

Timor Sea Justice Campaign

a fair go for East Timor

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Submission to the Joint Standing Committee on Treaties Australian Parliament 14 March 2007

'Certain Maritime Arrangements in the Timor Sea' (CMATS) Treaty

Executive Summary

- While the 50% share of Greater Sunrise upstream revenues is an improvement on the miserly 18% previously acceded to by the Australian Government, it still falls dramatically short of East Timor's legal entitlement under current International Law.
- Through CMATS, the Australian Government is set to short change the poorest nation in Asia to the tune of at least \$20 billion dollars.
- CMATS is a 'stop gap, band aid' solution that precludes discussion of broader issues of sovereignty. It's simply an attempt to allow the commercial development of the Greater Sunrise field while the Australian Government continues to violate East Timor's rights to this and other fields on East Timor's side of the median line.
- Sadly, the Howard Government has proven that it is willing to bully and blackmail our neighbouring countries for its own financial gain. This disregard for International Law is damaging Australia's reputation in the region.
- The Australian Government should compensate East Timor for the approximately \$2.5 billion the Commonwealth government has taken from the Laminaria Corallina fields since 1999.
- East Timor should receive a fairer share of the downstream benefits as well as have greater control of development decisions via its currently inequitable, 1:2, representation on the Sunrise Commission.
- The Australian Government must 'finish the job' and commit to negotiate permanent maritime boundaries with East Timor in accordance with International Law and respect for the sovereignty of our neighboring nation.
- These issues are integral to the process of self-determination and achieving true independence. Until the East Timorese enjoy just and fair borders, their struggle will continue.

About the Timor Sea Justice Campaign (TSJC)

The TSJC is an independent campaign made up of concerned Australians of various ages and professions that believe East Timor should control all of the gas and oil fields that it is entitled to under current international law, by the establishment of a permanent maritime boundary.

Introduction

Whilst the TSJC acknowledges that the CMATS treaty is an improvement on previous Australian Government policy regarding the sharing of oil and gas reserves in the Timor Sea, it cannot endorse a treaty that continues to deprive the sovereign nation of East Timor of permanent maritime boundaries and the East Timorese people of tens of billions of dollars worth of gas and oil revenues that they are legally entitled to.

The legally dubious and morally bankrupt positions held by the Australian Government in previous years should not be used as the benchmark when evaluating the CMATS treaty.

The 50 percent share of government revenues from the Greater Sunrise gas field is a significant improvement on the miserly 18 percent Australia was previously willing to accede to East Timor. However, the increase does not seem as 'generous' when you consider that if permanent maritime boundaries were established in accordance with international law - along the median line halfway between Australia and East Timor's coastlines, the Greater Sunrise field would lie entirely within East Timor's exclusive economic zone (EEZ).

Furthermore, the CMATS treaty does nothing to address the billions of dollars worth of revenues that Australia has unilaterally taken from other contested deposits, the Corallina and Laminaria fields, which also would likely belong exclusively to East Timor if permanent maritime boundaries were drawn in accordance with international law. On the contrary, the CMATS treaty specifically and deliberately prevents East Timor from addressing such issues for the next fifty years.

There are many shortfalls in the CMATS treaty, but at the core of the TSJC's concerns is the issue of justice. It is not merely a matter of Australia being 'generous' towards our significantly less wealthy neighbour - it is a question of Australia respecting the sovereignty of another nation, and the principles of international law.

The only just and lasting solution for the Timor Sea dispute is for the Australian Government to immediately agree to establish permanent maritime boundaries with East Timor along the median line, halfway between the coasts of Australia and East Timor, as prescribed by international law.

Background

For various historical reasons East Timor has never had legal boundaries. Under current international law, East Timor is entitled to a much larger share of the petroleum resources in the Timor Sea than it currently enjoys.

The negotiations leading to the CMATS treaty were not held on a level playing field. During negotiations with East Timor, the Australian Government did not 'act with restraint' as required by international law. On the contrary, beginning in 1999, the Australian Government unilaterally took over \$2.4 billion of contested revenues from the Laminaria Corallina oil fields. These fields are highly likely to belong to East Timor if permanent maritime boundaries were established in accordance with current principles of international law.

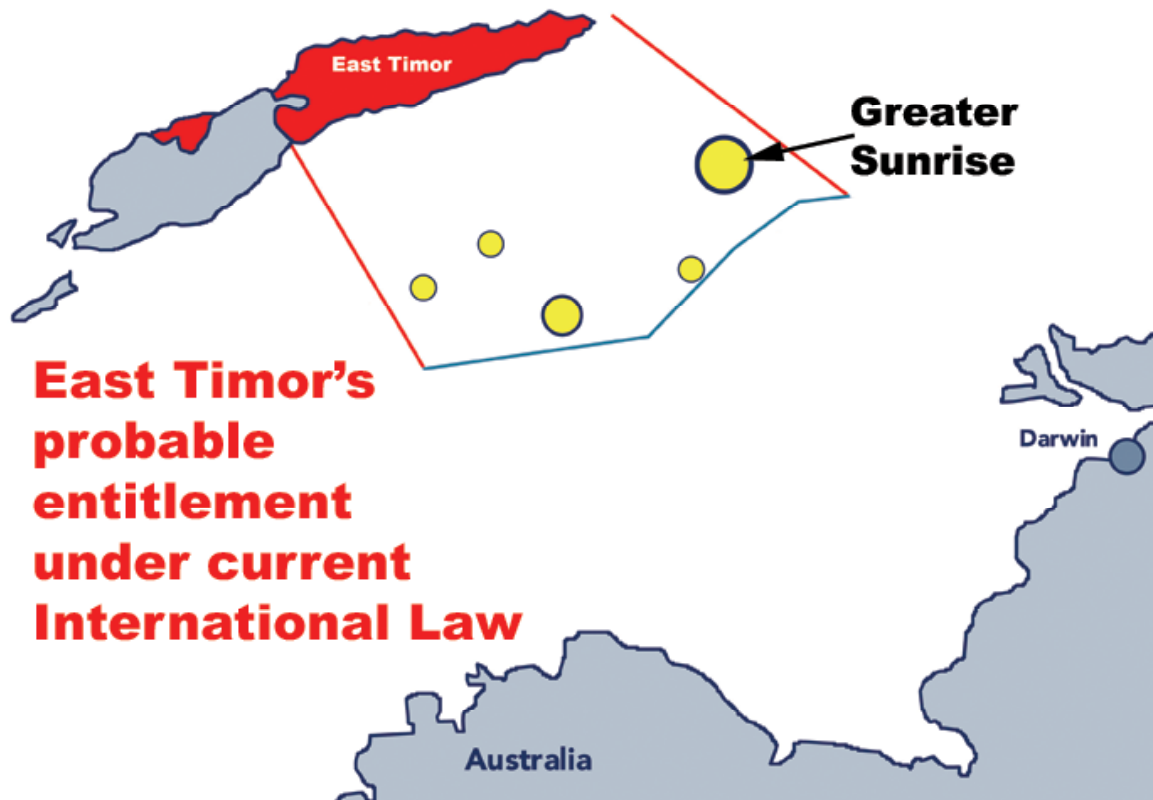
By depriving East Timor of a large portion of the share of petroleum resources it is entitled to under current international law, Australia has in effect made the poorest nation in Asia, the largest donor of foreign aid to one of the wealthiest.

East Timor wanted to establish maritime boundaries along the median line, halfway between the coastlines, and with equitable lateral boundaries. East Timor's negotiating position was based on principles of international law set out in the 1982 UN Convention on the Law of the Sea and in case law.

Australia on the other hand, simply wanted to close the 'Timor Gap' that was left in the 1972 Indonesia/Australia seabed boundary treaty, which was based on the long outdated continental shelf rationale.

Because the Australian Government secretly and preemptively withdrew recognition of the maritime boundary jurisdiction of the International Court of Justice and the International Tribunal of the Law of the Sea in March 2002, East Timor had no legal avenues in which to settle this dispute and was forced into notably unbalanced negotiations.

With East Timor in desperate need of funds, a so called "creative solution" was devised and the deal to share the Greater Sunrise gas field 50/50 was reached with the condition not to pursue claims for permanent maritime boundaries for the next 50 years.



East Timor's probable entitlement under current International Law

This map shows maritime boundaries drawn along the median line and with equitable lateral boundaries. This would be the likely outcome if principles of current international law were followed when establishing the boundaries. As you can see, all of the contested gas and oil fields would belong to East Timor.

The view from East Timor

The TSJC notes that various civil society groups in East Timor remain staunchly opposed to the CMATS Treaty. It's worth noting, that the Treaty was ratified in East Timor's Parliament with only 48 votes despite the Parliament having 88 members.

East Timor is currently undergoing serious political instability and a crisis of security. This is a matter of vital importance for the long-term future of East Timor, and the relations between Australia and East Timor. It is a great shame that such an important treaty is being rushed through the Australian Parliament.

Public Opinion in Australia

Locally, more and more Australians have begun to grasp the underlying truth behind Australia's continuing maritime occupation of the Timor Sea.

Given the dramatically low level of support for this treaty in Australian civil society, Foreign Minister Downer's attempts to stifle debate and

prevent scrutiny of CMATS are illustrative of the Government's disrespect for public opinion that is particularly prevalent in its approach to foreign policy.

The TSJC is deeply troubled by Minister Downer's decision to invoke the rarely used 'national interest' exemption clause to fast-track the ratification of CMATS. The fact that the submission is not being read until after the CMATS treaty has come into effect, is testament to the Government's arrogance.

The Howard Government continues to regard itself as 'above the law'. From its surprise and secret withdrawal from the maritime jurisdiction of the International Court of Justice to the CMATS already being in force without Australian Parliamentary approval, the Government has never shied away from throwing its weight in its bully-boy approach to the Timor Sea dispute.

The TSJC believes the Australian public can see the Federal Government's behaviour for what it is – a disgraceful example of a powerful nation bullying a much smaller neighbour out of billions of dollars. Such actions are not helpful to Australia's international standing in the region.

Recommendations

First and foremost, the TSJC urges the Australian Government to:

- resume negotiations to establish permanent maritime boundaries in accordance with international law along the median line, halfway between Australia and East Timor.

The Australian Government should also act to:

- ensure East Timor also receives a fair share of 'down-stream' benefits from the development of the Greater Sunrise field.
- return the contested revenues taken from the Laminaria Corallina field.
- conduct public hearings in both Australia and East Timor to better gauge the opinions of civil society in both countries.

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