

Submission
to
The Joint Standing Committee on Treaties Inquiry
concerning
Certain Maritime arrangements – Timor-Leste

Given the task of examining “*the consequences of termination of the Treaty between Australia and The Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea*”:

1. Preamble

Even though this may be reiterating some historical facts of which this committee of inquiry is well aware, the following timeline may be useful to place the matter under investigation into perspective

1960s

Private companies, licensed by the Australian government, were already exploring and confirming the presence of vast hydrocarbon reserves in the Timor Sea, in what Portugal, the occupying colonial power at the time, considered was maritime territory under its jurisdiction. It lodged very strong objections with the Australian Government.

1982

The *United Nations Convention on the Law of the Sea* (UNCLOS) was concluded following a ten year period of consultations. It gives every coastal state a right to a 200 nautical miles (or about 370 km) *Exclusive Economic Zone* (EEZ) in which they have full sovereignty from the water surface to under the seabed. Where countries are less than 400 nautical miles apart and their EEZs overlap or are adjacent, international courts and tribunals have developed a process that uses the equidistant (or median) line as the starting point, and then adjusts the line to take into account '*relevant circumstances*' which modify the line such as the location of minor islands or the concavity of coastlines. The existence or otherwise of a continental shelf is totally irrelevant to the EEZ boundary delimitation.

However, over the past 30 years, successive Australian Governments have consistently argued on the basis of this latter irrelevant fact, when attempting to negotiate the position of a permanent sea boundary between Timor Leste – whether as an occupied territory or as an independent nation – and Australia, a linear distance of some 480km commonly referred to as the *Timor Gap*.

1989

The *Timor Gap Treaty* (officially known as *Treaty between Australia and the Republic of Indonesia on the zone of cooperation in an area between the Indonesian province of East Timor and Northern Australia*) is ratified between Australia and Indonesia. It established the framework for the joint exploitation of petroleum resources in a part of the Timor Sea seabed which were then claimed by both Australia and Indonesia, at the time the illegal occupier, in terms of international law, of the former Portuguese territory of Timor Leste.

As part of the negotiation process, Australia shamefully agreed to give *de jure* recognition to the annexation by Indonesia of the former Portuguese colony, the only country in the world to have done so. In return, Australia gained access to the greater portion of undersea hydrocarbon resources in the area.

1991

The *Timor Gap treaty* comes into force

Portugal, which was still recognized by the U.N. as the lawful administering power of Timor Leste, institutes proceedings against Australia at the *International Court of Justice* (ICJ), disputing the lawfulness of Australia's negotiations as a party to the *Timor Gap Treaty*. The court ruled that it could not adjudicate the dispute as it would require the court to rule upon the lawfulness of Indonesia's annexation of Timor Leste, a decision that could not be made, nor could it become binding, without the consent of Indonesia.

1994

The *United Nations Convention on the Law of the Sea* comes into force. Australia signed the convention.

2002

In March of that year, Australia withdraws from the binding dispute resolution mechanism under the *UNCLOS* and the *ICJ*, specifically on the delimitation of maritime boundaries.

In May of that year, the *Timor Sea Treaty* (officially known the *Timor Sea Treaty between the Government of East Timor and the Government of Australia*) is signed in Dili. This treaty is the near mirror image of the 1989 *Timor Gap Treaty*.

2003

The *Timor Sea treaty* comes into force postponing the establishment of a maritime boundary until 2032.

2007

The *Treaty between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea* (CMATS) is signed. As part of the negotiation process, the Timor Leste Government agreed to extend the period of validity for the *Timor Sea Treaty* until 2057, therefore postponing the establishment of a maritime boundary until then, in exchange for the equal distribution of revenue derived from the disputed *Greater Sunrise* oil and gas field between Australia and Timor Leste. Prior to this treaty, Timor Leste would only have received about 18% of the revenue from the field as determined by the *Sunrise International Unitization Agreement* (Sunrise UIA) of 2003.

The revenue to Government from this field is expected to generate between 40 to 50 billions AUD over its estimated 40-year lifetime of exploitation (or about 1 to 1¼ billion AUD per year). In terms of the current Australian Government budget, it represents a mere 0.3% of aggregate revenue. On the other hand, for Timor Leste, considered one of the poorest nations in the world, this would constitute a very significant part of their budgeted revenue and provide a reliable income stream vital to the Timorese state's survival, as it develops viable economic and industrial foundations likely to give promising employment prospects to its large population of young people.

2013

It is revealed that the Australian Government, through its secret intelligence organisation, was spying on Timor-Leste's officials during critical commercial, intergovernmental negotiations on the *CMATS Treaty*.

2016

Following the revelation of this spying scandal, Timor Leste decides to institute proceedings to terminate the *CMATS Treaty*, pursuant to the terms of the treaty which provide for either Timor Leste or Australia to terminate the treaty if a development plan for the Greater Sunrise field is not approved within six years after its entry into force. As no development plan had been approved by 23 February 2013, six years after CMATS came into force, Timor Leste is exercising its legitimate rights.

A conciliation process is now under way before the *Permanent Court of Arbitration* in The Hague, in which Timor Leste is seeking to bring Australia to the negotiating table in order to settle the ongoing dispute about a permanent maritime boundary between the two nations in accordance with the principles established by the *UNCLOS*.

2. Expectations

Now that the Australian Government has agreed to participate in this conciliation process, it is to be hoped that this will mark the end of a long period of unconscionable and dishonourable behaviour by successive Australian Governments of all persuasions in their dealing with Timor Leste, both as an occupied territory or as an independent country.

In this conciliation process, the Australian Government will need to approach the negotiation in good faith and with honesty, recognising the genuine grievances of the Timor Leste people and granting them what they have been seeking for so long, namely justice in accordance with

principles of international law established by the UNCLOS, rather than offering charity in a very condescending way. Australia should gracefully accept that the maritime boundary between the two countries is established along the half-way line, even if this means that the entire resources of the Greater Sunrise field are placed under Timor Leste jurisdiction. This would be but a small price to pay, in Australian terms, to ensure that Australia does not have on its doorstep a failed state, with all the consequences that this would imply. In addition, this would provide the required certainty over the long term that petroleum companies seek before they commit to the very large investment required for the development and exploitation of undersea hydrocarbon resources.

3. Submission

As Australian citizens with a long-standing commitment to the welfare of the Timor Leste people, having been active supporters of the independence movement during the 25 years of brutal Indonesian occupation and having participated as volunteers on three occasions over the last seven years in an educational program run under the auspices of the Ballarat-Ainaro friendship relationship, we urge this Senate committee to recommend without qualification that the Australian Government negotiate in good faith with a view to finalising, as a matter of urgency, the establishment of a fair and permanent boundary between Australia and Timor-Leste, using median line principles, in accordance with current international law.

Michel & Anne Beuchat
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