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Sent: Monday 15 July 2002 12:55 AM  
To: jsct@aph.gov.au  
Subject: Treaties C'tee submission

To the Joint Standing C'tee on Treaties  
Inquiry into Timor Sea Treaty  
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Submission by Rob Wesley-Smith  
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15th July 2002

My submission at this time has to be brief, as I leave today for 3 weeks in East Timor. I would appreciate the opportunity to expand on some points in meetings. Meanwhile my mobile phone will work most of the time 0419 807175.

I would like you to note my/our submission of 2/10/97 to your c'tee investigating the Australia-Indonesia Maritime Delimitation Treaty, public hearing in Darwin 8/10/97. Much of this is still relevant today, and can be seen as prophetic. But we always knew we were morally right, perhaps events towards East Timor gaining its independence moved quicker than then expected.

[The chair of this c'tee hearing in Darwin told journalists that noone objected to signing that treaty. This was completely false, as you can see from my written and oral testimony, for which I felt c'tee members gave me much support.]

We feel this has caught the Australian government out - it was not prepared to lose the majority of the revenues from the Timor Sea, even though international law clearly places these resources within any maritime boundary determined based on UNCLOS principles.

In fact the Australian government, and Downer in particular, have and do seek to prevent East Timor gaining Maritime Boundaries other than JPDA ones, and certainly not in accordance with UNCLOS, as shown by its withdrawal on 19th March from the jurisdiction of the ICJ in relation to Maritime Boundaries for East Timor, PNG and Indonesia.

I published an angry public statement about this in April, see below, expressing outrage but also attempting to get the public to understand the subterfuge being done as quietly as possible. I feel this is still relevant. Many of us feel that Australia under the present government is picking and choosing which UN human rights or legal instruments it will follow depending on how it sees Australia's short term interests based on a cynical and selfish not a moral view. Perhaps your c'tee could help reverse this trend.

I published about 30 statements/documents in April this year on this matter, many trying to stop the emergent East Timor administration from signing a biased treaty including annexe E which stated that 80% of a unitised Greater Sunrise gas field would belong to Australia. This failed, and the Treaty was signed on 20th May, and Downer could not resist some triumphalism.

Why did the new East Timor government sign such a stupid document giving away their resources? Does your c'tee want to find out?

Will it insist on all records of meetings and all financial transactions both on the record and off being sought out and made public? I doubt it, though it is necessary to try to understand this matter. Or are we to conclude that it was naked threats and pressure from the Australian government? There has to be some such reason. East Timor now claims 100% of Greater Sunrise - which we also support, so why sign it away on May 20th? It just doesn't make sense.

We know that the Australian government is worried that a Maritime Boundaries agreement with East Timor based on UNCLOS principles will be seen as a precedent which Indonesia will use to claim boundaries based on 1982 and thereafter international law which sets boundaries at equidistance where 2 countries are less than 400nm apart.

Australians for a Free East Timor submits that the Australian government should recant and negotiate a new Treaty with East Timor, so that it can achieve its Maritime Boundaries in accordance with UNCLOS. Australia should then negotiate arrangements to best exploit the resources based on mutual interests and respect, including energy to East Timor. Actually we believe that an unjust treaty will be an ongoing source of tension and instability, which is exactly what the oil companies do not want. We will continue to advocate for justice for the East Timorese.

see affet 1/4/2002:

"Australian Treachery against East Timor again, this time over Oil and Gas Royalties"

Australians for a Free East Timor  
Public Statement 1 April 2002 (sl.editted 12th April)

"Australia 25th March 2002 announced it would no longer submit to international legal rulings on maritime boundaries - after leading lawyers advised East Timor that Canberra was poised to rob it of tens of billions of dollars in oil and gas revenue."

Having just returned from East Timor where I attended the now fabled Maritime Boundaries/Oil and Gas Semina, I was staggered to read the above report re withdrawal from UNCLOS by Hamish McDonald in the Sydney Morning Herald 26 March, and further, to fail to see any other reports.

This is blatant treachery against the emerging nation of East Timor.

But why should we be surprised? Australia has been treacherous to East Timor 5x in my lifetime:

1. 1942 withdrawing commandos but not their assistants, leaving the defenceless population to lose 60,000 people or 12% of their population to Japanese military barbarity
2. 1975 acquiescing and even encouraging the Indonesian military invasion of East Timor
3. 1978/79 giving de jure recognition to Indonesia's illegal military and bloody occupation which killed around 300,000 people or a mere 30% of the entire population
4. 1989 signing the illegal Timor Gap Treaty with Indonesia, designed to steal East Timor's oil and gas resources and to restrict its future Maritime Boundaries
5. 25 Mar 2002 withdrawal from UNCLOS in order once again to steal over \$30b of oil and gas royalties

As against this, the Howard government touts its belated support of Interfet in Sept 1999, despite a year of withholding intelligence and

action re the TNI Militias, [and still continued withholding of that intelligence]. Even Interfet allowed 3 weeks of continued abuses before definitive action all over the country, based on the Howard view that Indonesia was still the country of legal authority, the refusal to engage positively with Falintil, and putting Interfet lives way beyond those of the East Timorese.

Many statements over the last couple of years have set out the Maritime boundaries and Pipeline issues, see some attached.

The Seminar in Dili sponsored by an Oil Company provided expertise in these issues which go way beyond the sponsors. Its accuracy was indicated by the subsequent withdrawal by Australia from UNCLOS.

We also were told that an oil pipeline to East Timor is feasible and would cost only 75% of that to Darwin. As the distance is less than half, I think the pipeline might be smaller to carry the same volume and thus allow extra savings. This is quite the opposite of the information publically provided by Phillips and various Oz governments as the basis of negotiations. It also opens up 3 not 1 pipeline options:

1. one pipeline to Darwin; 2. one pipeline to East Timor; 3. a large pipeline to Darwin, and a small line to East Timor maybe for electricity generation.

Despite this I detected no desire to foil the Phillips Bayu Undan proposal as this is so well advanced. However the argument about risking early royalties for East Timor is laughable when it is considered that 100% of Oil royalties of \$300m from Corallina/Laminaria now all goes to Australia now when almost certainly it should all be going to East Timor under UNCLOS.

The danger now is that the draft agreement Timor Gap Treaty of Aust, East Timor and Phillips will jeopardise the future ability of East Timor to claim its lawful Maritime Boundaries. We call for this agreement:

\* to be published to enable independent legal experts to analyse it now,

\* for the new East Timor assembly NOT to sign it until this is done, and it is fully understood that it does not jeopardise future Maritime Boundary claims.

Mari Alkatiri and Jose Ramos Horta bear a heavy responsibility to ensure that the future independence of East Timor is not jeopardised by throwing away future revenues of US\$30b; to be well informed themselves, and to inform the elected members and the whole population. As Xanana has recently said, democracy is primarily about freedom of expression and information - and actually the new Constitution is not even clear about this right.

To have internationally recognised land and maritime boundaries is a country's right and requirement, and should not be jeopardised by unconscienceable bullying by a large immediate neighbour such as Australia. Sure, try to settle by negotiations, but according to UNCLOS.

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see affet 10th April 2001 :  
Affet - Australians for a Free East Timor

Press Release 10th April 2001

"Australia trying to bully East Timor -  
any delays are Australia's fault"

Yesterday ETTA's Peter Galbraith reported on the situation  
re Timor Gap negotiations between East Timor and Australia.

In particular he said a new treaty needs to be negotiated between  
East Timor and Australia before work can begin.

This simple obvious truth led to bullying reactions from the  
conservative Australian government and from the oil industry,  
seeking to suggest that any delays are due to unreasonableness  
by East Timor.

This has been a tactic from the start, with Australian Ministers  
such as Minchin and Downer suggesting East Timor should be  
grateful for any concessions Australia may make. In fact they  
are trying to heist East Timor's oil.

The simple fact is, the previous Timor Gap agreement was  
between the illegitimate occupier Indonesia and Australia,  
NOT East Timor and Australia.

A new treaty has to be negotiated between the two  
nations today, based on current International Law.

This means the boundary between the two nations must be  
equidistant. This is the stated ALP policy as I understand it. ...

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Yours sincerely,

Rob Wesley-Smith  
affet spokesperson  
Darwin 15th July 2002