



AUSTRALIA TIMOR-LESTE BUSINESS COUNCIL

9 March 2017

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Joint Standing Committee on Treaties
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Treaty: Certain Maritime Arrangements in the Timor Sea

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

I write on behalf of the members of the Australia Timor-Leste Business Council (ATLBC) which was established in June 2002 to foster and strengthen business relationships between Timor-Leste and Australia. The ATLBC has been successful in facilitating many visits to Timor-Leste for Australian business people and also hosting a large number of events for visiting senior Timorese Government officials that have come to Australia to generate interest in companies looking to invest in Timor-Leste.

The ATLBC aims to assist both the Commonwealth of Australia and the Democratic Republic of Timor-Leste to develop mutually beneficial business relationships to promote private business investment which benefits both countries and the peoples of Timor-Leste and Australia.

There is no impediment for the Australian Government to negotiate a binding position on the maritime boundary with the Government of Timor-Leste in accordance with international law.

The business communities that I have consulted across Asia-Pacific have commented that the lack of action towards the delimiting of the maritime boundary between Australia and Timor-Leste has impacted both countries, primarily the inertia of major project investment in Timor-Leste. This has resulted in other business investment reprioritised to other nations within the Asia-Pacific. It has meant that Australian business technical expertise have been hindered in securing major project opportunities in Timor-Leste.

Concurrently within the Asia-Pacific region, the Australian Government encourages nations such as China and the Philippines to abide by international law on matters pertaining to maritime boundary. This is an opportunity for the Australian Government to do the same and to demonstrate how well it can work with its nearest neighbour.

I have previously stated to the Australian Government through the Australian Ambassador to Timor-Leste, His Excellency Peter Doyle and predecessors that one of the underlying issues for companies doing business in Timor-Leste is sovereign risk. Several Australian companies have not established a presence in Timor-Leste because the Australian Government has not in good faith engaged to establish the maritime boundary. A settled maritime boundary would reduce one aspect of business investment concern relating to sovereign risk. It is in Australia's national interest to ensure that we have an economically stable neighbour and regional partner that we can count as we did during the Second World War and at great cost to their people still felt today.

The ATLBC is an independent organisation that seeks the facts and does not solely rely on media releases and briefings provided by the respective nations' Foreign Affairs agencies. I share with your Committee the following excerpt by Dr Christopher Ward, who delivered a speech titled "*The Maritime Boundaries of East Timor and Australia: Arbitration and the Role of International Law*" delivered in Sydney to the International Commission of Jurists August 16, 2014. The pertinent paragraphs are summarised as follows:

"The maritime boundary between Australia and East Timor has been a significant and unresolved issue since the late 1960's. Despite the conclusion of the Treaty between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea (the CMATS Treaty) it is now clear that the underlying issues remain a source of tension between the two states. The dispute has involved four states, Indonesia, Australia, Portugal and now East Timor. East Timor has initiated arbitration proceedings seeking to have set aside the CMATS Treaty on the basis that it was concluded in breach of Australia's obligations of good faith.

...

Australia remains under a continuing obligation to resolve maritime boundary disputes peacefully. Conciliation of disputes, either informally or through formal processes of conciliation, remains a real possibility. Equally, it is not out of the question that Australia may conclude that its national interest could best be served by waiving its reservation and allowing an ICJ process of delimitation to take its course.

It is beyond doubt that the resolution of the tensions are in the best interests of both States. Australia's long held positions lack legal merit and should no longer be asserted. The position is capable of resolution according to law, and the time is now appropriate for a process of legal resolution to take place."

The ATLBC encourages the Australian Government to negotiate with Timor-Leste to establish the permanent maritime boundary guided by international law. The ATLBC as a result of continual business consultations conducted since 2010 with various industry sectors is of the firm view that it is in Australia's national interest to resolve the maritime boundary. This will permit both Australian and multi-national companies particularly in the energy and resources sector to commit and invest in both the Greater Sunrise petroleum field and associated major project infrastructure for down-stream and corresponding side-stream major projects.

During my consultations with European and American energy resources developers has concluded that a pipeline from Greater Sunrise to Timor-Leste's south coast is feasible and affordable. This has been demonstrated with economic transformation in Darwin achieved by a similar pipeline project. Australian companies and technical capability are well regarded in Timor-Leste, especially since a number of projects awarded to non-Australian companies have proven to be deficient in quality, capacity building, knowledge transfer and ongoing lifecycle costs. Our national interest will still be served as the respective Timorese government agencies will require support and implementation from Australian professional services firms and reputable engineering and construction companies.

Briefly, your Committee has been provided a National Interest Analysis document which has been shared with the Australian public and it confirms that:

- ✓ No Australian legislation would be required to give effect to the proposed treaty action.
- ✓ No foreseeable financial costs to Australia of compliance with the proposed treaty action.
- ✓ Future revenue flows from Greater Sunrise are governed by the 2003 International Unitisation Agreement pending the outcome of negotiation of a maritime boundary with Timor-Leste.
- ✓ No regulation impact statement is required.
- ✓ No future treaty action concerning CMATS 2006 is envisaged.

The ATLBC believes the certainty provided by the delimiting of the maritime boundary will be good for business in both Timor-Leste and Australia.

I would be pleased to brief the Committee in person should your Committee invite me to do so.

Yours sincerely

Denis Fernandez
President
Australia Timor-Leste Business Council

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