

[SUBMISSION NO. 13]

# **East Timor Independent Information Centre for the Timor Sea (CIITT)**

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Joint Standing Committee on Treaties  
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## **Submission to the Australian Parliament's Joint Standing Committee on Treaties**

### **Regarding the Timor Sea Treaty And the Related Exchange of Notes Between the Government of Australia and The Government of the Democratic Republic of East Timor**

#### **Summary**

1. East Timor is a sovereign nation which has no maritime boundaries, and whose claims overlap those of Australia.
2. East Timor should not be subjected to illegal historical precedents or made to negotiate under pressure.
3. The current Treaty was written too quickly and, for example, does not adequately protect the marine environment.
4. Revenues from oil and gas in the disputed territory should be held in trust until the boundaries are agreed to based in principles of international maritime law.

Dear respected members of the Australian Parliament:

East Timor is a nation whose sovereignty was formally recognized by the international community on 20 May 2002. With independence, East Timor has the fundamental right to determine its territorial boundaries – land, air and water – following national legal principles laid out in our Constitution, and following international legal principles laid out in the UN Convention on the Law of the Sea (UNCLOS).

East Timor does not yet have clear territorial boundaries with Australia and in fact, the two countries have overlapping claims in the Timor Sea.

In 1972, the governments of Australia and Indonesia agreed upon their maritime boundaries using the continental shelf argument as a basis for the negotiation. This agreement was never recognized by the Government of Portugal which at that time had administrative authority over East Timor. The 1972 line drawn by Indonesia and

Australia intrudes into East Timor's waters, even though they left a gap where they recognized that they had no claim against Portuguese Timor. This gap left a still-contested area in the Timor Sea called "the Timor Gap".

In 1975, Indonesia unilaterally seized East Timor, and annexed it the following year. The international community represented by the United Nations, however, never recognized this annexation and continued to officially recognize East Timor as an area under the administration of Portugal. Australia was the only nation to legally accept the illegal annexation, which was condemned by eight U.N. General Assembly resolutions. In 1989, Indonesia and Australia concluded negotiations over the joint exploration and production of oil and gas in the Timor Gap. Without any resolution of maritime boundaries in the area, the two nations signed the Timor Gap Treaty, using the 1972 continental shelf boundary as the basis of the partnership agreement and agreeing to joint exploration and production of oil and gas within the Zone of Cooperation area of the Timor Gap. The treaty was challenged in the International Court of Justice by Portugal, although the court could not rule because of Indonesia's refusal to recognize the authority of the court.

Because the annexation of East Timor was illegal, unilateral and never recognized by the United Nations, the 1989 treaty was an illegal treaty. For this reason, any agreement that uses the boundaries for the joint sharing of oil and gas which are used in the 1989 Timor Gap Treaty must also be viewed as illegal and in conflict with the principles of the international community, UNCLOS, other international laws, and the Constitution of the Democratic Republic of East Timor which came into effect on 20 May 2002.

In March of this year, Australia withdrew from UNCLOS and International Court of Justice (ICJ) processes as they relate to the resolution of maritime boundaries. Although the treaty says it does not prejudice this issue, it enacts temporary boundaries which unfairly and illegally advantage Australia. Also, based on this proposed treaty, the money from Laminaria-Corallina and other oil fields in contested areas goes to Australia, despite the fact that these areas are within East Timor's territorial claims. It is likely that when the question of maritime boundaries between Australia and East Timor is finally resolved, these revenues will be already spent and unrecoverable by East Timor.

Australia must commit itself to resolving the maritime boundary question following the principles of international maritime law. Australia should cancel its withdrawal from UNCLOS and ICJ processes, and return to the community of law-abiding nations. This is the only way East Timor can be assured that its rights will be respected.

Under pressure by oil companies, Australia in turn pressured East Timor to sign the treaty within hours of becoming independent. This is not an appropriate way to relate to a new neighbour which is just developing governmental and democratic structures. This treaty, which has a 30-year term, will greatly affect East Timor's ability to meet this new nation's basic needs. More time must be taken to allow East Timorese people and their representatives to fully understand all aspects of the issue.

For example, the current treaty does not adequately protect East Timor or Australia's marine environment. As a new nation, East Timor has not had time to develop proper environmental laws or practices. It may be appropriate for us to rely on Australian law, but as a small, underdeveloped nation, East Timor may have different needs and

concerns than Australia. Providing a stable environment for oil companies must not be prioritised over protecting the future of East Timor's sea, land, natural and human resources.

With East Timor's independence, all the natural wealth of the nation, both in the sea and on land, must be used to benefit the East Timorese people. The East Timorese government must work with great diligence to ensure that the oil and natural gas resources in the Timor Sea are used in the interests of national reconstruction and prosperity for the people of the Democratic Republic of East Timor. At this time, East Timor is taking steps to rebuild despite limited resources, both human and economic. Given this situation, it is very unfair for a large and wealthy nation such as Australia to continue to take natural resources from East Timor. The East Timorese people have a far greater need for this wealth than Australia, which is already relatively prosperous, and has much greater oil and gas resources elsewhere.

Based on the above concerns, a group of East Timorese civil society organizations formed the Independent Information Centre for the Timor Sea (CIITT), an information centre formed by thirteen East Timorese non-governmental organizations with the goal of monitoring and analysing the process of determining legal maritime boundaries and the process of oil and natural gas exploration and production in the Timor Sea. The goal of this group is to maintain the sovereign borders of East Timor, to optimise the use of natural gas and oil resources for the prosperity of the East Timorese people, and to decrease the negative effects which sometimes accompany petroleum development. We will continue to follow the process for resolving the issue of maritime boundaries between Australia and East Timor and also the exploration and production of gas and oil in the Timor Gap. This monitoring process began while East Timor was still under UN administration.

The CIITT includes organizations representing different constituencies, but with a common goal of ensuring that the resources of the Timor Sea are used in the most safe and effective way to advance the prosperity of our people. Some of our member organizations are making separate submissions to your Joint Standing Committee, going into more detail on certain aspects of the Timor Sea Treaties. As a coalition, we support the issues raised by the submissions of each of our members.

We consider that the 1989 Treaty between Australia and Indonesia was an illegal treaty, including the agreement on how oil and natural gas reserves would be explored and exploited in the Timor Gap. This agreement will clearly have a very serious political and economic impact on East Timor and the legal determination of the maritime boundaries of East Timor.

During the transitional period, the United Nations and Australia carried out negotiations which led to the Exchange of Notes signed in February 2000 and the Draft Arrangement of July 2001 which was then signed on 20 May 2002 by the Government of Australia and the new Government of East Timor. This process will potentially impact the proper determination of maritime boundaries and territories such as the Exclusive Economic Zones of the countries which are disputed. This treaty was signed before East Timor had any maritime boundary legislation and for that reason, should not be viewed as legal.

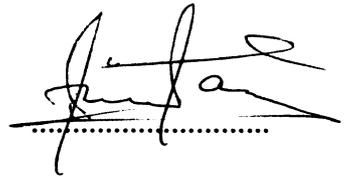
Based on the above, the members of the CIITT, representing a significant portion of East Timorese civil society, submit the following recommendations to the National Parliament of Australia:

1. Do not ratify the Treaty which was signed by Australian Prime Minister John Howard and East Timorese Prime Minister Mari Alkatiri on 20 May 2002 in Dili.
2. Carry out a review of the 20 May 2002 Treaty with attention to the fact that East Timor should receive the oil and gas reserves in the Timor Sea in concordance with the rights and principles laid out by the international law of the sea.
3. Settle the question of maritime boundaries between the two nations in accordance with the principles of the UN Convention on the Law of the Sea (UNCLOS), accepting the decision of the International Court of Justice on matters related to international maritime law.
4. Ask the Governments of Australia and East Timor to agree that all revenues from oil and gas fields in disputed territory must be held in a Trust Fund until there is settlement of the boundaries. We hope that this settlement can be arrived at by negotiation between Australia and East Timor, but if that fails, there must be impartial arbitration procedures available. After settlement, this Trust Fund will be divided based on the boundaries between the two nations.

In closing, we request your authorisation to publish and circulate this submission.

Dili, East Timor  
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