prepared to consider  
11   was a pipeline running from Greater Sunrise to the  
12   south coast of Timor-Leste with downstream  
13   processing then being able to occur on that south  
14   coast.

15                  How does that insistence by Timor-Leste  
16   sit with the legal regime established by the  
17   treaties?

18                  Under the treaties, Australia and  
19   Timor-Leste agreed, sensibly, that it would not be  
20   for either or both governments to dictate how  
21   Greater Sunrise would be developed. Rather, it  
22   would be for the contractors to bring forward  
23   a development plan which was commercially sensible  
24   and feasible, and the parties' regulatory  
25   authorities, that is the States' regulatory

1 authorities, would assess the development plan of 12:02  
2 the commercial investor by this criteria. The  
3 relevant criteria was whether the plan provided the  
4 "best commercial advantage consistent with good  
5 oilfield practice".

6 It is important to note that Australia has  
7 remained neutral on the question of where or how the  
8 pipeline should run. It is not for Australia nor  
9 for Timor-Leste to put forward a development option.  
10 It is not for Australia to oppose the concept of  
11 a Greater Sunrise pipeline to Timor-Leste.

12 Australia's approach, consistent with its  
13 treaty obligation, is that it will participate in  
14 the joint assessment of the plan put forward, as  
15 I have said, to consider whether it provides for the  
16 "best commercial advantage consistent with good  
17 oilfield practice".

18 It is next important to note that, by  
19 about 2010, the Greater Sunrise joint venture,  
20 having conducted their assessment, came to two  
21 conclusions, and you have not heard these  
22 conclusions this morning, but they are important to  
23 understanding this dispute.

24 The first conclusion was that laying  
25 a pipeline from Greater Sunrise to the south coast

1 of Timor-Leste would be technically and  
2 environmentally risky, given that the pipeline would  
3 be laid across a seismically active trough  
4 approaching 3000 metres in depth.

5 The second conclusion was that a pipeline  
6 to Timor-Leste would be commercially inferior to the  
7 two alternatives, the first being a floating LNG  
8 platform, and the second being a pipeline to Darwin.  
9 That is the material which has been put forward by  
10 the commercial venturer to the two States for them  
11 to consider and approve in order to allow this field  
12 to develop. However, the following has been  
13 Timor-Leste's response:

14 Firstly, in mid 2009, it said publicly any  
15 plan by the venturers to use floating LNG or to  
16 construct a pipeline to Darwin would be rejected.

17 In April 2010, the Joint Venturer  
18 announced it had selected the floating LNG as its  
19 preferred development concept, yet this was  
20 immediately dismissed by Timor-Leste.

21 In May 2010, the Joint Venturers delivered  
22 their formal development proposal for floating LNG  
23 to the Timor-Leste petroleum regulator who refused  
24 to accept it.

25 In July 2011, when Timor-Leste released



1 its strategic plan, it indicated that the only  
2 option was still to be a pipeline to Timor-Leste.

3           What those facts show, which I have gone  
4 into in a little detail, is that the lack of  
5 development in Greater Sunrise is not because of any  
6 deficiency in the Timor Sea treaty framework; it is  
7 rather because Timor-Leste is not satisfied with the  
8 proposal which has been put forward by the  
9 commercial venturers.

10           That provides the true context in which,  
11 around 2011, Timor-Leste first began to indicate  
12 publicly that it was looking beyond the existing  
13 treaty framework, it was considering the termination  
14 of CMATS, and, to use its words, the possible  
15 "breaking up" of CMATS, is what it said publicly.

16           My conclusion of this part of the  
17 presentation is that the operative cause for why  
18 Greater Sunrise has not been developed is simply  
19 that Timor-Leste insists upon an option which the  
20 commercial venturers do not wish to pursue.  
21 Australia's approach is that it is not a sound  
22 reason to discard a treaty framework that took five  
23 years to negotiate, and which the parties had  
24 previously acknowledged meets their interests, under  
25 which substantial work towards development has been

1 done, simply because one State makes a preference  
2 for a commercial matter such as a pipeline.

12:07

3 Mr President, members of the Commission,  
4 that is what I wish to say on the second part of  
5 Australia's four-part presentation. I trust you now  
6 have a good idea of the approach Australia is taking  
7 to the importance of these treaties, and to the  
8 current circumstances that we find ourselves in.

9 Could I then move to the third part of our  
10 presentation which, to some extent, will deal with  
11 some of the matters raised by Sir Michael Wood in  
12 the sense that I will also put some submissions to  
13 you concerning the boundaries of the joint  
14 development area.

15 The difference in our approach, however,  
16 will be that I will commence from the history and  
17 the facts and seek to show how it is that the  
18 current boundaries have come to be developed and to  
19 show that they are a reasonable negotiated solution  
20 consistent with international law.

21 Sir Michael Wood has approached the matter  
22 from the opposite end: This is what Timor-Leste  
23 would like to argue for assuming we are in a full  
24 maritime boundary negotiation.

25 The one other matter by way of preface

1 before I give you this part of our presentation is 12:09  
2 that Sir Michael put to you in a fairly freeflowing  
3 fashion that natural prolongation, to use his words,  
4 is out of date and that the modern regime of the Law  
5 of the Sea treats every State as entitled to a 200  
6 nautical mile continental shelf and, to use his  
7 words, "natural breaks and geomorphology are now  
8 irrelevant to maritime boundary delimitation".

9           The place for arguing that matter is  
10 elsewhere, but could I simply affirm Australia  
11 rejects that summary of this area of the law. One  
12 only needs to read article 74 of UNCLOS to see that  
13 natural prolongation remains one of the two ways in  
14 which a continental shelf can be conceived of and  
15 brought into a maritime boundary delimitation.  
16 I refer you to article 76(1), (2) and (3) for that  
17 fact.

18           With that in mind, could I now turn to  
19 look a little more closely at how the boundaries  
20 have in fact been built up.

21           I will ask first for you to be shown  
22 figure 4. In figure 4, you will see the extent of  
23 the prolongation of Australia's land mass, and  
24 you will see from the chart or the code that the  
25 colouring indicates that Australia's land mass

1 naturally extends a significant distance into the 12:10  
2 Timor Sea at depths which are relatively shallow:  
3 50, 100, 150, perhaps approaching 200 metres.

4 Then what you see is the Timor Trough.  
5 You see the slope of Australia's continental shelf.  
6 You then see the very deep Timor Trough with depths  
7 down to 3500 metres, an average depth of about 2,800  
8 metres, and then you see a very sharp rise up to the  
9 land mass of Timor-Leste.

10 What that demonstrates is that the  
11 physical continental shelves of Australia to the  
12 south and Timor-Leste and Indonesia to the north  
13 are entirely separate. They are separated by the  
14 Timor Trough and the Timor Trough is indeed deeper  
15 than the highest point on the land mass of either  
16 Timor-Leste or the Australian continent.

17 Now these characteristics, which Sir  
18 Michael says you simply ignore, are significant  
19 factual characteristics geologically,  
20 geomorphologically and ecologically and they create  
21 a distinction between Australia and its northern  
22 neighbours, Indonesia and Timor-Leste. They are  
23 matters which Australia would, in an appropriate  
24 forum, submit remain relevant in a maritime boundary  
25 delimitation.

1           I will next ask for you to be shown figure       12:12  
2   5 which, similar to what Professor Lowe showed you,  
3   indicates the 1972 seabed boundary line established  
4   under the treaty between Australia and Indonesia.  
5   What figure 5 adds, which you have not yet been  
6   shown, is that it maps the 1972 boundary onto the  
7   natural prolongation of Australia's land mass and it  
8   explains the rationale for the 1972 line.

9           Next, as you have been told, the 1972  
10   agreement left a gap in the area between Australia  
11   and Indonesia known as the Timor Gap. Australia  
12   submits that that was done in proper recognition of  
13   the fact that Portugal at that time would be  
14   entitled to claim interests in the Timor Sea.

15           Now, the precise position of the gap was  
16   based on a line of equidistance projected from the  
17   coast of Indonesia and the coast of then Portuguese  
18   Timor.

19           As you have heard, between 1979 and 1989,  
20   Australia and Indonesia entered further negotiations  
21   with a view to closing the Timor Gap. While  
22   a permanent maritime boundary was not established,  
23   in 1989 the Timor Gap Treaty was entered.

24           On slide 6 you will see, and you saw  
25   something a little similar this morning, the 1989

1 treaty mapped onto the 1972 boundary, and under the 12:14  
2 zone of co-operation which was established there was  
3 to be an equal sharing of benefits in the area  
4 identified as zone A. Conversely, zones C and B  
5 would be dealt with solely for the benefit of the  
6 closest State.

7           What is important is that zone A covers  
8 substantially the same area as the JPDA then  
9 established under the following treaty.

10           You have also heard that, in 1997,  
11 Australia and Indonesia signed the Perth Treaty  
12 which has not yet come into force.

13           The reason to go through this history and  
14 this fact is to show that the current boundaries for  
15 the JPDA have two important features:

16           Firstly, they reflect the significant  
17 natural prolongation of Australia's land territory,  
18 as well as reflecting claims based on the median  
19 line, and secondly, that in relation to the lateral  
20 boundaries, they have been established in a way that  
21 it does not infringe upon claims of Portugal or,  
22 later, Timor-Leste.

23           Could I next turn to figure 7. There we  
24 have again the JPDA, and you have already heard  
25 a little as to the northern and the southern

1 boundaries of the JPDA.

12:16

2           What I would next like to do is to  
3 demonstrate to you through slide 8 the manner in  
4 which the lateral boundaries of the JPDA were  
5 established as median lines from the area.

6           What you will see on figure 8 will be the  
7 western lateral being established, and it is  
8 a median line and it is also an equidistant line  
9 giving weight and effect to various points in the  
10 physical geography of the area.

11           Next you will see the manner in which the  
12 eastern lateral is built up. I might just pause  
13 there with the eastern lateral to observe that it is  
14 being built up giving weight both to the land mass  
15 of Timor-Leste and to islands in the Indonesian  
16 archipelago.

17           I will then ask for you to be shown  
18 figure 9. What we see from figure 9 is that when  
19 Portugal granted petroleum concessions, it also used  
20 the western and the eastern lateral built up in the  
21 manner I have identified.

22           What you see then on figure 10 is the  
23 western and the eastern lateral, together with the  
24 Portuguese concessions in red, and next, under  
25 figure 11, you will see how those laterals, properly

1 established as median equidistant lines, matched the 12:18  
2 1972 treaty. Further, on figure 12, you will then  
3 see how they matched the Zone of Co-operation of the  
4 1989 Timor Gap Treaty, and then under figure 13 you  
5 will see they match the JPDA.

6 Pausing just at figure 13, through the  
7 principles that I have identified, one can see the  
8 consistent basis upon which the laterals have been  
9 established under each of the arrangements up until  
10 the present.

11 Mr Chairman, members of the Commission, it  
12 was often claimed and repeated in various ways this  
13 morning that Timor-Leste's claim is no more and no  
14 less than a claim to the median line which will put  
15 the whole of Greater Sunrise in Timor-Leste's  
16 jurisdiction.

17 Let me show you that that is not the case.  
18 There you have before you the western and eastern  
19 laterals on figure 15 which have been built up in  
20 the manner I have earlier indicated.

21 You have on the southern boundary of the  
22 JPDA the Australia-Timor coastal median.

23 Let us now look at the location of  
24 Greater Sunrise. What one can then see is that use  
25 of the median lines in the manner I have developed



1 them today, consistent with history, would be the 12:20  
2 reason why 80 per cent of Greater Sunrise falls  
3 outside the median line.

4           You have heard this morning a presentation  
5 from Sir Michael of the manner in which Timor-Leste  
6 would seek to have the laterals drawn. It is not  
7 appropriate for Australia in this Commission at this  
8 time to be dealing with those matters in detail,  
9 because of course that goes to the very heart of the  
10 matters that would be discussed if our competence  
11 objection were to fail, so I do not wish and I do  
12 not think it is appropriate or perhaps desired by  
13 you for there to be any substantive response to that  
14 at the moment, and we certainly do not propose to  
15 show you a slide presentation contradicting what  
16 Sir Michael has put. They are matters which are not  
17 for the present time.

18           I do simply need to observe a few general  
19 points to put in context what has been put to you.

20           Firstly, and this was probably  
21 acknowledged near the end of Sir Michael's  
22 presentation, Timor-Leste is proposing new laterals,  
23 essentially either ignoring, or leaving for another  
24 forum and day, the claims of Indonesia. They are  
25 drawn on a basis of a contention between Timor-Leste

1 and Australia, ignoring the claims of Indonesia. 12:22

2 The effects of that are that, were any  
3 such laterals to be pursued, they would have the  
4 consequence of either requiring Indonesia to  
5 surrender maritime sovereignty it currently has, or  
6 Australia, or both.

7 Mr President, members of the Commission,  
8 at this stage I have concluded the matters I wish to  
9 put on this part of Australia's presentation.  
10 I have given you our historical perspective on how  
11 the boundary lines have come to be drawn as they,  
12 and at this stage I would ask to hand over to  
13 Mr Quinlan to conclude our presentation.

14 **MR QUINLAN:** Mr Chairman, members of the  
15 Commission, thank you.

16 In our concluding comments I would now  
17 like to put forward four reasons why Australia  
18 believes that it is in the best interests of both  
19 parties to support the current treaties.

20 First, the treaties represent, as I hope  
21 we have demonstrated, a reasonable, agreed outcome.  
22 In fact, the Timor Sea Treaty and the subsequent  
23 treaties really are a model example of how two  
24 states can work together for mutual benefit, despite  
25 different views on how to finalise boundaries.

1           The treaty framework has provided the  
2   certainty and stability to enable the early  
3   exploitation of resources so revenue could start  
4   flowing immediately to Timor-Leste. The stable  
5   revenue provided by the 2002 Timor Sea Treaty was  
6   particularly important for supporting Timor-Leste's  
7   recovery from conflict and economic development in  
8   the first years of its independence.

9           In addition to providing a stable revenue  
10   stream to Timor-Leste the Timor Sea Treaties have  
11   enabled that country to benefit from Australia's  
12   considerable expertise in offshore oilfield  
13   regulation which has assisted to build its own  
14   capacity in oil and gas regulation. The stability  
15   and experience brought by Australia's involvement in  
16   regulation of the joint development area has also  
17   been instrumental, we believe, in fostering  
18   investment.

19           One of Timor-Leste's arguments for  
20   dispensing with the current treaty framework is that  
21   it claims Australia has exploited Timor-Leste's  
22   vulnerability as a developing state. I hope we have  
23   demonstrated this is simply not true. Nor is that  
24   claim compatible with the undeniable benefits that  
25   have flowed to Timor-Leste since the Timor Sea

1 treaties were agreed. Timor-Leste proposed many of 12:24  
2 the key aspects of these arrangements itself,  
3 celebrated them at the time as major achievements,  
4 and has benefited significantly from them.

5 Second, the treaties do exactly what the  
6 Convention on the Law of the Sea encourages us to  
7 do, to enter into co-operative provisional  
8 arrangements pending final delimitation.

9 Far from being an obstacle to sovereignty,  
10 as Timor-Leste has sometimes suggested, when  
11 Australia and Timor-Leste negotiated and agreed to  
12 the treaties, the two countries were in fact  
13 exercising their rights as sovereign nations as well  
14 as achieving the objectives of UNCLOS. The preamble  
15 to UNCLOS recognises one of the key purposes of the  
16 Convention is "to promote the peaceful uses of the  
17 seas and oceans, the equitable and efficient  
18 utilisation of their resources".

19 The Convention in Articles 74 and 83  
20 obliges states to make "every effort to enter into  
21 provisional arrangements of a practical nature  
22 pending delimitation".

23 In this way, maritime delimitation should  
24 not necessarily be seen as an end in itself. As  
25 noted by the inaugural President of the

1 International Tribunal for Law of the Sea,  
2 Thomas Mensah, and I quote, "joint development zones  
3 may be seen as one way by which states can implement  
4 the letter and spirit of the provisions of the  
5 Convention on the Law of the Sea relating to  
6 delimitation of maritime boundaries".

7           Following a conciliation between Iceland  
8 and Norway regarding the island of Jan Mayen, the  
9 Chairman of the Commission appointed to hear this  
10 matter wrote about the benefits of joint development  
11 zones stating, "The merit of a joint development  
12 zone, as opposed to a division of territory, lies in  
13 minimising the potential for conflict often by  
14 eliminating competition over the ownership of  
15 resources. It converts the otherwise intractable  
16 issue of ownership into a question of distribution  
17 and of quantity, how much can each state be assured  
18 of obtaining from the disputed area".

19           This, of course, is what Australia and  
20 Timor-Leste have done. It is also what a number of  
21 states in our region and elsewhere have chosen to  
22 do. Malaysia concluded arrangements with Thailand  
23 for the joint exploration and exploitation over  
24 a 50-year period of the non-living natural resources  
25 of a defined seabed area in which the two countries

1 have unresolved overlapping claims to the  
2 continental shelf.

12:27

3           Provisional arrangements were likewise  
4 concluded between Malaysia and Vietnam to create  
5 a joint development zone lasting up to 40 years.  
6 Similar arrangements have been concluded by Japan  
7 and the Republic of Korea which have agreed to  
8 jointly develop a zone in the East China Sea for up  
9 to 50 years. These periods have not seemed abnormal  
10 or remarkable.

11           Of course, not all states are able to  
12 agree on joint development when unable to resolve  
13 their maritime claims. But by agreeing to put aside  
14 our differences and to co-operate through  
15 arrangements for joint development, Timor-Leste and  
16 Australia avoided a protracted stand-off of the type  
17 so often seen elsewhere.

18           Third, we must honour our commitments and  
19 uphold our obligations. Despite years of  
20 negotiations, extensive give and take on both sides  
21 and numerous statements by both countries that the  
22 agreements reached served the interests of each  
23 party, Timor-Leste is, in fact, seeking to avoid  
24 giving effect to a commitment it not only  
25 voluntarily entered into but, in fact, proposed.

1           What Timor-Leste is now proposing would           12:28  
2     undermine the reputation of the parties for  
3     providing a stable and secure investment environment  
4     in the Timor Sea. Companies which invest billions  
5     in developing resources are entitled to expect  
6     a level of certainty that countries will abide by  
7     the legal regime they have established. Significant  
8     reputational harm would be caused by disregarding  
9     the treaties. And broader principles of  
10    international relations and international law are  
11    also at stake here.

12           Fourth, re-opening negotiations would add  
13    to uncertainty and further delay the flow of  
14    revenues from Greater Sunrise. We are aware from  
15    the IMF and other reports that oil production in the  
16    joint development area could stop as early as 2023,  
17    and there are no new resources scheduled to come  
18    online.

19           The Timor Sea treaties provide us the  
20    building blocks for exploitation of  
21    Greater Sunrise -- unitisation, revenue share,  
22    governance. Casting aside the Timor Sea treaties  
23    would put us back to square one.

24           Mr Chairman, members of the Commission, in  
25    concluding, I hope we have shown that Australia has

1 always been willing to work with Timor-Leste to 12:29  
2 jointly develop Timor Sea resources. The current  
3 treaty arrangements are a proven foundation for  
4 investment. They provide a solid framework for the  
5 successful development of Greater Sunrise.  
6 Timor-Leste's argument that Australia is holding  
7 back its development is not true. The reality is  
8 that Timor-Leste's change of heart in relation to  
9 the Timor Sea Treaties has created uncertainty,  
10 raised sovereign risk, undermined investor  
11 confidence, and considerably delayed  
12 Greater Sunrise's development. This will only be  
13 exacerbated by re-opening the treaties.

14 For the reasons we have outlined, we think  
15 we should instead devote our time to jointly  
16 developing the Timor Sea's resources under our  
17 existing joint development framework, as both sides  
18 originally intended. This would ensure revenue from  
19 Greater Sunrise would start flowing as soon as  
20 possible.

21 Mr Chairman, members of the Commission, as  
22 I noted in opening, our remarks on the issue of  
23 maritime boundaries are, of course, without  
24 prejudice to the objections we have raised to these  
25 proceedings and to the competence of the Commission.



1 These objections will be developed over the course 12:31  
2 of this afternoon and the coming days.

3 On the wider issues, as I said also at the  
4 beginning today, Australia does not pretend that the  
5 course of our relationship with Timor-Leste has been  
6 free of difficult issues. We are seeking neither to  
7 avoid history nor downplay the significance of  
8 Timor-Leste's story of resistance, independence and  
9 development, which we deeply respect.

10 The bottom line is that we are committed  
11 to a strong and empathetic relationship with  
12 Timor-Leste. We remain Timor-Leste's largest and  
13 closest security and development partner. We have  
14 a vital interest in Timor-Leste's success as  
15 a nation able to achieve prosperity and security for  
16 its own people. And Australia is confident that we  
17 can overcome our differences on the Timor Sea in  
18 a way that is equitable and reasonable, and that  
19 respects the obligations we owe each other as  
20 neighbours -- close neighbours -- and sovereign  
21 states.

22 Thank you.

23 **THE CHAIRMAN:** Thank you very much.

24 I thank the delegation of Australia for its opening  
25 statement. This almost brings us to the end of the

1 opening session.

12:32

2           Before we close, I note and thank both  
3 delegations for very comprehensive and enlightening  
4 interventions. It has been very useful for me and  
5 my colleagues to understand where each delegation  
6 comes from and how you see these difficult issues  
7 that you have been discussing this morning.

8           I also note that Sir Michael Wood  
9 presented East Timor's expectation of this  
10 Commission and put it out in three different  
11 elements, and that this is disputed by the  
12 Australian delegation.

13           I look forward to continuing that part of  
14 the discussion after our lunch break. I think that  
15 maybe should be dealt with in closed session, so  
16 I will call a one and a half hour lunch break. We  
17 have now won half an hour, so we will do it very  
18 well.

19           I hope to see you all back here for  
20 2 o'clock for our continued deliberations, and this  
21 closes our opening session and the public session is  
22 also closed by now.

23           Thank you very much.

24 (12.34 pm)

25           (The webcast was terminated)