

**SUBMISSION TO THE JOINT STANDING COMMITTEE ON TREATIES
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CERTAIN MARITIME ARRANGEMENTS - TIMOR-LESTE

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CONSEQUENCES FOR TIMOR-LESTE AND AUSTRALIA OF REPEALING CMATS

In this submission we seek to show that there are serious adverse consequences to Timor-Leste and the Timorese people in the event of termination of the **CMATS** Treaty. The Australian people, on the contrary, can only be better off in terms of government revenue accruing through taxes upon sales of oil and gas production in the event of development of the fields.

We submit that the adverse consequences to the Timorese are ultimately also adverse for the Australian people and their government. That is so because:

- Firstly Timor-Leste has been heavily dependent upon foreign aid from Australia, and
- Secondly Timor-Leste is of significant strategic importance to Australia and there is an obvious imperative for foreign policy to ensure continuing good relations. Those good relations have been sorely tested recently by the government of Timor-Leste and its vigorous campaign for clearly defined maritime boundaries.
- Thirdly it is quite clear that Timor-Leste is not, as many have claimed over the past few years, an “oil rich country”. Indeed, Bayu Undan, the last of the producing fields, is due to exhaust its resource by 2022. When that happens there is nothing else to replace its revenue support to the government’s annual budget and there is no prospect of other income taking its place. The economic, political and humanitarian consequences will be severe and will require significant foreign aid resources from Australia if a disaster in all three of those domains is to be averted.

BACKGROUND

Although geography and geometry would give Timor-Leste only 18% of the revenue from the Sunrise and Troubadour oil and gas fields, as per the Timor Sea Treaty, **CMATS** provided that revenue from the fields should be shared equally on a 50%-50% basis.

CMATS also provided that the JPDA was entirely within Timor-Leste's water column. The two countries agreed on a 50 year moratorium for defining permanent maritime boundaries.

IMMEDIATE EFFECTS

The immediate consequences of the invalidation of **CMATS** would be that:

- a. the 50%-50% sharing of revenue [Article 5] would be voided and Timor-Leste's share would revert to the pre-**CMATS** level of 18%
- b. Timor-Leste would lose jurisdiction over the water column in the JPDA, including fishing rights [Article 8]
- c. Timor-Leste would regain the right to pursue its claims to sovereign rights and jurisdiction and maritime boundaries [Article 4]

INDONESIA IGNORED

Australian Geological Survey documentation and Indonesian government official EEZ maps and marine charts indicate that 80% of the Sunrise and Troubadour fields lie in Indonesian waters comprising the Indonesian Exclusive Economic Zone. This is not surprising since the eastern lateral boundary of what is now the JPDA was drawn strictly according to geometric principles for a median line between two coastlines. The Government of Timor-Leste will accordingly achieve nothing by the termination of **CMATS** unless and until the Republic of Indonesia agrees to cede a substantial part of its EEZ. The area involved is 22,100 sq. km and is calculated on the basis of shifting the lateral line eastwards resulting in an outcome which the Government of Timor-Leste insists is a result of applying international law principles. We think it is extremely unlikely that Indonesia would cede such a significant area of its territory whether for reasons of weight of population or for concavity of the coastlines. There is no publicly available evidence of such a proposal for cession by the Indonesian government, and equally no evidence and no compelling reasons that the Indonesian government would entertain such a proposal. Moreover Australia has no reason to disturb any of the existing agreements which it has made with Indonesia. The Timor-Leste government, perhaps naively, has not made this issue of Indonesian water column rights a condition precedent to its termination of **CMATS**, raising the distinct possibility that the Timorese will be permanently prevented from ever accessing a greater share of revenue from the Sunrise and Troubadour fields.

THE ECONOMIC IMPERATIVES OF DEVELOPMENT

It appears there will be no feasible economic alternative, in the current and foreseeable oil and gas market, to piping the gas from Sunrise and Troubadour to Darwin, perhaps via the existing Bayu Undan pipeline. Again, the Timor-Leste Government has apparently not sought any guarantees from Australia about sharing of economic benefits from the potential development of the field, even accounting for its 18% interest which it has retained through

the Timor Sea Treaty. Once again it is hard to understand the negotiating position of the Timorese in not seeking any guarantees about upstream or downstream development.

SEVERE DISADVANTAGE FOR THE TIMORESE FROM NO PRIOR COMMITMENTS BEFORE TERMINATION

To terminate a treaty with at least some obvious advantages [revenue, Timorese EEZ in the JPDA] in the absence of any prior formal commitment to a better set of agreements for revenue and boundaries would be imprudent at best and even reckless. Absent any prior binding commitments, Australia may decide to re-negotiate a new agreement with Timor-Leste on maritime boundaries on its own time and terms.

GO BACK TO THE NEGOTIATING TABLE

We submit that **CMATS** should not be repudiated and Australia should resile from accepting the Timorese invalidation in the interests of both countries, until public guarantees are provided to the peoples of both Australia and Timor-Leste that the treaty will be replaced by a superior agreement, fairly drafted and beneficial to both parties involved, and without any net loss of sovereignty or revenue for Timor-Leste.

* Notes:

- *For an exhaustive technical analysis of the Timor Sea issues, refer to www.hydrographer.org*
- *Marc Moszkowski, is an engineer and master mariner. He has superior experience in the Timor Sea and has led projects for the first detailed bathymetric survey of parts of the Timor Sea, as well as surveys commissioned by the Secretary of State for Natural Resources of strategic parts of the southern shore including Beaco and Suai for the Tasi Mane project of the government of East Timor.*
- *Rodney Lewis is a Sydney Lawyer and as a volunteer human rights lawyer and member of the International Commission of Jurists advocated for the self determination of the Timorese people from 1975 until they gained their independence in 1999. Rodney was directly involved in the 2007 Coronial Inquest into the deaths of the 'Balibo 5' journalists and appeared for their families. He was an accredited international trial observer in Dili for the 1992 trials arising from the Santa Cruz massacre. He is a former President of the Australia East Timor Business Council and was senior legal advisor to the Minister of Finance in Timor-Leste in 2007-2009.*