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**Submission of the Synod of Victoria and Tasmania, Uniting Church in Australia to the Joint Standing Committee on Treaties Inquiry into 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 Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes the opportunity to make a submission to the inquiry into the consequences of the termination of the Treaty between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea. The Synod of Victoria and Tasmania welcomes the termination of the treaty.

The Synod notes that the Government of Timor-Leste has requested that the Australian Government negotiate in good faith permanent maritime boundaries with Timor-Leste. For example, Minister of State Agio Pereira stated in a speech at the Australian National University in November 2013:

In the case of Australia, our bilateral relationship has also been extremely positive. Australia led the international INTERFET in 1999, and contributes more direct development assistance than any other development partner. However, there is one aspect of our relationship with Australia that has not been so positive – our efforts to negotiate a permanent maritime boundary in the Timor Sea. In the spirit of looking forward, and not back, this is something I hope can be resolved sooner rather than later, to provide certainty for our friends in the oil industry, and an equitable outcome negotiated according to the principles of good governance and international law.

The Synod notes that on 10 January 2017, Timor-Leste's Parliament resolved to cancel the CMATS Treaty, and President Taur Matan Ruak promulgated Resolution 01/2017 six days later.

The Synod has strongly supported that Timor-Leste be able to have a permanent maritime boundary based on the international law governing maritime boundaries. This view was



supported by a majority of 10,271 Australians polled by ReachTEL in August 2016.¹ The poll found that 56.5% of those polled supported that the Australian Government should try to establish a permanent maritime boundary with Timor-Leste in accordance with international law. Only 17% opposed doing so, with 26.5% undecided.

The Uniting Church in Australia has been an advocate for and friend of the people of Timor-Leste for a long time and wants Timor-Leste to have the resources it needs to be self-sufficient. The Uniting Church in Australia is a partner church of the Protestant Church of East Timor (IPTL: Igreja Protestante iha Timor Lorosa'e).

The 2002 Synod meeting of approximately 400 representatives of Uniting Church congregations across Victoria and Tasmania resolved

Noting Assembly resolution 94.18.05 which called upon the Australian Government to recognise the right to self determination of the East Timorese people and noting the significant development needs of East Timor:

- (a) To request the Federal Government to ensure that East Timor receives sovereignty over all of the oil and natural gas deposits in the Timor Sea that it would be entitled to under the international law governing maritime boundaries;*
- (b) To request the Federal Government to allow East Timor to have any maritime boundary dispute with Australia resolved through the International Court of Justice or the compulsory dispute resolution mechanisms of the UN Convention on the Law of the Sea;*
- (c) To inform the Prime Minister, the Minister for Foreign Affairs, the Leader of the Opposition and the Shadow Minister of Foreign Affairs of this resolution.*

The 2016 meeting of approximately 400 representatives of Uniting Church congregations across Victoria and Tasmania resolved:

- (i) Noting Synod resolution 02.6.4.6, To renew the 2002 to call on the Federal Government to negotiate in good faith a permanent maritime boundary with Timor L'este. If the boundary cannot be established through good faith negotiations, then to allow Timor L'este to have any maritime boundary dispute with Australia resolved through the International Court of Justice or the compulsory dispute resolution mechanisms of the UN Convention on the Law of the Sea.*
- (ii) To inform the Prime Minister, the Minister for Foreign Affairs, the Leader of the Opposition and the Shadow Minister of Foreign Affairs of this resolution.*

A permanent maritime boundary could deliver Timor-Leste billions more in tax revenue from taxes on natural gas extraction in the Timor Sea. That is money Timor-Leste could use to provide schools, health clinics, aged care and support for people with disabilities. The Australian Government could easily replace this reduction in revenue from natural gas and oil by introducing a Commonwealth royalty regime on its natural gas and oil deposits that are currently subject to no royalties and/or by reform of a flawed Petroleum Rent Resource Tax (PRRT). The current design flaws in the PRRT sees the Australian Government giving away much of Australia's natural gas deposits off-shore for free to large multinational enterprises.

On 12 January 2006, the governments of Timor-Leste and Australia signed the *Certain Maritime Arrangements in the Timor Sea* (CMATS), which split the gas resources from the Greater Sunrise gas field 50/50 between the two countries, even though a median line solution to the maritime boundaries would have seen the entire field belonging to Timor-Leste. The Greater-

¹ The Australia Institute, 'Australians back Timor-Leste in maritime dispute', 14 November 2016.



Sunrise gas field is twice as close to Timor-Leste as it is to Australia. CMATS would see Australia getting an estimated extra \$20 billion over the next 40-50 years that would have otherwise been used for the benefit of the people of Timor-Leste. Under the CMATS the Timor-Leste Government was required to forgo permanent maritime boundaries for 50 years.

The Synod questions the legitimacy of the CMATS treaty given the likelihood that the Australian Government spied on Timor-Leste by bugging the Timor-Leste Government offices from 2004.² It is alleged that the Australian Government used an Australian construction contractor funded by AusAID to plant listening devices inside the walls of a meeting room adjacent to the Prime Minister's private office.³ There are also allegations that that a senior member of East Timor's negotiating team was bribed or blackmailed by ASIS during the negotiations.⁴ Timor-Leste Secretary of State for Natural Resources Alfredo Pires told *The Australian* newspaper in May 2013 that:⁵

"As far as Timor Leste is concerned, CMATS Treaty is invalid . . . it has come to our knowledge . . . that there was some covert operations by the Australian intelligence, which allowed the Australian team to have access to conversations by our negotiating team."

The commendable efforts that the governments of Timor-Leste have made in improving the lives of the people of Timor-Leste and the important role that revenue from oil and gas deposits have played is well summarized by the World Bank:⁶

Over the past decade, Timor-Leste has created the conditions for successful development. It has credibly emerged from a crisis of internal violence and political instability in 2006-2007 and increased tangible services for the population, creating hard-won political stability, absence of conflict and a new confidence in the state. Largely peaceful democratic elections for the presidency and the parliament since 2012 reflect these achievements.

Timor-Leste has achieved tremendous progress since achieving Independence in 2002 – drawing down money from the Petroleum Fund and channeling it through the budget to meet pressing needs. The effectiveness of this process is evident in the near-halving of infant and child mortality rates; significant gains in health and education; economic growth to rival regional neighbors; increasing citizen participation, and; the gradual strengthening of state institutions.

Ensuring Timor-Leste's young people are educated, healthy, and productively employed are arguably the biggest development challenges facing Timor-Leste over the next decade. With 60% of the population under 25 years of age, Timor-Leste is one of the youngest countries in the world. Benefitting from high global oil prices, the country achieved lower middle-income status in 2011, but poverty remains high, particularly in rural areas, where the majority of the population lives.

² Paul Cleary, 'How Canberra and Woodside 'bugged' Timor PM to strip fledgling nation of oil billions', *The Australian*, 6 January 2014.

³ Paul Cleary, 'How Canberra and Woodside 'bugged' Timor PM to strip fledgling nation of oil billions', *The Australian*, 6 January 2014.

⁴ Paul Cleary, 'How Canberra and Woodside 'bugged' Timor PM to strip fledgling nation of oil billions', *The Australian*, 6 January 2014.

⁵ Leo Shanahan, 'Aussie spies accused of bugging Timor Cabinet', *The Australian*, 29 May 2013.

⁶ <http://www.worldbank.org/en/country/timor-leste/overview>



The Timor-Leste governments have made significant progress at reducing poverty since 2007. At the national poverty line, which represents the cost of meeting basic needs in relation to food, shelter and non-food items in Timor-Leste, the proportion of Timorese living in poverty declined from 50.4% in 2007 to an estimated 41.8% in 2014. At the internationally comparable extreme poverty line of US\$1.90 (in 2011 purchasing power parity dollars), poverty in Timor-Leste fell from 47.2% to 30.3% over the same period.⁷

The Synod's Justice and International Mission Unit made a submission to JSCOT in 2002 opposing Australia's declaration under paragraph 2 of Article 36 of the *Statute of the International Court of Justice 1945* that was lodged in New York on March 2002 and Australia's Declarations under Articles 287(1) and 298(1) of the *United Nations Convention on the Law of the Sea 1982*. The Unit was deeply concerned that Australia's Declarations were motivated to stop the International Court of Justice from considering the maritime boundary between Australia and Timor-Leste and exploitation of the oil and natural gas fields within the Timor Gap. Further, the Unit was concerned that the Australian Declarations under Articles 287(1) and 298(1) of the *UN Convention on the Law of the Sea 1982* were for the purposes of preventing the principles of the Convention applying to the determination of the maritime boundary between Australia and Timor-Leste. The Unit was concerned that the Australian Government recognised it was able to negotiate from a position of power with regard to the maritime boundary and exploitation of the oil and gas fields with the Timor-Leste Government. Appeal to the International Court of Justice may have redressed this power imbalance in the negotiations resulting in a more just and fair outcome for Timor-Leste at Australia's expense.

Timor-Leste's then Chief Minister, Mari Alkatiri, is quoted in the media as having stated that Australia's Declarations were an "unfriendly act".

If the principles of the *UN Convention on the Law of the Sea* were to apply then Timor-Leste would get all the revenue from the oil and natural gas deposits contained within its boundaries. Further, the Convention stated that for countries with less than 400 nautical miles of sea between them, the international boundary should be at the mid-point. This was a point made by Dr Christopher Ward, Adjunct Professor of the Australian National University College of Law who offered the opinion the Australian Government's claim the maritime boundary should be set by the Timor Trough is not consistent with the views of the International Court of Justice (ICJ) as highlighted in the Libya/Malta Continental Shelf case in 1985.⁸

The ICJ accepted that delimitation by reference to distance had replaced principles of natural prolongation in areas of continental shelf within 200 nautical miles of the coast of one or other State. The Court said that, within the 200 nautical mile zones, "there is no reason to ascribe any role to geological or geophysical factors."

Further, Dr Ward observed:

The ICJ has now developed very clear jurisprudence in relation to the delimitation of opposing sea-bed claims.

In the Black Sea case (Ukraine v Romania) the Court developed a three stage process. First, a provisional median line of equidistance is drawn (unless there is any compelling

⁷ World Bank, 'Poverty in Timor-Leste 2014', 2016, p. 3.

⁸ Christopher Ward, 'The Maritime Boundaries of East Timor and Australia: Arbitration and the Role of International Law', A speech delivered in Sydney to the International Commission of Jurists, 16 August 2014.



reason to adopt another provisional line). Next, the Court considered whether any factors existed that required an adjustment of the equidistance line. Finally the Court considered the possibility that the result was unfairly disproportionate or inequitable.

This approach built on the earlier decisions of the Court in the 1980's and 1990's which also gave primacy to equity.

In the present case, there is no obvious reason to depart from the line of equidistance between Australia and East Timor. It follows that in my opinion the north/south boundary of the disputed sea-bed would be determined by any international tribunal to be the line of equidistance.

It necessarily follows that East Timor would have exclusive rights to exploit any resources north of the line of equidistance and any suggestion to the contrary by Australia is incorrect.

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