

Submission

on behalf of

Queensland Timor Sea Justice Group

to the

Joint Parliamentary Inquiry into

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

March 8 2017

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Introduction

Members of the Queensland Timor Sea Justice Group have a long standing, varied and extensive involvement with Timor Leste. Our members are Australian citizens. Some are also citizens of Timor Leste. For some members, involvement with Timor Leste predates 2002 when Timor Leste was recognised as an independent nation. The aggregate time our members have spent living in Timor Leste would amount to many, many years.

Members' involvement with Timor Leste includes:

- Working in voluntary and paid capacities for agencies such as NGO's, Government and Churches
- Providing advice to the government of Timor Leste and its representatives
- Participating in the Peace keeping force
- Participating as observers during National Elections
- Fund raising and making donations to assist in the re-building of Timor Leste

(Some pics and statements go here about our members activities in TL)

Our members have first-hand knowledge of the problems facing both the citizens and government of Timor Leste as well as the progress made to date. Our members have knowledge of the undue pressures brought to bear by Australia to get the government of Timor Leste to sign the existing treaties and the inequalities that resulted from these pressures exerted by the rich, powerful longstanding nation Australia on the poor, weak, new nation of Timor Leste. Our members are aware of and dismayed by the constant stream of inaccurate and misleading statements made by representatives of the government of Australia to justify the status quo. Our members are aware of how governments and civil societies around the world view the treaties and the misleading statements.

We write as a group with links to neither the Australian government nor Resource companies. We write as people who believe in fairness, not short term monetary gains to the Government of Australia and Resource companies.

The knowledge of Timor Leste we have acquired has been via our ongoing contact with Timorese citizens, the Timor Leste government and NGO's. This has caused us to become informed on issues of importance to Timor Leste particularly issues which are also of interest in Australia.

Australia's citizens

Australian people have endearing feelings towards Timor Leste beginning with Sparrow Force during WW2 and continuing throughout the Indonesian occupation. This led to the Australian government being pressured to provide - the Peace Keeping force in 1999 and again in 2006. These feelings continue to this day.

Australians also have a strong belief in fairness. This fairness was evident in support for Timor's long struggle for independence. As Australians like us become more informed about the maritime boundary issues and the Australian government's current stance they, like members of our group, will support a median line boundary.

Support is already strong amongst Australians for such a boundary between Australia and Timor Leste. An August 30, 2016 TEL national survey of 10,271 residents from all states and Territories found that 56.5% of respondents supported establishing a

maritime boundary in accordance with current international law. Only 17% were opposed to the change. See: <http://www.tai.org.au/sites/default/files/TAI%20-%20National%20-%2030%20August%202016%20-%20Timor%20Sea.pdf>

The government of Australia no longer has bi-partisan support for its stance on delaying border determination. The Australian Labor Party has been swayed by evidence and public opinion and now supports meaningful negotiations towards border settlement.

Current treaties

Our group is appalled that current treaties mean that Timor Leste has been deprived of royalties that, according to international principles, have the effect that Timor Leste has been deprived of billions of dollars to the effect that it has been described as 'our largest foreign aid donor'. 'Since 1999, Australia has provided approximately US\$1.7 billion in military and civilian assistance for Timor-Leste through bilateral and multilateral mechanisms. During the same sixteen years, the Australian government has received nearly \$5 billion dollars in revenues from oil and gas fields which rightfully belong to Timor-Leste.'

See: <https://blogs.crikey.com.au/northern/2016/02/27/drawing-the-median-line-a-declaration-to-the-australian-government-on-timor-leste/>; and http://www.laohamutuk.org/Oil/Boundary/laminaria_revenues.htm

This situation must not continue.

Misrepresentations by Australian Government and their spokespersons

Our group is perturbed and dismayed by the misinformation imparted by Government ministers, government members and other government spokespersons about the treaties' 'generous' benefits to Timor Leste and how international borders are decided.

Our group was perturbed to learn that even at the Hague hearing in August 2016 a representative from the Australian government was making a statement not in accord with thinking that has been around for many years – that the Timor Trough is a depression not the end of the continental shelf so Timor Leste and Australia are part of the same continental plate. He instead referred to the trough as the northern boundary of Australia's continental shelf. See:

<http://easttimorlawjournal.blogspot.com.au/2012/05/the-timor-leste-maritime-boundary-case.html>

At a speech delivered in Dili July 11, 2014 to the Northern Territory Bar Association Conference, Dr Christopher Ward said 'The Timor Trough is similar to other significant depressions including the Tripolitanian Furrow between Libya & Malta, the Cayman Trench, and the Aruba Gap between Venezuela, Colombia and the Dominican Republic. In each of those cases the depression was not treated as creating independent shelves. The ICJ in the North Sea Continental Shelf cases had placed significant emphasis upon equity and fairness, although it had also acknowledged the significance of natural prolongation.' See: <http://ntba.asn.au/wp-content/uploads/The-Maritime-Boundaries-of-East-Timor.pdf>

Dr Ward also indicated that the 1958 the United Nations Convention on the Continental Shelf 'made express provision for the situation in which two or more States shared the same continental shelf. Then, the Convention provided that the boundaries of the

opposing shelves were to be determined by agreement, failing which the boundary would be "the median line". The median line is a line of equidistance, drawn from the baselines (usually the low water mark) of the opposing state coastlines.'

It should also be noted that the International Court of Justice (ICJ) has progressively moved from natural prolongation and geomorphological factors towards equidistance or median line with equitable considerations to produce an equitable solution between countries with sea border disputes.

There are no International Maritime principles for Australia to rely on to support its stance.

If our group knows this information about how sea borders are determined, then the Australian government must also know this, so why does the government's position ignore this? Does their position have face validity? Are they acting in good faith?

The treaties currently in force do not accord to Timor Leste what should be rightfully theirs – full benefits from oil and gas deposits on their side of a median maritime boundary.

Despite claims to the contrary by the Australian government, the treaties can only be the result of wealthy, powerful Australia exerting its power over the poor small nation of Timor Leste.

Article 12(4)

We are delighted that Australia has agreed to remove Article 12(4) from the CMATS treaty. This article, unbelievably, was designed to survive even if the treaty was terminated. It is a dreadful article as it prevents settlement of a maritime border for at least 50 years or until 10 years after the resources have been used.

The article has all the hallmarks of an outcome where one party has bullied the other. It can be compared to negotiations between a rich powerful person and a poor disempowered person where the latter though extreme circumstances feels there is no option but to agree to the former's demands even in the knowledge that he/she is signing away what is rightfully his/hers and that furthermore he/she has to also signed away his/her right to redress in the courts for a further 50 years. It is an outrageous article.

Consequences and opportunities

The Australian government's agreement to terminate article 12(4) just might be an indication that there could be a 'change of heart' on its part. However, from our consideration of the unfair benefits it has gained from current treaties, and in the absence of any statements to the contrary, we have little confidence that this will happen nor that Australia will act in good faith during the current round of negotiations.

Will Australia continue to exert its unfair and undue influence under the cover of confidentiality during the current negotiations?

Will Australia take the opportunity afforded by the cessation of CMATS to be an exemplary neighbour?

A good neighbour is not a bully and does not take what is not rightfully theirs.

A good neighbour would use the CMATS cessation as an opportunity to promptly and publicly state that it will agree to a median line solution. That would signal that Australia is 'fair dinkum' about a 'fair go' for Timor Leste.

A good neighbour would also provision to give Timor Leste full monetary reparation for revenue it would have received had the median boundary been in place.

The time has come for Australia to stop profiting from the 1975 Indonesian invasion – the current inequitable treaties are a consequence of this.

It's time for the Australian government seize the day - draw the line and make reparation.

This is why it is so important that the Joint Committee provide accurate information and leadership to the government.

Recommendations

1. That the government of Australia and its representatives cease from making further statements that suggest Timor Leste has received either fair or favourable treatment from current and past oil and gas treaties.
2. That Australia re-join the maritime boundary jurisdiction of the International Court of Justice and of United Nations Convention on the Law of the Sea (UNCLOS)
3. That Australia recognises the principle of the median line maritime boundary, halfway between Timor Leste and Australia
4. That Australia responds in good faith and as an equal, not more powerful partner, to the Permanent Court of Arbitration's ruling at the Hague in September 2016 to hold conciliation talks for a fair and prompt resolution.
5. That Australia transfer all past and ongoing revenues obtained from oil and Gas fields on Timor Leste's side of the median line to the government of Timor Leste.

We would be happy to answer any questions and urge that the committee seek 'witness' from Civil Societies and individuals who have made submissions as well as 'experts'.

We hope that the outcome from your inquiry will mean that members of groups such as ours can again devote their time to their activities in Timor Leste.

Judith M Attwood B.Sc Cert Teaching
Secretary
Queensland Timor Sea Justice Committee.