

TIMOR SEA JUSTICE CAMPAIGN

The Timor Sea Justice Campaign's

submission to the

Joint Standing Committee on Treaties'

inquiry into

Certain Maritime Arrangements - Timor-Leste

*regarding the consequences of termination of the Treaty
between Australia and the Democratic Republic of Timor-Leste
on Certain Maritime Arrangements in the Timor Sea*

10 March 2017

The **Timor Sea Justice Campaign** is an independent grassroots community campaign consisting of concerned Australians of various political persuasions, ages and backgrounds who want the Australian Government to establish fair and permanent maritime boundaries with Timor-Leste in accordance with international law.

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Summary

The Timor Sea Justice Campaign (TSJC) enthusiastically encourages the termination of the Certain Maritime Arrangements in the Timor Sea (CMATS) Treaty.

As the TSJC noted to this Committee when CMATS was signed in 2006, the treaty was a flawed 'band aid' solution that sought to preclude discussion regarding sovereignty in order to allow the commercial development of the Greater Sunrise field while the Australian Government continued to violate Timor Leste's rights to this and other fields located closer to Timor's coastline than Australia's.

CMATS was short-sighted and mean-spirited. In light of the spying revelations, it was clearly not signed in good faith.

Termination of CMATS provides the Australian Government with an opportunity to finally do the right thing and finish the job by establishing permanent maritime boundaries with Timor-Leste in accordance with contemporary international law – namely halfway between the two coastlines.

To demonstrate it is ready to negotiate with Timor-Leste in good faith, the Australian Government should immediately resubmit its recognition to the maritime boundary jurisdiction of the International Court of Justice (which it pre-emptively withdrew in March 2002 – two months before Timor's independence.)

The Australian Government should also put an amount equal to all revenue it has taken from contested oil and gas fields (including the approximately \$2 billion unilaterally taken from the Lainaria-Corallina fields) into trust to be distributed accordingly once permanent maritime boundaries have been established and ownership of the fields confirmed.

Recommendations

The TSJC urges the Committee to recommend that the Australian Government:

1. Negotiates, in good faith, permanent maritime boundaries with Timor-Leste in accordance with international law – namely, half way between the two coastlines.
2. Resubmits its recognition of the maritime boundary jurisdiction of the International Court of Justice.
3. Puts a sum equal to revenue taken from contested fields into a trust fund to be distributed once boundaries are established.

Background

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

Under current international law, Timor-Leste 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 Timor-Leste, 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 billion of contested revenues from the Laminaria Corallina oil fields. These fields could quite likely be found to belong to Timor-Leste if permanent maritime boundaries were established in accordance with current principles of international law.

Because the Australian Government had preemptively withdrawn its 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, Timor-Leste had limited legal avenues to challenge Australia's actions.

Further, it has since been revealed that under the guise of an AusAid project, the Australian Government installed listening devices in the Timorese cabinet room to gain an unfair advantage during negotiations.

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 the poorest nation in Asia, the largest donor of foreign aid, in the form of revenues, to Australia, one of the wealthiest nations in the region.

Timor-Leste wanted to establish maritime boundaries along the median line, halfway between the coastlines, and with equitable lateral boundaries. 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.

With Australia refusing to take the matter to independent arbitration, the fledgling nation was jostled into a shabby deal.

CMATS was considered a "creative solution" that would not just side-step the issue of sovereignty – but would prohibit Timor from discussing its desire for sovereignty for the next 50 years. It was to see government revenue from the Greater Sunrise gas field split 50/50.

If permanent maritime boundaries were established in accordance with current international law, the overwhelming consensus from legal experts is that most if not all of Greater Sunrise would lie within Timor-Leste's exclusive economic zone. More recently, Timor-Leste has initiated a number of actions in international forums.

One, which has been suspended, was in the International Court of Justice and relates to the ASIO raid on Timor-Leste's Australian-based lawyers and the seizure of the passport of the former senior ranking Australian spy-come-whistleblower known as 'Witness K'.

Another is the 'compulsory conciliation' proceedings through a UN created mechanism for situations in which one country (in this case Australia) refuses to acknowledge the independent umpire. It is a mechanism that has never been used before and as Australia's foreign minister, Julie Bishop, was quick to point out when the proceedings began, any ruling from the UN-constituted Commission will not be legally binding.

At the opening hearing, Australia's delegation challenged the Commission's authority to consider the central topic of maritime boundaries. Fortunately, this undignified attempt to wriggle out of the process was soundly rejected by the Commission and the conciliation process now appears to be making some progress with the subsequent announcement that both governments have agreed to terminate CMATS.

What next?

Terminating CMATS has the potential to clear away some of the debris that successive Australian governments have generated in their unscrupulous pursuit of Timor's oil and allow the two nations to start afresh on the fundamental problem at the heart of the dispute – where exactly to establish permanent maritime boundaries.

As a sovereign nation, Timor-Leste is entitled to permanent maritime boundaries. The establishment of permanent boundaries will mark the closing chapter of a long struggle to achieve independence.

In circumstance like this, where two countries are less than 400 nautical miles apart, international law overwhelmingly favours establishing maritime boundaries based along the median line – that is, halfway between the two coastlines. This approach would see most if not all of Greater Sunrise fall within East Timor's exclusive economic zone.

Greater Sunrise might generate up to \$20 billion in government revenue alone. This type of income could have a profoundly transformative effect on a developing country.

But it is important to remember that this issue is not about charity – it is about justice. Timor-Leste is simply asking for what it is entitled to under international law – nothing more, nothing less.

As such, the Australian Government should without delay agree to establish permanent maritime boundaries with Timor-Leste in accordance with international law. Specifically, the

boundaries should be based along the equidistance median line halfway between the two coastlines and with fair lateral boundaries to ensure Timor can benefit from all the resources located closer to it than Australia.

Common myths

The continental shelf argument

During the negotiations with Indonesia that led to the creation of the 1972 seabed boundaries between Australia and Indonesia, the Australian Government successfully argued that the boundary should extend to the edge of its continental shelf located much closer to Indonesia.

Realising that standard international practice has changed and that international law was evolving to favour median line solutions, Indonesia's foreign minister would later comment that Australia had taken Indonesia to "the cleaners". As such in subsequent negotiations during the 1980s to close the 'Timor Gap' (the gap left in the boundaries because Portugal, the former colonial ruler of Timor, had refused to participate in the 1972 negotiations) Indonesia took a stronger line and pushed for an outcome that better reflected international law of the time.

Since the 1982 UN Convention of the Law of the Sea, international law has overwhelmingly favoured median line solutions.

When coastlines are less than 400 nautical miles apart (as is the case with Australia and Timor-Leste) then geological factors such as continental shelves are considered irrelevant.

In the 2006 Treaty with New Zealand which resolved overlapping maritime boundary claims off Norfolk and Macquarie Islands, Australia agreed to median line solutions – exactly what it has so far refused to do with Timor-Leste.

This double standard is insulting to Timor-Leste and suggests Australia is less inclined to respect international law when billions of dollars of oil and gas is up for grabs. It also undermines the credibility of the Australian Government's urging of China to respect international law in the South China Sea dispute.

The Indonesian argument

Another increasingly aired argument is that Indonesia has a valid claim to the Greater Sunrise fields. However, it's worth nothing that:

- a) Indonesia gave up any claim to this area with the establishment of the 1972 seabed boundary with Australia.

- b) Unlike Australia, which has stubbornly refused to negotiate permanent boundaries with Timor-Leste, Indonesia has been steadily establishing its land boundaries with Timor and commenced discussions about the maritime boundaries.
- c) Even if this claim turns out to be valid, so what? If it is determined under international law that the Greater Sunrise field should be split in some way between Timor-Leste and Indonesia, how in any way would that justify Australia taking a share of something that does not belong to it?

Any related arguments about how doing the right thing by Timor will somehow 'unravel' our boundaries with Indonesia should be dismissed for the scaremongering that they are.

The diversifying economy argument

Arguments about the need for Timor-Leste to diversify its economy should not distract from the matter at hand – Timor's sovereign right to determine its boundaries and to control and benefit from its natural resources as it chooses.

Yes, Timor would benefit from a more diverse economy. No, this fact does not in any way justify Australia's underhanded attempts to pilfer Timor's oil.

Timor-Leste's petroleum sovereign wealth fund is based on the Norwegian model and is in keeping with world's best practice when it comes to transparency and ensuring intergenerational benefit from the revenue derived from Timor's oil and gas resources.

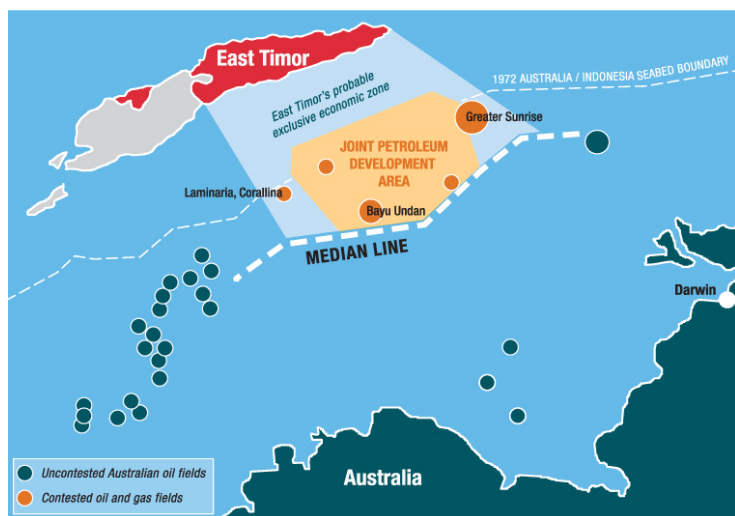
The view from East Timor

CMATS was ratified in Timor-Leste's Parliament with only 48 votes despite the Parliament having 88 members. Since then support for CMATS has plummeted.

Various civil society groups in Timor-Leste remain staunchly opposed to the CMATS Treaty and dedicated to ensuring Timor finishes its long journey to independence – complete with permanent maritime boundaries.

In March 2016, over ten thousand Timorese people marched to the Australian embassy in Dili to protest Australia's refusal to return to the negotiating table and demand it establish permanent boundaries along the media line.

Map



Conclusion

Establishing permanent maritime boundaries halfway between the coastlines of Australia and Timor-Leste would be fair, common sense, and exactly what international law proscribes in such circumstances.

The TSJC urges the Committee to recommend that the Australian Government:

1. Negotiates, in good faith, permanent maritime boundaries with Timor-Leste in accordance with international law – namely, half way between the two coastlines.
2. Resubmits its recognition of the maritime boundary jurisdiction of the International Court of Justice.
3. Puts a sum equal to revenue taken from contested fields into a trust fund to be distributed once boundaries are established.

For further information or to stay up to date with the Timor Sea Justice Campaign's activities, visit timorseajustice.com, follow us on Twitter @TimorSeaJustice and like us on [facebook.com/timorseajustice](https://www.facebook.com/timorseajustice)