



Submission No 17

Inquiry into Australia's Relationship with Timor-Leste

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Unfinished business in the Timor Sea

The case for permanent maritime boundaries between Australia and Timor-Leste

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This is a submission to the Parliament of Australia's **Joint Standing Committee on Foreign Affairs, Defence and Trade** regarding its **Inquiry into Australia's relationship with Timor-Leste** prepared by the **Timor Sea Justice Campaign**

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Executive Summary

Australia's refusal to settle permanent maritime boundaries with Timor-Leste continues to deprive the young nation of billions of dollars in government revenues from oil and gas resources that it is legally entitled to.

The refusal to settle permanent maritime boundaries:

- Undermines Australia's aid programs directed to Timor-Leste,
- Stymies Timor-Leste's economic development,
- Generates ill will at various levels between the two countries and detracts from Australia's many positive contributions to Timor-Leste since 1999,
- Undercuts the system of international law generally and specifically the United Nations Convention on the Law of the Sea,
- Prevents the East Timorese from truly completing their long struggle to become a sovereign nation – complete with maritime boundaries,
- Contradicts the wishes of the vast majority of Australians and contradicts the essential Australian value of 'a fair go'.

Australia should immediately move to establish permanent maritime boundaries with Timor-Leste in accordance with international law – that is along the median line half way between the two coastlines.

Amongst other benefits, this would enable Timor-Leste to benefit from 100% of the \$40billion in government revenues expected to be generated by the Greater Sunrise gas field located just 150 kilometres from Timor-Leste's coast.

Australia should also resubmit to the maritime boundary jurisdiction of the International Court of Justice and the International Tribunal for the Law of the Sea.

Australia should repay to Timor-Leste the amount of government revenues Australia received by the unilateral exploitation of contested fields, namely the Laminaria Corallina and Buffalo fields.

About the Timor Sea Justice Campaign

The Timor Sea Justice Campaign (TSJC) is an independent campaign made up of concerned Australians from all political persuasions, of various ages and professions calling on our Government to give Timor-Leste a fair go.

The TSJC was most notably active in 2004 and 2005 when Timor-Leste was actively requesting Australia to negotiate permanent maritime boundaries. In 2005 the TSJC was promoted by print and television advertisements and influenced the change in the Australian Government's negotiating position to better reflect the views and values of the Australian people.

Although the TSJC has put active campaigning on hold since the signing of the Certain Maritime Arrangements in the Timor Sea (CMATS) treaty, it continues to monitor and report on developments.

The TSJC maintains that Timor-Leste should control all of the gas and oil resources that it is entitled to under current international law, through the establishment of permanent maritime boundaries.

This submission was prepared by Tom Clarke who coordinated the TSJC in 2005 and continues to be a TSJC spokesperson.

Introduction

For various historical reasons, Timor-Leste has never had maritime boundaries.

As a sovereign nation, Timor-Leste is entitled to have permanent maritime boundaries. Unfortunately, Australia has not previously been willing to negotiate in good faith to establish permanent maritime boundaries with Timor-Leste.

Instead it has pursued a series of temporary resource sharing agreements. These agreements (The Timor Sea Treaty, International Unitization Agreement and the Certain Maritime Arrangements in the Timor Sea (CMATS) Treaty) short change Timor-Leste of billion of dollars in government revenues, because if permanent maritime boundaries were established along the median line half way between the two coastlines – in accordance with international law – all of the gas and oil resources in dispute would belong exclusively to Timor-Leste.

While these agreements provide generous revenue streams for Australia, they are short-term 'stop-gap' solutions that not only short change Timor-Leste, but also fail to provide a level of economic certainty conducive to commercial resource exploration and exploitation. For example, if new resources were discovered in the contested areas of the Timor Sea tomorrow, it would not be clear which country they belonged to. This would likely lead to a long drawn out dispute which would hamper the commercial development of the resources.

Although the CMATS treaty was to enable the development of the Greater Sunrise gas field, for the last six years the Sunrise resource has remained unexploited, giving rise to circumstances which trigger a clause in the treaty which allows either country to unilaterally terminate the treaty.

This presents Australia with a prime opportunity to do the right thing and finish the job in the Timor Sea by establishing permanent maritime boundaries in accordance with international law.

Permanent maritime boundaries will provide more economic certainty for both countries and for the companies seeking to exploit the oil and gas resources. But more than this, setting permanent boundaries in accordance with international law is the right thing to do. It would also bring some closure to the Timorese's long and determined struggle to become an independent and sovereign nation – complete with maritime boundaries.

The Joint Petroleum Development Area

The Timor Sea Treaty signed by Australia and Timor-Leste in 2002 formalised the Joint Petroleum Development Area (JPDA). The JPDA is the descendent of the Zone of Cooperation created by the Timor Gap Treaty signed with Indonesia in 1989 by then Foreign Minister Gareth Evans.

Whilst the Gap Treaty split government revenues from the Zone evenly, the Timor Sea Treaty increased Timor-Leste's share to 90 percent. This is obviously a vast improvement, but unfortunately, only a fraction of the contested resources in the Timor Sea lie within the JPDA. Further, the JPDA would fall entirely within

Timor-Leste's exclusive economic zone if maritime boundaries were established in accordance with international law along the median line.

The main field being exploited within the JPDA is Bayu Undan. Gas from this field is piped to Darwin for processing which also generates various 'downstream' economic benefits for Australia.

The Timor Sea Treaty (and the IUA and CMATS after it) clearly states that it does not prejudice future negotiations for permanent boundaries. In media coverage the Australian Government has previously attempted to suggest that Timor-Leste wants to "redraw the boundaries". This is simply not true. There are no boundaries to redraw. The Timor Sea Treaty was always designed to be a temporary arrangement, put in place on the first day of Timorese independence pending permanent boundaries that would take time to settle.

Laminaria Corallina

The Laminaria Corallina oil fields lie to the west of the JPDA. If permanent maritime boundaries were established in accordance with international law, these fields would most likely fall entirely within Timor-Leste's exclusive economic zone.

Despite this, and despite being required by international law to act with restraint in regards to contested resources, Australia has unilaterally exploited the fields and taken 100% of the government revenues generated, approximately \$2 billion since production began in 1999

Greater Sunrise and CMATS treaty

After a considerable period of stonewalling and then stalling, Australia's then Foreign Minister, Alexander Downer, finally agreed to enter meaningful discussions with Timor-Leste in early 2005.

The discussions seemingly focused on the massive Greater Sunrise gas field located just 150 kilometres from Timor-Leste that would be owned entirely by Timor-Leste if permanent maritime boundaries were established in accordance

with international law. The field is expected to generate over \$40 billion in government revenues over its lifetime.

Despite widespread public support for Timor-Leste within Australia and the TSJC's apparent ability to influence the Australian Government's position, the inherently inequitable negotiating positions proved too much. Rather than establishing permanent maritime boundaries, a temporary resource sharing agreement was reached to allow the development of the Greater Sunrise field.

The CMATS treaty signed in 2006 resulted in an agreement to split the upstream revenues generated by Greater Sunrise 50/50. This increase from the previous plan involving a 18/72 percent split in Australia's favour came with a condition: Timor-Leste would shelve its claim for permanent maritime boundaries for the next 50 years.

The CMATS treaty was and remains deeply unpopular with civil society and citizens in Timor-Leste. It narrowly passed through Timor-Leste's parliament with 48 votes from 88 members, while Australia brought it into force without waiting for parliamentary approval, under a National Interest Exception.

Six years later the Greater Sunrise field remains untouched. Timor-Leste's Government is eager to benefit from the 'downstream' revenues and possible spin-off economic development that would be generated by processing the resources in Timor, while Woodside Petroleum (who has the contracts to develop the field) would prefer to liquefy the gas at a floating plant near the field. A stalemate. CMATS includes a provision that if a development plan was not approved within six years, either country could terminate the treaty.

That time is now upon us and this issue will continue to haunt our Governments, sour bilateral relations, and hinder commercial exploitation of natural resources in the Timor Sea, until Australia negotiates in good faith with Timor-Leste to establish permanent maritime boundaries in accordance with international law.

International law

Since the 1982 UN Convention on the Law of the Sea, international law has strongly favoured median line boundaries between countries whose coastlines

are less than 400 nautical miles apart – that is, draw a line half way between the two countries' coastlines.

While there are over 80 examples of the median line resolving such claims, there is only one exception; the 1972 Australian-Indonesian Treaty.

The Australia Government relies on its 'continental shelf' argument to support its preferred position of establishing a boundary some 60 kilometres from Timor-Leste's coastline, and 450 km from Australia's. However, current international legal principles and advances in drilling and mining technology have made geological and geomorphological factors such as continental shelves irrelevant in such cases. Further, Timor-Leste is on the same continental shelf as Australia (the Timor trough is merely a feature of the one continental shelf) making the entire argument rather nonsensical.

If Australia is confident in its legal position, the question must be asked: why won't it allow this matter to be taken to court or independent arbitration?

International Court of Justice

Just two months before Timor-Leste's independence in 2002, Australia preemptively withdrew its recognition of maritime boundary jurisdiction of the International Court of Justice and the International Tribunal for the Law of the Sea.

By turning its back on the independent umpire, Australia has left Timor-Leste with no legal avenue to enforce its claim. This is not the action of a Government confident of its own legal position or of one that intends to play nice.

No doubt, Timor-Leste's desperate, and at the time quite urgent, need for revenue created an extremely unlevel playing field. Australia's stonewalling approach to negotiations in 2004 through to 2006 was nothing short of a rich powerful nation bullying one of the smallest and poorest nations in Asia.

Australia's maritime boundaries with New Zealand

Notably, during this time Australia was also negotiating permanent maritime boundaries with New Zealand where overlapping claims existed off Norfolk and

Macquarie Islands. In 2006 Australia settled negotiations with New Zealand about exclusive economic zones by adopting the median line principle.

According to a DFAT media release at the time:

"The Treaty is an excellent outcome for both Australia and New Zealand and brings certainty of jurisdiction over the maritime area between our two countries. It details the jurisdiction over the water column and the seabed between Australia and New Zealand where the areas claimed by both countries previously overlapped."

Seemingly, the median line principle was deemed good enough a solution for our dispute with New Zealand, but not for the Timor Sea, where less principled and legally dubious brinkmanship would deliver Australia billions of dollars in governments revenues.

Downstream benefits

In addition to receiving its rightful government revenues from its natural resources, Timor-Leste as a sovereign nation should be able to exercise its right to determine the manner in which the resources are developed.

Given the potential 'downstream' economic benefits, it is understandable that the Government of Timor-Leste is keen to have the resources processed onshore – as opposed to piping the gas from Greater Sunrise 450 kilometres to Darwin or processing it on a floating plant near the field.

Figure 1 – Map showing Timor-Leste’s probable exclusive economic zone, the JPDA, the median line, the 1972 Aus/Indonesia seabed boundary, and known oil and gas fields.



Undermining Australia's foreign aid to Timor-Leste

By depriving Timor-Leste of a large portion of the share of petroleum resources it is entitled to under current international law, Australia has in effect made one of the poorest nations in Asia, the largest donor to one of the wealthiest.

Whilst Australia has played a very important and popular role in helping to stabilise East Timor from 1999, over the same period of time the Australian Government has taken more in contested oil and gas royalties than it has given to Timor-Leste in combined military and humanitarian aid.

Australia's legacy of generous military and humanitarian assistance in Timor-Leste is at risk by our profiteering in the Timor Sea.

Conclusion

This issue has never been about charity. It's not about helping East Timor out. It's about justice and what the sovereign nation of East Timor is legally entitled to.

The only thing standing between East Timor and what it is legally entitled to is the Australian Government. Australia could and should put an end to decades of hardnosed greed and stop taking government revenues from natural resources that simply do not belong to us.

Australia must move to immediately establish permanent maritime boundaries with Timor-Leste in accordance with international law half way between the two coastlines.

Recommendations

1. Australia should immediately enter negotiations in good faith with Timor-Leste to establish permanent maritime boundaries in accordance with international law. Australia should establish permanent maritime boundaries along the median line half way between the coastlines of Australia and Timor-Leste. To enable this Australia should terminate the CMATS treaty.
2. Australia should immediately resubmit to the maritime boundary jurisdiction of the International Court of Justice and the International Tribunal for the Law of the Sea. Australia should commit to referring the matter to independent arbitration should the matter be unable to be resolved bilaterally.
3. Australia should repay to Timor-Leste the amount of government revenues Australia received by the unilateral exploitation of contested gas and oil fields, namely the Laminaria Corallina fields.