

TT May/June 03
Submission No:11.....

**SUBMISSION TO THE JOINT STANDING COMMITTEE ON TREATIES
CONCERNING THE 'AGREEMENT BETWEEN THE GOVERNMENT OF
AUSTRALIA AND THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF
TIMOR-LESTE RELATING TO THE UNITISATION OF THE SUNRISE
TROUBADOR FIELDS'.**

This submission is from the Australia East Timor Association in NSW and follows an earlier submission to the JSCT on the Timor Sea Treaty. It will be brief as our essential concerns were already outlined in the previous submission. This agreement between the governments of Australia and Timor-Leste was previously known as the 'International Unitisation Agreement' and, for simplicity, that is how we refer to it in this submission.

The essential issue in the dealings over the resources in the Timor Gap between Australia and Timor Leste is – who is entitled to, and who will actually benefit from, the revenue and infrastructure derived from which resources? The final answers are not yet clear.

The International Unitisation Agreement (IUA) (a provision of Annex E of the Timor Sea Treaty) applies to the Sunrise and Troubador fields (together called Greater Sunrise) in the Timor Gap between the coasts of Australia and East Timor. This is currently the biggest proven gas resource in the area and the revenues from it will be significant for both countries – though, of course, proportionally much more significant for East Timor than Australia. The IUA, which has been signed by both parties, (but not yet ratified) defines the proportion of the field considered to lie within the Joint Petroleum Development Area (JPDA) at 20.1% - leaving the proportion considered to lie outside the JPDA (and thus in territory that Australia claims) at 79.9%. East Timor will receive 90% of the revenues from the resources within the JPDA and thus overall will receive only about 18% of the revenues from the total Greater Sunrise field. Australia stands to receive the remaining 82% of the revenues.

The concern of the Australia East Timor Association in NSW (AETA, NSW) is that this outcome may not be equitable and may disadvantage East Timor in the longer term. The concern is that East Timor's potential maritime entitlements could be significantly greater and encompass most, or all, of the Greater Sunrise field – according to the maritime boundary opinion provided in March, 2002 by Professor Vaughan Lowe of Oxford University, Commander Chris Carleton of the U.K. Hydrographic Office and Australian barrister Chris Ward. We believe that this opinion is reliable and is the only one that has been formally provided to the best of our knowledge.

This opinion has been produced by people who are experts in their field and was offered at a time when determination of the issue within the International Court of Justice (ICJ) was seen as a distinct possibility. Subsequent criticisms of that opinion have come from Australian sources who may be less qualified and / or

might tend to have allegiance towards a particular outcome. The contrary opinions were also offered (in most, if not all, cases) after it became known that Australia had withdrawn from the jurisdiction of the ICJ (which it did in March, 2002) - and thus in circumstances in which it was known that these legal interpretations would not be subject to scrutiny by the ICJ.

Australia withdrew from the jurisdiction of the International Court of Justice (ICJ) with respect to maritime boundary determination in March, 2002 at the time that the Vaughan Lowe joint opinion was made available. This background suggests that Australia has withdrawn from the ICJ (with respect to maritime boundary dispute resolution) because it recognises that the Vaughan Lowe joint opinion could be correct and is concerned that this opinion would be upheld if the issue went to international arbitration.

If Vaughan Lowe's opinion is correct, Timor Leste would be entitled to maritime boundaries significantly wider than the lateral borders of the JPDA and thus could claim sovereignty over most, or all, of Greater Sunrise and other important resources in the Timor Gap (notably Bayu Undan and Laminaria Corallina). Under the existing Timor Sea Treaty with the International Unitisation Agreement in its current form, East Timor appears to be obtaining only a proportion of its entitlements.

Timor Leste's public position is that it wants a permanent delimitation of maritime boundaries. Given that Australia has already withdrawn from the jurisdiction of the International Court, and given East Timor's extremely weak state, it is difficult to see how East Timor will actually be able to apply pressure to Australia to negotiate in good faith over maritime boundaries. Australian Foreign Minister Alexander Downer has made it clear that he has no real intention to negotiate further on this issue. Thus it is difficult to see how a solution that grants East Timor its full potential maritime entitlements might be reached.

If the outcome does not progress from its current configuration (as embodied in the Timor Sea Treaty with the current IUA) it appears that East Timor will receive substantially less than the revenues to which it is potentially entitled. It will also not be able to claim sovereignty over its own entitlements in the Timor Gap - a matter that is important to many Timorese who fought (and paid a high price) for their homeland. For these people, sovereignty is much more than an academic issue - it has a significant emotional resonance.

Yet Australia has publicly described its own position as 'generous'. Certainly the Timor Sea Treaty gives a greater proportion of revenues from the Timor Gap to Timor Leste than the previous incarnation (the Timor Gap Treaty) gave to Indonesia. The proportion of revenues received by the other party has risen from 50% (the revenues Indonesia would receive from resources within 'Zone A' of the prior Timor Gap Treaty) to 90% (the proportion that Timor Leste will receive from the JPDA of the current Timor Sea Treaty). Given that the area in question is

identical (as 'Zone A' of the Timor Gap Treaty was simply renamed the 'Joint Petroleum Development Area' of the Timor Sea Treaty) a direct comparison can be made – and it can be said that East Timor's revenues are likely to be almost double what Indonesia's would have been under the Timor Gap Treaty (at least with respect to revenues received from resources extracted - ignoring complicating factors which could alter that ratio, such as where 'downstream' developments are, or would have been, located under the current and past development programmes). So it is true that the current Timor Sea Treaty is more 'generous' to Timor Leste than its preceding Timor Gap Treaty was to Indonesia. However the current agreement does not seem generous at all when one considers that Timor's entitlements (under the generally accepted principles of the United Nations Convention on the Law of the Sea, UNCLOS) might be significantly greater.

Australia points out that it has played a significant role in assisting East Timor since 1999 and has already expended well over a billion dollars on peace creating and peacekeeping in East Timor. INTERFET's crucial role in establishing peace and security and providing the foundation for East Timor's transition to independence is well recognised. Australia's ongoing role in peacekeeping at the border is crucial to East Timor and its ongoing role in technical assistance and training is also significant. Australia and East Timor have a long relationship extending back to World War 2 and earlier.

However from 1975 up until 1999, Australia had abandoned the East Timorese and consigned them to live under a very repressive military occupation. Australia's role post-1999 has helped to redress this unfortunate background, though it cannot erase history.

East Timor is a small country stuck between two giant neighbours – Indonesia and Australia. Relations with Indonesia remain strained (and will probably remain so into the foreseeable future) - therefore relations with Australia are particularly important. East Timor will remain somewhat dependent on Australia for assistance with peacekeeping along its border and ongoing support in other areas. This relationship, and East Timor's lack of leverage over Australia, mean that Australia has a lot more 'clout' than East Timor to bring to the negotiations. This has been translated, through 'realpolitik', into an agreement that has been in Australia's favour. It is not clear what options East Timor may have, at this stage, to redress the imbalance.

However, from the perspective of the Australia East Timor Association, one of the most important features that should be maintained is the diplomatic goodwill and spirit of cooperation between both governments for the long term. That goodwill certainly exists between the people of both countries. As we see it, it is important that any disagreements over maritime boundaries in the Timor Gap should not be allowed to destabilise the fundamentally good relations between both countries.

It was for this reason that AETA had suggested (in the prior submission to the JSCT on the Timor Sea Treaty) that a 'middle-road' option be pursued. The suggestion made was that Australia might concede a greater share of the revenue from the Greater Sunrise field to East Timor, in exchange for East Timor foregoing claims for its maritime boundaries. This outcome would have been a compromise for both parties but could have resulted in what AETA perceives to be a more equitable outcome that could have resolved further diplomatic wrangling. This option, in AETA's opinion, would have helped maintain good diplomatic relations between the two governments and allowed an outcome that would have balanced East Timor's long term economic interests with the 'realpolitik' of diplomatic and financial interests.

Although East Timorese negotiators did indicate their interest in such an outcome at one point, Australia appears to have adamantly rejected any change to the Greater Sunrise resource / revenue split that was under discussion (the 20.1 / 79.9 split). Australia appears to have then played 'hard ball' by withholding the ratification of the Timor Sea Treaty in order to pressure East Timor into signing the existing terms of the International Unitisation Agreement (under Annex E of the Timor Sea Treaty) – that is the 20.1 / 79.9 % split of Greater Sunrise which gives over 80% of the revenues from the resource to Australia. By delaying its ratification of the Timor Sea Treaty, Australia exerted an unfair economic pressure on East Timor – which was vulnerable because it urgently needed this treaty ratified in order to provide certainty for ongoing developments of the Bayu-Undan field (in the JPDA) and to allow much needed revenue, then held in trust, to be released to the East Timorese government.

This means that the International Unitisation Agreement that has been signed and awaits ratification has provided no concessions towards East Timor and will provide much the same financial outcome as had been 'on the table' previously - with no significant concessions.

Meanwhile the East Timorese government has indicated that it intends to claim its full maritime boundaries - which it is certainly entitled to under the terms of the Timor Sea Treaty. The question is whether East Timor will be able to oblige Australia to enter into further negotiations – negotiations which Australia seems reluctant to undertake.

A major concern of the Australia East Timor Association is that this conflict of interests should not be allowed to undermine the fundamentally good relations between both governments – something that is important to the long term interests of the people of both countries.

The Australia East Timor Association in NSW therefore recommends:

1. That the JSCT looks at the possibility of altering the revenue split of Greater Sunrise field somewhat more towards East Timor's favour, so that a more equitable compromise can be reached.
2. That the JSCT request that the Australian Government re-submit to the jurisdiction of the International Court of Justice with respect to maritime boundary determination - so that maritime boundaries can be determined in an equitable manner consistent with international law in case either or both parties should wish to do so.
3. that the JSCT should request that the Australian Government desist from misleading claims that it has been 'generous' in these dealings with Timor Leste. Portraying Australia's negotiations as 'generous' confuses the public and creates what we believe to be a false impression - that Australia has already fulfilled any obligations it may have towards Timor Leste.
4. that the JSCT encourage the Australian Government to take further steps to enhance the development of the long- term relationship with Timor Leste and to be willing to continue to assist with security, capacity building and training for jobs in the oil industry so that relations between the two countries are augmented and real help is provided. If, due to the disproportionate power wielded by Australia, neither of the outcomes listed in recommendations 1 and 2 above are implemented, Australia should particularly acknowledge and honour this ongoing obligation to remain engaged with Timor Leste and to continue to provide significant developmental assistance over the long-term – assistance commensurate with the resources and revenues that Timor Leste will have foregone in Australia's favour.

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END.

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