



Submission No 72

Inquiry into Australia's Relationship with Timor-Leste

Organisation: International Law and Human Rights Division,
Attorney-General's Department

Joint Standing Committee on Foreign Affairs, Defence and Trade
Foreign Affairs Sub-Committee



Australian Government
Attorney-General's Department
**International Law & Human
Rights Division**

13/5935; SEC13/0084

6 May 2013

Mr Jerome Brown
Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
Parliament House
CANBERRA ACT 2600

Dear Mr Brown

Inquiry into Australia's relationship with East Timor

Thank you for your letter of 6 February 2013 seeking input into the Committee's inquiry into Australia's relationship with East Timor (Timor-Leste).

Australia and Timor-Leste have not delimited their maritime boundaries, but consistent with the *United Nations Convention on the Law of the Sea 1982* (UNCLOS), have entered into three treaties which establish provisional arrangements of a practical nature and which are without prejudice to final delimitation. These arrangements were developed through long and complex negotiations, in which both sides made constructive compromises to achieve a fair and equitable outcome. Importantly, they provide a framework for the joint management and development of the hydrocarbon resources in the Timor Sea, allowing the resources to be explored and exploited for the benefit of both countries. The treaties in question are:

- the 2002 *Timor Sea Treaty*
- the 2003 *Agreement Relating to the Unitisation of the Sunrise and Troubador Fields*, and
- the 2006 *Treaty on Certain Maritime Arrangements in the Timor Sea*.

The *Timor Sea Treaty* (Timor Sea Treaty) was signed for Australia by the then Prime Minister John Howard on 20 May 2002 and entered into force on 2 April 2003. The Timor Sea Treaty establishes the Joint Petroleum Development Area (JPDA), a defined coffin-shaped area between the two countries where Australia and Timor-Leste jointly control, manage and facilitate the exploration, development and exploitation of petroleum. The Timor Sea Treaty is without prejudice to final seabed delimitation or either country's entitlements to the seabed, and was valid for 30 years from entry into force. Under the Timor Sea Treaty, petroleum revenue is shared on a 90:10 basis as between Timor-Leste and Australia. Any petroleum reservoir extending across the boundary of the JPDA is to be treated as a single resource between Australia and Timor-Leste (the concept of 'unitisation'). There are two fields in the JPDA (Bayu-Undan and Kitan) that have been producing for a number of years with Timor-Leste receiving billions of US dollars in proceeds.

The *Sunrise Unitisation Agreement* (Sunrise Agreement) was signed for Australia by the then Minister for Foreign Affairs Alexander Downer on 6 March 2003 and entered into force on 23

February 2007. The Sunrise Agreement establishes a legal and regulatory framework for the development of the Sunrise-Troubador field (generally referred to as 'Greater Sunrise') that straddles the eastern boundary of the JPDA and the area of Australian jurisdiction to the east of the JPDA. Greater Sunrise is apportioned on the basis that 20.1 per cent falls within the JPDA and the remaining 79.9 per cent falls in an area where Australia has jurisdiction over the seabed and subsoil, and resources therein. This apportionment reflects the geographical location of the resources, and unitises the reservoirs (consistent with the Timor Sea Treaty). Due to the agreed 90:10 resource split in the JPDA, under the Sunrise Agreement Timor-Leste would receive revenues from 18.1 per cent and Australia from 81.9 per cent of the Greater Sunrise resource.

The *Treaty on Certain Maritime Arrangements in the Timor Sea* (CMATS) was signed for Australia by the then Minister for Foreign Affairs Alexander Downer on 12 January 2006 and entered into force on 23 February 2007. CMATS adjusts the revenue split established in the Sunrise Agreement to increase Timor-Leste's share of proceeds from the Greater Sunrise development from 18.1 per cent to 50 per cent of the upstream revenue, and extends the period of the Timor Sea Treaty to match the duration of CMATS (for 50 years after entry into force of CMATS, so until 23 February 2057). CMATS also places a moratorium on maritime boundary negotiations, meaning that both parties are bound to refrain from asserting, pursuing or furthering by any means their claims to sovereign rights and jurisdiction and maritime boundaries while CMATS is in force. CMATS also provides that either party may terminate CMATS if a development plan for Greater Sunrise is not approved by 23 February 2013, or the field is not in production by 23 February 2017. Australia remains committed to the current treaty regime, including CMATS, which delivers benefits to both countries and provides certainty for investors.

As a matter of domestic law, Australia's maritime boundaries are established under the *Seas and Submerged Lands Act 1973* (the Act). The boundary of Australia's continental shelf (seabed and subsoil) is set out in the *Seas and Submerged Lands (Limits of Continental Shelf) Proclamation 2012* made by the Governor-General on 24 May 2012 under section 12 of the Act. However, the Government decided not to proclaim the outer limit of the continental shelf in the area to the north of Australia until the totality of those boundaries – including those with East Timor - has been agreed. Nonetheless, in its exercise of prescriptive and enforcement jurisdiction in this area Australia acts consistently with the treaties agreed with East Timor.

On 3 May 2013, the Minister for Foreign Affairs, Senator Bob Carr, and the Attorney-General, the Hon Mark Dreyfus QC, announced that Timor-Leste had initiated arbitration against Australia under the *Timor Sea Treaty*. A copy of the statement is attached.

I hope that the above information is of assistance to the Committee.

Yours sincerely



Greg Manning
First Assistant Secretary
International Law and Human Rights Division

Arbitration under the Timor Sea Treaty

Joint media release:

- Senator the Hon. Bob Carr, Minister for Foreign Affairs
- The Hon. Mark Dreyfus QC MP, Special Minister of State, Attorney General, Minister for Emergency Management, Minister for the Public Service and Integrity

3 May 2013

Timor-Leste notified Australia on April 23 that it has initiated arbitration under the 2002 *Timor Sea Treaty* of a dispute related to the 2006 *Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS)*.

The arbitration relates to the validity of the CMATS treaty. Timor-Leste argues that CMATS is invalid because it alleges Australia did not conduct the CMATS negotiations in 2004 in good faith by engaging in espionage.

These allegations are not new and it has been the position of successive Australian Governments not to confirm or deny such allegations.

However, Australia has always conducted itself in a professional manner in diplomatic negotiations and conducted the CMATS treaty negotiations in good faith.

Australia considers that the CMATS treaty is valid and remains in force.

Australia remains committed to the Timor Sea treaty framework, including the CMATS treaty. The treaties provide certainty for investors and deliver benefits to both countries from our shared resources including equal sharing of upstream revenue from the Greater Sunrise area.

The Australian Government is considering its response to Timor-Leste's arbitration notification.