

Submission

to the Joint Standing Committee on Treaties

Framework Treaty between Australia and the Democratic Republic of Timor-Leste establishing their Maritime Boundaries in the Timor Sea
(Timor Treaty) (New York, 6 March 2018).

Timor Sea Justice Forum NSW

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Summary

The establishment of maritime boundaries in the Timor Sea brings to favourable close many elements of a long-standing dispute, during which Australia's performance has been detrimental to the welfare of its neighbour, Timor-Leste.

Six recommendations outline measures which Australia could now take to acknowledge historical realities, contribute to the progress of the nation which it has treated with disregard, and redeem Australian international standing in this matter.

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Thank you for the opportunity to make this submission.

Both Timor-Leste and Australia are to be congratulated for coming to agreement on this matter. The establishment of fair and permanent boundaries has long been the desire of the Timorese people and their many supporters in Australia.

The National Interest Analysis (NIA) correctly addresses the Australian financial and geopolitical gains in connection to the Treaty, but such a limited interpretation of "national interest", even though consistently used, is incomplete.

Australia's national interest also involves less definable but more important features, such as the values underlying decisions, and the effects of those actions on others. Omitting these considerations concerning the Timor Sea ignores the very influences which brought about the problems in the first place.

Obviously, neutralising any moral effects of political and economic decisions and actions is designed to protect Australia from any claims of compensation, as in n.46, which states: "*neither Party has a claim for compensation*". Surely, Australia has no case for claiming compensation from Timor-Leste. The inclusion of "both Parties" seems to be an attempt to equate Australia's role with that of Timor-Leste.

However, even a cursory glance at the history shows a series of Australian decisions which can only be described as self-serving, taken without regard for the welfare of the Timorese people:

- Australia's support for the Indonesian takeover of Portuguese Timor in 1975 was partly to ensure ease of negotiations regarding the Timor Sea
- in 1989 Australia negotiated the Timor Gap Treaty with Indonesia, sharing the area 50/50, even though Indonesia was the illegal occupier of the Timorese territory
- the re-negotiation of the Timor Gap Treaty as the Timor Sea Treaty (TST) took place within hours of the 2002 Timorese declaration of Independence
- two months prior to the signing of the TST, Australia withdrew from the maritime boundaries section of the *United Nations Convention on the Law of the Sea* (UNCLOS), thus evading international oversight of its dealings concerning the border
- the TST was declared "generous" because Australia only took 10% of an area totally

on Timor's side of the median, instead of 50%. (The present Treaty now transfers the whole area to where it belonged, in Timor's jurisdiction, as noted in NIA n. 23 and 57. Thus Timor-Leste will receive what little remains of the proceeds from those areas.)

- Australia exploited Laminaria-Corallina when it was in dispute, bringing in \$2 billion dollars in tax revenue (far more than the amount given in development aid thus far)
- Australia required Timor-Leste to maintain silence on border discussions for 50 years as part of the 2006 *Certain Maritime Arrangements in the Timor Sea* (CMATS) 50/50 agreement on Greater Sunrise
- it is alleged that Australia spied on Timorese CMATS negotiators under the guise of an AusAid project (Timor-Leste has subsequently dropped any court action, but current research indicates that there would have been a case to answer.)
- Australia refused two formal Timorese approaches for dialogue, showing unwillingness to engage in diplomacy, until Timor-Leste's 2016 initiation of the UN's compulsory conciliation
- Australia made six objections to the jurisdiction of the conciliation, all of which were found to be baseless
- Timor-Leste has expended vast resources of time, money, effort and expertise to bring the conciliation to completion, as it was their only means of attaining justice

Finally, the *Maritime Boundaries Treaty 2018* delivers a more just and equitable arrangement.

## Recommendations

### Australian Humility

*In NIA n.13 and 14 there is exhortation by Australia to the international community to try to "resolve disputes peacefully", to respect the decisions of international bodies attempting to maintain the "rules-based order".*

*Yet the NIA contains no indication of any Australian official regret at the decisions which have been so detrimental to both Australia and Timor-Leste. Instead, there is this element of sermonising at others who may be tempted to similarly thumb their noses at the international community (perhaps China). The Australian government would be far more credible had it not sought to circumvent internationally accepted processes.*

*Thinking Australians are embarrassed at the avaricious Australian decisions regarding Timor-Leste over decades and the consistent practice of trumpeting good Australian actions out of all proportion to their history and effects. Australia's international reputation will not be redeemed by transparent evasions of the truth.*

**Recommendation 1.** That the JSCOT Committee advises the Foreign Minister and the Department of Foreign Affairs to refrain from claiming the high moral ground in reference to the Timor Sea.

**Recommendation 2.** That the government further enhance the national interest deriving from international acceptance of the rule of law, by a clear acknowledgement of its error of judgement when it contested the jurisdiction of the compulsory conciliation.

**Recommendation 3.** That in order to demonstrate the good faith Australia is claiming, the government now reverse its 2002 withdrawal from the UN instruments concerned with jurisdiction of maritime boundaries.

## Status of Timor-Leste in regard to Australia

*In n.20 we are told that "Australia is Timor-Leste's largest partner in development and security. The Australian Government will provide an estimated \$96.1 million in total development aid to Timor-Leste in 2017-18". Nothing is said of the billions which Australia has reaped from sections of the Timor Sea which are now internationally recognised as belonging to Timor-Leste, e.g. Laminaria-Corallina and Bayu-Undan. These amounts eclipse any development aid which Australia has thus far given to Timor.*

*In the spirit of new beginnings which the Maritime Boundaries Treaty brings, Australia should offer Timor-Leste **Most Favoured Nation Status**. This is not the compensation which both parties have agreed to forego, but a recognition of the strategic importance of Timor-Leste to Australia. This importance arises from*

- *geographical proximity*
- *the history from World War II onwards*
- *current Chinese influence*
- *necessity for regional security*

**Recommendation 4.** That Australia offers unique cooperation with the Timorese government in education and health to ensure attainment of the Sustainable Development Goals. Australia has the capacity to assist through a greatly enhanced program of scholarships:

**Education:** With about half of the population under the age of [18 years](#), the education challenges are immense. General illiteracy and women's education are prominent among the needs.

**Health:** Serious but preventable health issues face the Timorese people. Much of the illnesses result from poverty and malnutrition, e.g. [rheumatic heart disease](#).

*Numerous Australia groups have spent years assisting the Timorese people to deliver basic services and re-build their nation. These groups, existing in every State and Territory, are the face of Australian understanding of the history. They, not governments, have been the mainstay of the favourable relationship which exists between our two nations.*

*These groups have been established by Australians who understand the history of the Australian/East Timor relationship and who want to repay the debt owed to the Timorese. These groups are not government-inspired initiatives, and in many cases have had to oppose government policy and practice. Some of these groups now receive tax-deductibility under Australian government rules, thus helping them to enhance their work.*

### **Recommendation 5**

- a. That the Australian government reviews and publicly acknowledges the contributions of the many Australian groups which assist the Timorese people
- b. That the government matches the groups' fund-raising contributions dollar-for-dollar for the next ten years, thus securing and doubling the successful grassroots Australian support for Timor-Leste.

### **Recommendation 6**

That the government significantly expands the guest worker program for East Timorese workers. (See below)

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Guest Worker Program

Australia commenced a guest worker scheme for workers from selected Pacific countries in 2008. Workers come to Australia on short-term visas (generally 3 months) to work in the

horticultural industry, usually picking fruit and vegetables. It is used by Pacific workers to build a house, set up a small business or educate children. Many workers return to Australia for multiple working visits.

Currently, there are nine Pacific countries participating, and East Timorese workers were permitted to join in 2012. The program is much more developed in some Pacific countries such as Suva and Tonga, probably due to the large number of Australian citizens from those countries providing a network of relatives and friends here, making it easier for workers from those countries to apply and come to this country. The East Timorese workers generally work in the Northern Territory or the Kimberly region of Western Australia, picking vegetables in the Ord, picking mangoes in the Territory, or in the tourism and hospitality industry in Broome. In 2018, 477 workers from East Timor have come or will be coming to Australia for short-term work.

The workers are supposed to be paid the Australian award wage while working, and despite some farmers underpaying and exploiting their workers, many farmers do the right thing and the program is considered a success. The government should ensure that when they do come to Australia to work, they are treated fairly and not exploited. Australian farmers generally prefer the guest workers to backpackers for fruit and vegetable harvesting, because the backpackers are itinerant and sometimes leave half-way through the harvest rather than staying for the whole season.

This program has the capacity to greatly expand for East Timorese workers, and provide beneficial outcomes for their families and communities back in East Timor.

That the government significantly expands the guest worker program for East Timorese workers.

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## References

There are numerous book and articles which contain information on Timor Sea issues, while other publications are devoted to this matter. Little scholarly research exists which maintains that Australia acted fairly, in good faith and as a good neighbour. Occasional articles have supported Australia's decisions, and are usually written by oil company lobbyists or government advisors. (See Michael Leach's article below.) A selection of sources used in this submission follows:

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- Fernandes, Clinton. *Reluctant Saviour: Australia, Indonesia and the Independence of East Timor*. Carlton North, Vic.: Scribe Publications, 2004.
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- Way, Wendy, ed. "Australia and the Indonesian Incorporation of Portuguese Timor, 1974-1976." Canberra: Department of Foreign Affairs and Trade, 2000.