

Submission

to the
Joint Standing Committee on Treaties
inquiry into

‘Timor Treaty – Maritime Boundaries’

on behalf of the

TIMOR SEA JUSTICE CAMPAIGN

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prepared by
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Introduction

The new treaty between Australia and Timor-Leste offers a significant improvement on previous arrangements in the Timor Sea and should be ratified without delay or conditions.

There is not much the Australian Government can be proud of from this entire saga given it has tried to short-change Timor-Leste at every turn, but this treaty will finally establish permanent maritime boundaries between Australia and Timor-Leste.

This is what the Timorese have been asking for since independence and their determination to stand up to the bullying behaviour of successive Australian governments has been vindicated.

The Timor Sea Justice Campaign congratulates the Timorese on this historic victory which is an important step in their long journey towards true independence and we're proud to have stood in solidarity with them by calling out our own governments' greed and unscrupulous tactics over the last 14 years.

There are however, loose ends that the Joint Standing Committee on Treaties should urge the Australian Government to satisfactorily resolve. Namely the repayment of revenue Australia unilaterally took from contested fields, equitable sharing of the 'downstream' economic benefits associated with processing the petroleum resources, recognition of the independent umpire, and questions about Australian espionage laws. (More details on these topics below.)

The Timor Sea Justice Campaign also notes its disappointment with the Australian Government's insistence that the maritime boundaries be shoe-horned between the old 'Timor Gap' rather than accurately reflect Timor-Leste's probable Exclusive Economic Zone had the boundaries been set following key principles of current international law.

We also draw the Committee's attention to the submission made by the Timor-Leste Institute for Development Monitoring and Analysis, La'o Hamatuk, and echo its recommendations.

About the Timor Sea Justice Campaign – objectives compared to the results

The Timor Sea Justice Campaign (TSJC) was formed in 2004 by concerned Australians of various backgrounds, professions, ages, and political persuasions.

The TSJC's ultimate objective was to convince the Australian Government to negotiate permanent maritime boundaries with Timor-Leste based along the median line halfway between the two coastlines in keeping with international law.

Although the treaty could be better – by more accurately reflecting what Timor-Leste's Exclusive Economic Zone would be if the principles of current international law were embraced – its ratification will largely be considered as mission accomplished for the TSJC.

When the TSJC launched it had four key asks:

1. That the Australian Government stop unilaterally exploiting contested gas and oil resources in the Timor Sea
2. That the Australian Government place disputed revenues from contested fields into a trust fund to be distributed accordingly when the dispute is resolved
3. That the Australian Government immediately negotiate a permanent maritime boundary with Timor Leste in accordance with current principles of international law
4. That the Australian Government re-submit to the jurisdiction of the International Court of Justice and International Tribunal on the Law of the Sea and to settle the dispute by independent arbitration if necessary.

Points 1 and 2 still raise an important question about the revenue Australia unilaterally took from contested fields. While the treaty sets the western lateral (side) boundaries in such a way that puts the Laminaria Corallina fields into Australian territory, the Buffalo field will now be in Timorese territory.

These are all fields that Australia unilaterally depleted and from which Timor-Leste did not receive a single cent. **Frustratingly, the treaty includes restrictions that prevent Timor from seeking compensation for this loss of revenue.**

When natural resources are contested by two different countries – as was the case with these (Laminaria Corallina and Buffalo) fields – international law requires the governments to act with restraint. Yet in this case, despite Timor's protestation, the Australian Government unilaterally depleted the fields.

Agreeing that the Buffalo field belongs to Timor but refusing to discuss the possibility of compensation is characteristic of the mean spirited approach the Australian Government has taken throughout this dispute. A similar point can be made about the 10% cut the Australian Government took from fields in the Joint Petroleum Development Area under the Timor Sea Treaty which was located entirely on Timor-Leste's side of the median line. (All of the fields that where ever contested are located closer to Timor than Australia.)

Point 3, the TSJC's key ask, has more or less been achieved by this new Treaty. The boundaries are based along the median line, which is a fair outcome, but the side boundaries have been creatively squeezed within the artificial constraints of the old Timor Gap. This has resulted in a less than ideal outcome for Timor, but allows the Australian Government to avoid a politically inconvenient discussion with Indonesia about the 1972 seabed boundaries. See Figure A below.

(The 'Timor Gap' was left in the Indonesia/Australia boundaries established in 1972 because Portugal – the then colonial ruler of Timor – wasn't involved in the negotiations. It was envisioned that the gap would later be widened to accommodate Timor's boundaries or presumably closed if it were ever to become part of Indonesia. This treaty leaves the gap untouched despite it being much closer to Timor than the median line. This has distorted the outcome and once again sees the Australian Government short-changing the Timorese.)

Point 4 is still relevant and the TSJC takes this opportunity to renew the call. A rules based world order is in Australia's best interests. We can't continue to lecture countries like China for refusing to accept the ruling on the international umpire – as is the case in the South China Sea dispute – while we ourselves don't even recognise the authority of that umpire. It's a blatant hypocrisy that needs to be resolved as soon as possible.

Recommendations

The Timor Sea Justice Campaign recommends the following:

- 1. That the Australian Government ratify the treaty to establish permanent maritime boundaries with Timor-Leste.**
- 2. That the Australian Government resubmit its recognition of the maritime boundaries jurisdiction of the International Court of Justice and the International Tribunal for the Law of the Sea.**
3. That the Australian Government apologise to the people of Timor-Leste for attempting to bully their governments into accepting the previous unfair deals whereby it was unjustly taking the resources of a new nation struggling to find its feet.
4. That the Australian Government return to Timor-Leste the revenue it unilaterally took from the Buffalo field.
5. That the Australian Government return to Timor-Leste the 10% of the government revenue taken from the Bayan Udan field (in the Joint Petroleum Development Area that was located on the Timorese side of the median line and will now belong entirely to Timor) to Timor-Leste.

6. That the Australian Government ensure Timor-Leste receives a fair share of the 'downstream' economic benefits related to the processing of the Greater Sunrise gas field.
7. That the Australian Government amend national security laws to ensure Australian intelligence services can only be utilised for matters relating to national security and not for the seeking of economic gain.
8. That the Australian Government immediately return the passport to the former intelligence officer known as 'Witness K' who blew the whistle on Australia's morally bankrupt behaviour of bugging the Timorese cabinet room during negotiations.
9. That the Australian Government repay any related legal costs that 'Witness K' has incurred related to this matter.

Figure A:



This map roughly shows how the maritime boundaries (the dark navy blue lines) set by the Treaty have been shoehorned within the old Timor Gap and contrasts them with what would have been Timor's probable Exclusive Economic Zone (the light blue area) had the boundaries been set following the principles of international law without the distortion of Australia's insistence on maintaining the historical aberration that is the Timor Gap.