

La'o Hamutuk

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**Submission to the
Australian Senate Foreign Affairs, Defence and Trade Committee
Parliament House, Canberra, Australia**

**from the
Timor-Leste Institute for Development Monitoring and Analysis
La'o Hamutuk**

**regarding the inquiry into
Australia's declarations made under certain international laws**

7 October 2019

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Summary

- We appreciate both nations' defining our maritime boundary, after decades of struggle and frustration. It could have been accomplished sooner and more fairly if Australia had accepted a process of third-party arbitration or judicial decision under international law.
- Australia should reverse the declarations it made in March 2002 and return to the UNCLOS and ICJ mechanisms for resolving international maritime boundary disputes, as we have repeatedly suggested over the last seventeen years.
- Australia should voluntarily return the US\$5 billion that it has taken from Timor-Leste's maritime territory since 2002.

Introduction

La'o Hamutuk (Walking Together), the Timor-Leste Institute for Development Monitoring and Analysis, is a Timor-Leste civil society organization founded in 2000. We analyze the activities of the state of Timor-Leste, as well as its neighbours, development partners and multilateral agencies. We also advocate for democratic governance under the rule of law, as well as for policies to advance sustainable and equitable economic and social development.

We appreciate the opportunity to offer this submission to your inquiry into Australia's declarations made under certain international laws in March 2002, which removed your country from arbitration and judicial mechanisms to resolve maritime boundary disputes. We hope that you will reverse those declarations, which should never had been made.

During the last seventeen years, La'o Hamutuk has made six submissions to Australian Parliamentary inquiries on related issues. We are gratified that the Australian Government has finally addressed many of the concerns we raised, including the entry into force of the Maritime Boundary Treaty which belatedly codifies Australian recognition of Timor-Leste's sovereignty over its maritime territory.

We appreciate the results of the efforts of both our nations.

La'o Hamutuk and other civil society organizations in Timor-Leste have long advocated for a fair maritime boundary between Timor-Leste and Australia, and we celebrate that the two governments have finally achieved this. We trust that the new Boundary Treaty will open the way for our two nations to share maritime benefits and to strengthen a relationship based on equality and mutual respect for each other's sovereignty.

Since 2002, we have urged that the maritime boundary be drawn according to international legal principles, to be established by an impartial third party in binding arbitration or court decision, as outlined in the statutes of the International Court of Justice and in the United Nations Convention on the Law of the Sea. Unfortunately, two months before Timor-Leste restored its independence in May 2002, Australia withdrew from these mechanisms without asking Parliamentary advice, to pre-empt Timor-Leste from exercising its legal rights. Although we are glad that Australia eventually cooperated with the UNCLOS Compulsory Conciliation process, a more just boundary could have been established sixteen years earlier under international law, avoiding years of hostility and uncertainty between our nations.

In 2004, our organization and others in Timor-Leste formed the Movement Against the Occupation of the Timor Sea (MKOTT) to work to end a remnant of Indonesia's illegal occupation of Timor-Leste: Australia's continuing occupation of our maritime territory. Many Australian citizens also advocated for this position, and the Timor-Leste and Australian governments eventually also adopted it. Unfortunately, the complex compromises developed through the Conciliation negotiations leave critical issues unresolved, which could have been avoided by third-party arbitration.

La'o Hamutuk has repeatedly asked Australia to cancel these declarations.

For seventeen years, La'o Hamutuk has repeatedly asked Australia to cancel these declarations. The following excerpts from some of our submissions and publications explain our reasoning, which still applies today:

Submission to JSCT on the Timor Sea Treaty, 31 July 2002¹

Throughout history, strong, powerful, rich countries have often used their power to unfairly exploit poor countries and steal their resources. We know this only too well, from our own experience. But in recent years, with the decline of imperialism and colonialism, an international commitment has developed to prevent such exploitation in the future. By relying on global adoption of international conventions and treaties, all peoples should expect to be treated fairly. The same rules are supposed to apply to the large and the small, the rich and the poor, the white and the black. This legal protection is especially important to countries like East Timor, with little experience in self-government and almost no capability to influence its larger and more powerful neighbours.

Australia and others in the international community consistently encourage East Timor's new government to implement democracy, the rule of law, transparency and safeguards against corruption as we develop our governmental structures and practices, and we appreciate that encouragement. But at the same time, Australia is not practicing what you are preaching to us. When your country withdrew from legal processes for resolving maritime boundary disputes, you taught us the opposite message - that when the booty is large enough, the legal principles go out the window.

Your government's National Interest Analysis on withdrawal from UNCLOS arbitration, given to this committee on 18 June 2002, says the same thing in more polished language:

"This action was not made public prior to it being taken to ensure the effectiveness of the declaration was maintained. Public knowledge of the proposed action could have led other countries to pre-empt the declaration by commencing an action against Australia in relation to sea boundary delimitation that could not be made once the declaration under article 298(1)(a) of UNCLOS was made."

In other words, your government acted secretly and urgently to prevent East Timor from utilizing our rights under international law.

"The Government's view is that maritime boundary disputes are best resolved through negotiation, not litigation. Compared to other countries, Australia, as an island continent, has some of the longest maritime boundaries in the world. It has maritime boundaries with many countries and the Government is concerned that every endeavour should be made to reach an agreed resolution of any maritime boundary disputes through peaceful negotiation."

In other words, the gross imbalance of negotiating flexibility, economic power and political expertise which exists between Australia and East Timor should be exploited fully to advance Australia's economic interests. East Timor should have no recourse to the rule of law.

¹ <http://www.laohamutuk.org/Oil/Boundary/jsctlh.html>

Responding to disinformation from Australian government, March 2004²

Australia's High Commission in London wrote: *"Australia's declaration in March 2002 excluding the settlement of maritime boundaries from compulsory dispute resolution by the International Court of Justice and the International Tribunal for the Law of the Sea, reflects our strong view that any maritime boundary dispute is best settled by negotiation rather than litigation. This is precisely the course of action that Australia has now committed to in its discussions with East Timor on a permanent maritime boundary."*

We commented: *"The rule of law, including impartial international legal mechanisms for resolving boundary disputes, exists to protect the small and weak from the predations of the rich and powerful, as well as to support the entire community of states. By closing legal avenues of appeal to East Timor, Australia hopes that negotiations between unequal parties will follow the law of the jungle, or will drag on for decades until Australia has harvested all the petroleum in disputed territory."*

La'o Hamutuk press release, 23 January 2006³

The [CMATS] Agreement also exemplifies the Australian Government's continuing disrespect for the rights of Timor-Leste's people.

Australia showed that disrespect by supporting the Indonesian military regime's illegal occupation of Timor-Leste for 23 years. Since 1999, Australia has continued to occupy Timor-Leste's territory, acting on control over the Timor Sea that it obtained through a deal with the illegal Indonesian occupier. Australia recognizes that its legal position is weak; that's why it withdrew from maritime boundary procedures of the International Court of Justice and the International Tribunal for the Law of the Sea two months before Timor-Leste restored its independence in 2002.

This withdrawal removed the foundation of a fair negotiation process -- the opportunity for Timor-Leste to take Australia to court if negotiations fail. The position of Timor-Leste at the negotiating table is weaker than Australia's, because Australia is a long-developed, rich country, preferred by Australian and western oil companies. Timor-Leste is the world's newest country, the poorest country in the region. Timor-Leste's power comes from legal principles -- which Australia refuses to recognize -- and is supported by civil society in Timor-Leste, Australia, USA, and other countries.

An unbalanced negotiation resulted in an unjust agreement for Timor-Leste.

Submission to Senate FADT on Australia's relationship with Timor-Leste, 28 March 2013⁴

In March 2002, less than two months before Timor-Leste restored independence, Australia declared that you would no longer abide by impartial legal mechanisms the International Court of Justice and the International Tribunal for the Law of the Sea to settle boundaries fairly. Only hours after we attained nationhood, you used our necessity for Bayu-Undan revenues to coerce us into signing the Timor Sea Treaty, and then refused to ratify that treaty until our Government signed the Sunrise IUA. Three years later, through the CMATS Treaty, you blocked all discussion of the maritime boundary question in return for taking only 50% of Timor-Leste's rightful upstream revenues from Greater Sunrise.

² <http://www.laohamutuk.org/Bulletin/2004/Mar/bulletinv5n2.html#distortions>

³ <http://www.laohamutuk.org/Oil/Boundary/06CMATSLH.htm>

⁴ <http://www.laohamutuk.org/Oil/Boundary/2013/LHSubAustPNenquiry28Mar2013.pdf>

We realize that our perception of this history may be different from yours. But we cannot understand why the democratic nation of Australia, which respects human rights and rule of law for its own citizens, is unwilling to apply those principles to its northern neighbour. Is Australia so afraid of a fair boundary settlement that you would rather be a bully than a good international citizen? Why do you continue to exploit advantages you obtained during the shameful and bloody Indonesian occupation of our country?

We urge you to return to UN mechanisms for resolving maritime boundary disputes. Please respect our legal rights, as your equally sovereign neighbour, and allow an impartial third party to resolve our differences. Article 33 of the United Nations Charter says "The parties to any dispute shall seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." As a member of the UN Security Council, Australia should take the path of legality and mutual respect by engaging in good faith negotiations and dispute resolution processes to decide our maritime boundary.

Submission to JSCT on terminating CMATS, 10 March 2017⁵

Australia should reverse its withdrawal from maritime boundary dispute resolution mechanisms under ICJ and UNCLOS, and enter into binding arbitration by an impartial third party.

Many Australian people think that Australia has been a good donor to Timor-Leste, providing significant financial support over the past 18 years. Unfortunately, this is not true: since 1999, Australia has provided less than US\$2 billion in aid, while taking \$5 billion from oil and gas resources in Timor-Leste's part of the Timor Sea.

This imbalance stems from Australia's stronger political and economic power, which it used to force Timor-Leste to sign the Timor Sea Treaty in May 2002. That treaty obliged Timor-Leste to hand over part of our Timor Sea wealth to Australia. Australia had already withdrawn from impartial legal mechanisms under the International Court of Justice and the International Tribunal for the Law of the Sea, opening the way for continuing occupation of Timor-Leste's sovereign maritime territory.

La'o Hamutuk thinks that mutual relations should be balanced, fair, based on solidarity and not taking advantage of each other's weaknesses. We appreciate that Timor-Leste has received significant benefits from Australian foreign aid, but undermining our peoples sovereignty and future betrays Australian beneficence and humanity.

Submission to JSCT on Maritime Boundaries Treaty, 18 April 2018⁶

In March 2002, Australia unilaterally withdrew from international mechanisms for resolving maritime boundary disputes under UNCLOS and the International Court of Justice. At that time, Australia was worried that a binding, impartial, third-party ruling might not allow it to continue to take resources from territory which Australia now acknowledges belongs to Timor-Leste. Australia demonstrated how a large nation could violate the sovereign rights of a small neighbour, rejecting international mechanisms in favour of inherently unequal bilateral negotiations.

Sixteen years later, Australia has signed the new Treaty which recognizes Timor-Leste's rights under international law. Through this welcome step, Australia has shown that it accepts a fair boundary settlement. Therefore, Australia should reverse the action it took in March 2002 to prevent Timor-Leste from exercising its sovereign right to use international

⁵ <http://www.laohamutuk.org/Oil/Boundary/JSCT/2017/Sub16LaoHamutuk.pdf>

⁶ <http://www.laohamutuk.org/Oil/Boundary/JSCT/2018/LHtoJSCT18Apr2018.pdf>

processes, and return to the ITLOS and ICJ maritime boundary dispute resolution mechanisms. This would facilitate fair resolution of boundaries with your other neighbours, as well as provide a good example for other nations that dispute resolution should respect international law and the sovereign rights of every country.

Conclusion

Unfortunately the Boundary Treaty continues to legitimize some of the unjust practices through which Australia took assets belonging to the people of Timor-Leste. As part of the inherently unbalanced negotiating process that produced it, Timor-Leste's government agreed not to "claim for compensation" for money collected by Australia under prior treaties and agreements. However, nothing in the Treaty prevents Australia from voluntarily returning this stolen money – more than US\$ 5 billion that Australia has taken in from oil and gas fields that it now acknowledges are in Timor-Leste's territory. Australia reaped more than US\$ 105 million of this after signing the Maritime Boundary Treaty – because its negotiators compelled Timor-Leste to continue to allow Australia to claim 10% of Bayu-Undan revenues during the 17 months before the treaty entered into force.

We encourage you to return to the rule of law by re-opening the blocked paths to maritime boundary dispute resolution through the International Court of Justice and the International Tribunal for the Law of the Sea.

This concludes our submission to the Honourable Senate Committee on Foreign Affairs, Defence and Trade, and we are grateful for your attention. We would be happy to answer any questions or provide additional information regarding issues discussed in this submission, and would welcome the chance to appear before your Committee in person.

This submission is authorized by our organization, including for publication.

Sincerely

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