

**SUBMISSION TO THE PARLIAMENTARY INQUIRY
INTO
CERTAIN MARITIME ARRANGEMENTS IN THE TIMOR SEA**

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

On behalf of the Australian East Timor Friendship Association South Australia

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AETFA SA – 41 YEARS OF SOLIDARITY WITH TIMOR-LESTE FOR INDEPENDENCE & JUSTICE

Affiliated to the Timor Sea Justice Campaign

(AETFA SA was originally the Campaign for an Independent East Timor SA until Timor-Leste's independence in 2002)

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Australia East Timor Friendship Association South Australia Inc.

AETFA SA INC. SUBMISSION TO THE AUSTRALIAN PARLIAMENTARY INQUIRY INTO CERTAIN MARITIME ARRANGEMENTS IN THE TIMOR SEA (CMATS)

INTRODUCTION

The Australia East Timor Friendship Association SA Inc. (AETFA SA) is an organisation that seeks to build friendship between the people of Australia and Timor-Leste.

The objectives of the association are:-

“to work for the human rights and ongoing self-determination of the East Timorese people to assist the Timorese to rebuild their country and their lives;

and to promote public awareness in Australia of the history, culture and contemporary situation in East Timor.”

AETFA SA takes an active role in advocacy and fund-raising, including:-

- support for the just sharing of the Timor Sea oil and gas resources and a just maritime boundary between Australia and Timor-Leste,
- justice for victims of Gross Human Rights Abuses in Timor-Leste and the region by:-
 - a) seeking compensation from the Indonesian, the United States and the Australian governments,
 - b) seeking the establishment of an International Criminal Tribunal to try high-ranking members of the Indonesian military and government accused of committing heinous crimes 1975-1999,
 - c) seeking an end to Australian military and security links with the Indonesian Armed Forces (TNI) and Police until Indonesia ceases its repression in West Papua and in other parts of the Indonesian Archipelago.
- support and fund-raising for the work of the Bakhita medical clinic in the Ermera district through the participation of Dr Richie Gun,
- support and fund-raising for the Working Women’s Centre in Timor-Leste,
- promotion of Timor-Leste’s exports including coffee and crafts and provision of information about Timor Leste (books, music, videos etc.),
- support for Timorese students studying in South Australia.

AETFSA SA was originally known as the Campaign for an Independent East Timor, SA Inc. (CIET SA) when it was founded in May 1975. The organisation's main role during the 24 years of illegal occupation by the Indonesian military (TNI) was to promote the independence of East Timor and human rights of East Timorese and to demand the withdrawal of Indonesian troops from East Timor.

The name was changed to AETFSA SA in 2002 to recognise that fact that Timor-Leste had finally won its independence.

OUR OBLIGATION TO TIMOR-LESTE

BACKGROUND 1: WORLD WAR 2

At the outbreak of the war with Japan, what is now Timor-Leste was Portuguese East Timor, while the Western part of the island was a part of the Dutch East Indies.

Portugal at the time was a fascist power and allied to the Axis powers, but was neutral during the War.

In February 1942 an Australian commando force was deployed to the island of Timor in an attempt to forestall a Japanese invasion of the island, which would present a threat to the Australian mainland. Soon after the original Japanese force of about 15000 landed, most of the greatly outnumbered Australian force was captured.

However, a residual force of 400 Australian commandos evaded capture and remained in Timor, waging a guerrilla campaign against the Japanese occupiers for a year prior to being evacuated in early 1943. Even though the numbers of Japanese troops were increased to 20,000, the Australian commandos were able to conduct an effective guerrilla campaign. As a result, only about 40 Australians were killed in action, compared with approximately 1000 Japanese.

The success of the guerrilla campaign in Portuguese Timor was in no small part due to the support the Australians received from the East Timorese, who helped carry their equipment, provided much needed food and shelter; alerted the Australians of the presence of enemy troops; helped them to gather supplies dropped by the RAAF, the US Air Force and the RAN; and in some cases assisted in the fighting. This support occurred at great cost to the East Timorese. When the Australians were finally evacuated, the gallant Timorese were left to defend themselves from Japanese reprisals.

Melbourne author Tom Trumble, in his history *Rescue at 2100 Hours*, says “*The Timorese suffered unbelievably in the in the Second World War. Somewhere between 20000 and 70000 were put to the sword – often quite literally - by the Japanese.*” In addition, many died because they were caught between combatants or had their villages bombed or attacked.

The total population of Portuguese Timor at the time was about 500,000.

In comparison, Australian losses during World War 2 were 40,000 out of a total population of 7 million. The East Timorese losses during World War 2 were therefore far greater than those suffered by Australia and only occurred because Australia occupied their country.

After the Australian commandos left Portuguese Timor, the RAAF dropped leaflets over the villages of East Timor at the insistence of the commandos because of the death and destruction the East Timorese suffered for because they had helped them.

The pamphlets, printed in Portuguese, read, “*O Vossos Amigos Noa Vos Esquecem*” (“Your friends do not forget you.”)

Unfortunately these well-intentioned words were not matched by deeds - either at the time or 32 years later when the country was again invaded. This time, East Timor was invaded by the Indonesian military (TNI) sent by the Suharto dictatorship.

Indeed, to the dismay of the Australian commandos who fought in Portuguese Timor, Australian governments gave no assistance to the East Timorese, our valiant World War 2 allies during the 24 years of illegal and brutal occupation by the TNI.

AUSTRALIA'S BETRAYAL OF OUR WW2 ALLY

BACKGROUND 2: INVASION AND OCCUPATION OF EAST TIMOR BY THE INDONESIAN MILITARY 1975-1999

The Indonesian invasion of East Timor in 1975 and the subsequent 24-year long occupation were marked by Australian government complicity.

Prior to the main invasion, on 16 October 1975, five Australian-based media workers, later known as the Balibo 5, who observed an incursion of Indonesian troops from across the border with Indonesian West Timor, were murdered on the orders of the Indonesian commanding officer.

The Australian Government publicly maintained the fiction that the invaders were East Timorese dissident forces, when they had full knowledge that the troops were Indonesian. Indeed the muted response and the attempted cover-up on the part of the Australian government to this outrage led the Indonesian Government to conclude that its planned invasion would encounter no protests from Australia:

The full-scale invasion duly occurred seven weeks later on 7 December 1975. After that, a succession of Australian governments publicly maintained the absurd fiction that all the Balibo 5 were accidentally caught in cross-fire, so that they and their families have never received justice.

On a greater scale, however, neither have the East Timorese received justice even though they suffered genocide and massive human rights abuses at the hands of the Indonesian military for 24 years.

According to Associate Professor Clinton Fernandes of the University of NSW,

*“In the second half of the 1970s, Indonesia’s war against the people of East Timor caused the largest loss of life relative to population since the Holocaust. Reputable and widely used demographic techniques have shown that about 30 per cent of East Timor’s population died during the war.”*¹

¹ Professor Fernandes unsuccessfully sought to have Australian documents pertaining to Australia's role throughout the time of Indonesian occupation released in 2012. Nicola Roxon, the then attorney-general,

The attitude of the Australian Government to this carnage was one of appeasement of the occupying power, and was a shameful betrayal of the earlier generation of Timorese who risked their lives - and in many cases gave their lives – to protect the Australian commando force in 1942.

The more odious actions by Australian governments included:-

Throughout its illegal occupation of East Timor, Australian governments ensured that the TNI was able to receive aid, was able to purchase military hardware, have its personnel trained and carried out joint military exercises while it was committing genocide and human rights abuses in East Timor, West Papua, Aceh and parts of Indonesia - a violation of international law

- In 1976, the Fraser Government accorded *de facto* recognition of the Indonesian occupation - a violation of international law
- Australian governments acted as an apologist for the Suharto Indonesian dictatorship and its actions in East Timor - knowing full well, thanks to Australian security services, about the TNI's brutal and repressive actions against the East Timorese. In addition, they also criticised and belittled those who spoke out for the victims of TNI brutality.
- In 1978, the Fraser Government accorded *de jure* recognition of the Indonesian occupation - another violation of international law
- In 1982, when there was a widespread famine in East Timor, former Australian PM, Gough Whitlam, addressed the UN Special Committee on Decolonisation and advised it to take the issue of East Timor off its agenda. Fortunately, he was unsuccessful. Earlier, Whitlam had visited East Timor and supported what Indonesia was doing there and later defamed the Apostolic Administrator of Dili and Portuguese priest, Monsignor Martinho da Costa Lopes, who had courageously spoken out against human rights violations by the TNI while he was still living in East Timor.
- After the 1991 Santa Cruz Massacre of 1991, Gareth Evans, tried to ameliorate the embarrassment to the Indonesian dictatorship by referring to this mass murder as an "*aberration*" - despite the fact that there had already been numerous massacres conducted by the TNI before that time.
- Australia signed an oil and gas treaty with the Indonesian occupiers which divided up East Timor's oil and gas resources in the Timor Sea without consulting the East Timorese - another violation of international law
- In the lead-up to the referendum for independence, the Australian government denied Indonesian military complicity in militia attacks on pro-independence civilians, while being aware of such complicity
- The Australian government opposed sending an international peacekeeping force to protect the civilian population from attacks by TNI and its militias. This opposition

refused the request citing security reasons. This had nothing to do with security. Many of the documents should have been released because they are more than 30 years old. The release of these papers could be crucial in helping to win justice and compensation for the Timorese after their 24 years of suffering.

was even maintained when the militia attacks were stepped up after the referendum. Support for a peacekeeping force was not forthcoming until one week after the referendum, thanks to widespread public alarm at the destruction occurring in East Timor

WHY THE CURRENT ARRANGEMENT IS NOT FAIR TO TIMOR-LESTE

THE MARITIME BOUNDARY DISPUTE

The critical issue is the ownership of the Greater Sunrise field in the Timor Sea. Without the royalties from this field the Timor-Leste government will soon be unable to provide subsistence for its people. About 90% of current budget income is derived from the Bayu-Undan gas field, which is close to depletion. Woodside Petroleum has also expressed the urgent need for resolution of the ownership of Greater Sunrise before development proceeds.

As mentioned above, the Australian government signed a treaty with Indonesia, thus appropriating oil and gas reserves which rightly belonged to East Timor.

When independence was gained in 2002, the Australian government led by John Howard, promptly acted to maintain ownership of the Timor Sea resources illegally obtained by the treaty with Indonesia: This was achieved by withdrawing from those sections of the *UN Convention of the Law of the Sea* (UNCLOS) which would have conferred ownership of substantial resources on Timor-Leste – the Corallina/Laminaria oil and gas fields, together with most of Greater Sunrise.

UNCLOS defines Exclusive Economic Zones (EEZs) as areas that extend from the edge of the territorial sea out to 200 nautical miles (370 kilometres; 230 miles) from a nation's coastline. Within this area, the coastal nation has sole exploitation rights over all natural resources.

UNCLOS makes provision for circumstances where the distance between countries is small enough for the EEZs to overlap. Article 15 of UNCLOS states:

“Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured.”

Australia's declaration of withdrawal from the provisions of UNCLOS stands in contrast with the fact that it recognises the UNCLOS principle for our other neighbours e.g. NZ, PNG, the Solomon Islands, New Caledonia and Indonesia.

The *status quo* was then embodied in the Timor Sea Treaty of 2003, whereby the maritime boundary is well to the north of the mid-line between the two countries.

The boundary line is located either side of a gap – the so-called Timor Gap – where the Joint Petroleum Development Area (JPDA) is located. Under the 2003 Treaty Timor-Leste receives 90% of the royalties from the JPDA, which includes the Bayu-Undan field, thus funding most of the Timor-Leste budget since independence. However this arrangement leaves in Australian hands a large area which rightfully belongs to Timor-Leste.

Clearly, Timor-Leste's claim to this area is non-contentious under international law. The Australian Government exploited the inexperience of the leaders of the newly independent nation of Timor-Leste to induce them to agree to an unfair agreement. The cynical nature of this arrangement is evident from the sole defence by Alexander Downer that he was after all the Foreign Minister of Australia not East Timor.

In 2006, a further agreement, *Certain Maritime Arrangements in the Timor Sea* (CMATS), the proposed share of royalties from Greater Sunrise accruing to Timor-Leste was increased from 18% to 50%. Nevertheless, had the maritime boundary been drawn in accordance with UNCLOS, Timor-Leste would be entitled to 100% of the royalties. Furthermore, under CMATS, Timor-Leste forfeited any right to appeal these arrangements until 2057.

The iniquity of these arrangements was further demonstrated when in 2012 the Timorese government declared that it had received information from a former Australian intelligence officer who revealed that Australia had been illegally bugging the Timor-Leste cabinet offices during negotiations for the 2003 treaty – thus giving the Australian negotiation team an unfair advantage. This claim by the Timor-Leste government has never been denied by the Australian government.

The Timor-Leste Government informed the Australian Government that it considered the CMATS treaty to be null and void.

In April 2013, the Timor-Leste Government commenced arbitration against Australia at the Permanent Court of Arbitration in The Hague.

On the night before the Hearing in the Hague, on 3 December 2013, Australia's Attorney General, George Brandis, ordered Australian Security and Intelligence Agency (ASIO) officers to raid the Canberra office of Bernard Collaery, a lawyer representing Timor-Leste in the case and confiscate relevant documents belonging to the Timor-Leste Government that were crucial to the case. They also arrested the former Australian intelligence officer who was the whistle-blower (known as Witness K) and confiscated his passport. This was obviously an attempt by the Australian Government to pervert the course of justice on the CMATS issue.

Timor-Leste commenced proceedings against Australia in the International Court of Justice (ICJ) after it refused requests by East Timorese leaders for its stolen documents to be returned. After all, this was a theft under international law.

On 3 March 2014, the ICJ ordered Australia to seal the seized documents and to hold them until its final decision. It also directed Australia not to interfere in any way in the communication between the Timor-Leste Government and its lawyers in connection with the espionage, with future bilateral negotiations concerning the maritime boundary and/or any related procedures. Only the Australian *ad hoc* judge opposed this ruling.

Australia returned the stolen documents in May 2015.

In September 2014, the leaders of Timor-Leste agreed to suspend both the espionage matter and the theft of its documentation by Australia so that negotiations could continue on the maritime border between the two nations.

When the ICJ found in favour of Timor-Leste, its government decided not to pursue the case regarding the theft of documents, but announced it would reactivate the espionage arbitration.

After that, Australia refused to negotiate on the matter of a mid-line permanent maritime boundary with the leaders of Timor-Leste.

In April 2016, Timor-Leste instituted its right under the UNCLOS to initiate compulsory conciliation with Australia.

At the beginning of 2017, after a week of conciliation talks in Singapore, both countries announced Timor-Leste had agreed to drop the spying case as part of the "*good faith*" negotiations to resolve the underlying disagreement over maritime boundaries, that CMATS was dissolved and that both parties were resolved to agree on a fair decision by September 2017.

WHAT WE SHOULD DO TO REDRESS THE SITUATION CONCLUSIONS

This submission calls on the Australian Government to negotiate fairly in this matter which should not be contentious. Under the International Law of the Sea, Timor-Leste is entitled to all the maritime resources north of the mid-line between the coasts of the two countries.

The East Timorese are not asking for special treatment. They are asking for the same agreement as Australia has with its other neighbours – New Zealand, Papua New Guinea, the Solomon Islands, New Caledonia and Indonesia

There is a special bond between Australians and the people of Timor-Leste which is the poorest nation in our region and one of the poorest in the world.

The special bond between the two nations was created because the East Timorese suffered mightily for valiantly helping Australia during World War 2 in the struggle against Japanese fascism and in slowing down the Japanese Imperial Army's advance further south towards Australia.

Then, during the 24 years of brutal Indonesian illegal occupation, Australian leaders chose to turn their backs on them.

It is time for Australia's leaders to fully restore the friendship and the special bonds that exist between the peoples of Timor-Leste and Australia

RECOMMENDATIONS

- 1 That Australia should revoke its 2002 withdrawal from the mechanisms with respect to disputes concerning the interpretation or application of Articles 15, 74 and 83 of UNCLOS.**
- 2 Accordingly, Australia should undertake to accept any ruling or ruling by the Permanent Court of Arbitration (PCA) arising from the current negotiations**
- 3 That the Australian government will agree to the allocation of oil and gas royalties in accordance with such ruling or rulings.**

- 4 **That, in the event that the PCA rules the maritime boundary to be equidistant between the two countries, Australia should make reparation to Timor-Leste for the loss of royalties from the Corallina/Laminaria which would have accrued to Timor-Leste had such boundary been determined in 2002.**