

Submission No: 53



Submission

to the

Joint Standing Committee on Treaties

on

Australia's proposal to ratify the Timor Sea Treaty

To

The Secretary
Timor Sea Treaty Inquiry
Joint Standing Committee on Treaties

From

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1. Introduction

1.1 About Union Aid Abroad - APHEDA

Union Aid Abroad – APHEDA is the overseas humanitarian aid agency of the ACTU. Founded in 1984, almost all Australian national unions and their state branches are members of APHEDA, as well as all State Labor Councils and many regional Labor Councils and several hundred individual union members.

Union Aid Abroad - APHEDA directly supports training projects in education and vocational skills training in developing countries. Many of APHEDA - Union Aid Abroad's projects are designed to strengthen community development and human rights including workers' rights, and to help communities organise around these important issues.

On behalf of Australian workers, Union Aid Abroad - APHEDA is helping skills training for workers in East Timor, South East Asia, the Pacific, the Middle East and southern Africa. Currently, APHEDA – Union Aid Abroad is assisting over 50 training projects undertaken with 42 separate project partners in 14 countries where workers and their families face poverty, exploitation or civil conflict.

Union Aid Abroad - APHEDA's funding is provided by an annual grant from the ACTU, by sponsorship of overseas projects by many unions, by donations from many individual members of trade unions and by grants, submitted for on a competitive basis, from AusAID.

1.2 Union Aid Abroad – APHEDA's work in East Timor

In East Timor, Union Aid Abroad – APHEDA was assisting health and literacy training for a number of years prior to the ballot for democracy in 1999, assisted with emergency aid during most of 2000, and since then, has developed a program of assistance with East Timorese organisations. Union Aid Abroad – APHEDA is assisting:-

- vocational training through a vocational training centre in Dili, through carpentry and blacksmithing workshops in the Maliana and Bobonaro, Bazartete and Liquicia areas, and through assistance to the Technical High School in Becora.
- Capacity building for a number of East Timorese community organisations which undertake development or advocacy work through the East Timor NGO Forum
- Community radio through two community radio stations
- The University of East Timor library
- The strengthening of East Timorese trade unions.

Union Aid Abroad – APHEDA has a long-term commitment to the people of East Timor and to the development of their nation.

In this submission, I would like to briefly address four issues. These are:-

- The agreement on the boundary between East Timor and Australia.
- The commercial agreement (interim Timor Sea Treaty of May 2002) on the division of income arising from the Timor Gap oil and gas resources.
- The employment of East Timorese workers on the Timor Gap oil fields.
- The adequate involvement of the people and government of East Timor in these negotiations.

2. The maritime boundary between East Timor and Australia

Following independence, the new nation of East Timor is now in the process of negotiating maritime boundaries with both Indonesia and Australia.

These negotiations regarding the maritime or seabed boundary between East Timor and Australia are far from finalised, and the agreement of the border between the two countries will have a significant impact on ownership of much of the oil and gas resources in the Timor Sea.

The 1972 maritime boundary negotiated between Australia and Indonesia was based on the continental shelf theory, whereby the boundary was to run along the deepest point between the two countries. This saw Australia claiming over 80% of the maritime territory between Australia and the then Portuguese colony of East Timor. Portugal refused to accept this Australian claim.

In 1982, the United Nations Convention on the Law of the Sea recommended that international boundaries between countries separated by less than 400 kilometers of sea be drawn mid-way between the two countries.

In 1989, Indonesia and Australia signed the Timor Gap Treaty, dividing the resources of the disputed Timor Gap region between the two countries. This enabled contracts to be signed between the two countries and a number of major oil companies, so exploration could begin. It is worth noting, however, that most people outside Australia and Indonesia consider this to be an invalid treaty, as the United Nations never accepted the Indonesian invasion of East Timor, and never recognised East Timor as being a part of Indonesia.

There would appear to be no satisfactory reason why the boundary between the two countries should not be the mid-point between the two countries, however, in an effort to delay this inevitable step, the Australian government recently withdrew from the jurisdiction of the International Court of Justice regarding maritime boundary issues.

Recommendations:

- Union Aid Abroad – APHEDA strongly recommends that the question of the maritime boundary between East Timor and Australia be settled as a matter of highest priority, that the agreement be mutually acceptable, and that the agreement be underpinned by the United Nations Convention on the Law of the Sea.
- Union Aid Abroad – APHEDA recommends international arbitration by the International Court of Justice to ensure that a speedy resolution is arrived at, and to also ensure that the interests of the less powerful party, East Timor, are respected.

3. The commercial agreement on the division of income arising from the Timor Gap oil and gas resources.

Many commentators have claimed that the interim Timor Sea Treaty of May 2002 is primarily protecting the interests of the Australian government and petrochemical companies to the detriment of the East Timor government and its citizens.

The treaty ensures a ratio of 90:10 share of the royalties in the Joint Petroleum Development Area. However, two of the three oil and gas fields (the Greater Sunrise and the Laminaria Corallina fields) lies mainly outside this Joint Petroleum Development Area. This treaty ensures the Australian will be the major beneficiary of a resource most reasonable people would consider belongs to East Timor were the international boundary follow the rules of the United Nations Convention on the Law of the Sea. By its recent withdrawn from the jurisdiction of the International Court of Justice regarding maritime boundary issues, it would appear to many people that Australia is delaying a solution on a common border until the oil and gas resources, which should rightly belong to East Timorese people, are depleted.

Canberra is attempting to deny East Timor the right to control the most lucrative gas and oil fields in the region. The Bayu Undan field (gas reserve of 175 million barrels of LPG, 229 million barrels of condensate and 66 million tones of LNG) lies within the Joint Petroleum Development Area covered by the 90:10 royalty split. This field is currently being developed by Phillips and will deliver an estimated earnings of \$2 billion for East Timor. However, the Laminaria Corallina field (oil reserves of 198 million barrels) and the Greater Sunrise field (which is the largest deposit with a gas reserve of 300 million barrels of condensate and 177 million tones of LNG) are both 80% situated within Australia's current supposed resource zone. With a mid-way or median boundary between the two countries, East Timor would own 100% of Bayu Undan, 100% of Laminaria Corallina and at least 80% (perhaps more) of the Greater Sunrise field.

If the boundaries are to be redrawn in a manner consistent with International Law, and these deposits would then fall under the auspices of East Timorese control, the estimated difference in income for East Timor would be approximately \$US 30 billion. East Timor can expect approximately \$US8 billion under the present agreement, but would receive an estimated \$US38 billion under an internationally accepted boundary. Australia is, in effect, taking \$US30 billion in resources from the people of East Timor.

Currently the National Planning Commission states that 41% of East Timorese live in poverty – 48% in rural areas and 26% in urban areas. 48% are identified as illiterate. We in Australia have no moral right to deprive a nation as poor as this of \$US30 billion of resources which are rightfully theirs.

It is in Australia's long-term interest to have an economically viable East Timor. If East Timor is denied the opportunity to achieve a socio-economic level that is consistent with human rights standards, the result could well be increased illegal migration, encroachment into our fishing zones and the need for continuing financial aid.

Recommendations:

- That the Timor Sea Treaty of May 2002 be renegotiated to reflect the internationally accepted practise of a median border between East Timor and Australia.
- That until the question of the international boundary between East Timor and Australia is finalised, any income derived from the disputed area be placed in escrow, to be distributed later when the boundary issue is completed.

4. The employment of East Timorese workers on the Timor Gap oil fields

As an overseas aid agency, Union Aid Abroad – APHEDA has concentrated on skills training for workers and strengthening workers rights.

Union Aid Abroad – APHEDA considers it important that East Timorese workers benefit from the oil and gas resources in the Timor Sea. We believe that at least half the workforce developing and exploiting these oil and gas fields in the Joint Petroleum Development Area eventually be East Timorese. We also believe that for Australia to maximise the benefits from these resources, the other half of the workforce should be reserved for Australian workers.

This will entail a significant investment in training for the East Timorese workforce, as very few would presently have the maritime skills to work in key roles on the ships or oil drilling rigs currently in use in the Laminaria and Bayu-Undan fields, or proposed for the Greater Sunrise field. Unless or until the Australian government settles the issue of a median border, it should consider these skills development for East Timorese workers as a major priority of their development assistance to East Timor, and the oil and gas companies exploiting these resources should be required to also invest in worker training.

Union Aid Abroad – APHEDA also believes that all East Timorese and Australian workers employed on these oil and gas fields should be accorded all the internationally accepted rights and health and safety standards as contained in the core ILO Conventions.

Recommendations:

- That East Timorese workers be eventually allocated half the jobs on the oil and gas rigs working in the Timor Sea when their skills reaches sufficient level to make this possible.
- That the Australian Government through AusAID, and the oil companies working in that region, assist the training and skills development of a sufficient number of East Timorese workers to enable them to be gainfully employed in exploiting their natural resources.
- That the fundamental rights of workers as reflected in the core ILO Conventions be respected for workers who are working in these oil and gas fields.

5. The adequate involvement of the people and government of East Timor in these negotiations

It is important that the East Timorese people have the opportunity of full and active participation in discussions concerning the ratification process of this interim Timor Sea Treaty of May 2002.

Union Aid Abroad – APHEDA suggests that information during any future negotiations should be made public through a number of different communication mediums. Texts should be translated in languages understood by Timorese [Tetun and Bahasa] and information should be disseminated through the use of community radio programs. Information forums could be set up through the use of workshops, schools and social events to raise public awareness and general understanding of the issues being negotiated and which will have such a significant impact on their lives.

It is critical to include East Timorese in all parts of the negotiation and resource exploitation processes to build experience and capability. Effective participation of East Timorese workers, including training at all levels of the Timor Sea Project, should be made available. Negotiations with Australia's governmental and transnational representatives should be transparent and as participatory as possible, demonstrating a commitment to democratic processes. Independent legal advice should be available to East Timorese officials and negotiation developments be made accessible for public discussion. The active involvement of the people and government of East Timor in the negotiations is a crucial factor in facilitating the growing emergence of self determination within the newly formed nation state.

Recommendations:

- That the Government in East Timor be financially assisted in translating the Treaty into Tetun and Bahasa, and in disseminating it widely in East Timor.
- That the Joint Standing Committee consider holding hearings in Darwin and Dili to facilitate East Timorese people addressing the Committee if they so desire.

Conclusion

The oil and gas resources in the Timor Sea provide a once-only chance for the new nation of East Timor to reach a satisfactory level of economic development. The negotiations are a key opportunity to provide for the basic needs of their people and escape from what would otherwise be decades of dependency on foreign aid.

In order to maximise their benefits from these oil and gas resources, it is imperative that Australia quickly solve the continuing problem of the border between the two countries, and these negotiations should be done through an international forum under United Nation's auspices.

Australia should not attempt to derive wealth to which we have no moral right by refusing to consider the issue of the international boundary. It is in Australia's best long-term interest to ensure that East Timor receives its just share of the Timor Sea wealth so as to enable the new nation of East Timor to develop economically and emerge as a stable, viable neighbour.