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The Secretary,

Joint Standing Committee on Treaties (JSCT)

Parliament House,

Canberra ACT 2600

I wish to make a formal submission to the Committee regarding The Timor Sea Treaty (TST) which was referred to the Committee on 25 June, 2002.

I am writing to the Committee in my capacity as Joint Convenor of the Australian Public Policy Research Network and as an independent consultant on public policy. The issue I wish to highlight is the circumstances surrounding the signing of the treaty. A treaty has to be an agreement signed between two independent governments. The fact that the treaty was negotiated before and signed only a few hours after independence on 20 May 2002 indicates that this basic condition has not been observed only in the narrow letter of the law.

It is clear from the reaction to the treaty from key groups within civil society, the Church, some politicians from opposition parties of the post independence government of East Timor that there is some dissatisfaction with the terms of the treaty. This strongly suggests that many significant groups in East Timor do not regard the previous interim government as having the authority to negotiate such a treaty.

The sovereign power in East Timor prior to Independence was the United Nations. This means that any treaty negotiated binds the sovereign parties which does not include the independent government of East Timor. As Joseph Stiglitz in his recent book Globalisation and its Discontents makes clear in discussing the role of the IMF, negotiations between unequal parties, without the participation of the wider society, leads to outcomes that favour the more powerful party and are most likely to be to the long term detriment of the weaker party.

The weaker of unequal parties needs an arbitration process or other binding procedure to appeal to if they cannot get a fair settlement by negotiation alone. International law (like all other law) exists to protect the weak from the abuse of the strong. By withdrawing from international legal procedures for the arbitration of boundaries, Australia has put itself outside the use of internationally acceptable processes.

In International Relations, the process for arriving at a negotiated outcome is an essential element in achieving a mutually acceptable outcome. More time is needed to permit the Independent government of East Timor, its parliament and ordinary citizens greater opportunity to understand and debate the terms of a proposed treaty.

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The Australian Government needs to endorse a much more open process for negotiating a mutually acceptable outcome. Resort to the existing treaty, given the way it was negotiated, is likely to produce a continuing source of friction between the independent government of East Timor and the Australian Government.

This is not a good starting point from which to build good government-to-government relations for the future, especially when the parties are so unequal in terms of resources. They are also unequal in terms of governmental and diplomatic experience, democratic traditions.

Richard Curtain (Dr)
Joint Convenor