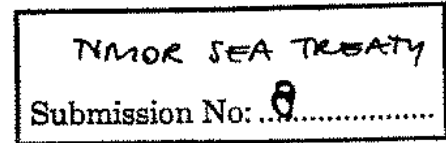




LEGISLATIVE COUNCIL

Hon. John D. Fischer MLC
Member for Mining and Pastoral Region



24th July 2002

The Secretary
Joint Standing Committee on Treaties
Parliament House
Canberra
ACT 2600

Timor Sea Treaty

Dear Sir/Madam

Please find attached my submission; in point form regarding the above treaty.

- As a Member of Parliament for the State of Western Australia I believe this treaty has ramifications for Western Australia. The final stand that is taken by our federal government will have an effect on Indonesia's position regarding both the seabed and water column rights between the coast of Western Australia and Indonesia. At present under bilateral agreement with Indonesia Australia (Maritime Delimitation Treaty 1974) has retained 100% of its seabed rights over its continental shelf by conceding a 50/50 right over the water column or EEZ/PFSEL zone. This treaty is yet to be ratified by Indonesia and as such can be readily abandoned by her.
- This has caused a degree of angst to members of my electorate who rely on fishing in the northwest of Western Australia.

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Excessive and uncontrolled fishing by Indonesian fisherman is already depleting fishing stocks to the point that the stocks of breeding fish are being depleted to alarming levels (CSIRO 2001-Demersal Scalefish). In the event that Australia gives 90% of its rights to East Timor, Indonesia may decide to enforce similar rights. This would have the effect of depleting fishing stocks to a point of no return as well as denying Australia rights to offshore oil and gas reserves.

- An additional vexatious issue is the fact that the PFSEL line has allowed traditional Indonesian fishermen to sail close to Australia aiding and abetting the illegal boat people trade. It is not inconceivable that should a 50/50 maritime delimitation be adopted between East Timor and Australia similar problems would be experienced along the Northern Territory coastline. At this stage East Timor is not claiming water column rights but almost certainly will in the not too distant future once the seabed rights are bedded down.
- The Australian government has a duty to secure Australia's sovereign rights both with respect to land and inherent resources contain therein. As such we should consider the definition of maritime boundaries as defined under *the United Nations Convention on the Law of the Sea (UNCLOS 1982)*. Australia has the right to claim a maritime boundary on the basis of a 200 nautical mile (nm) zone or by virtue of its continental shelf to a maximum of 350 nm. The continental shelf between Australia and East Timor is terminated less than 350nm from Australia by the Timor Trough, a geological phenomenon, which is in excess of 2000m deep. Australia has the right to claim that its boundary extends to the Timor Trough.
- Since 1940 coastal states have settled more than 130 maritime boundaries with more than 20 being settled by international courts. Despite this no normative principle has been derived that could act as a mandate to determine the boundary that lies between Australia and its northern neighbours. All of the country determinations have applied to states, which share a continental shelf. This is not the case with Australia and East Timor. Since Australia's continental shelf is terminated by the Timor Trough. Where states share a continental shelf courts

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have appeared to move away from the natural prolongation theory and it is under this premise that East Timor is considering taking Australia to the ICJ in order to gain access to all the petroleum and gas resources of the Bayu-Undan and Sunrise Fields.

- I would suggest rather that Australia's case is almost unique (excluding the China and Japanese Ryukyu Islands which are separated by the Okinawa Trough). In the case of Japan and China their maritime boundaries remain unresolved. As such these precedents cannot be applied to Australia. Australia having stated that it will no longer place itself under the jurisdiction of the ICJ cannot therefore apply to the court for determination. Should East Timor apply it is debateable that Australia would be bound by the decision and in any event the courts are unlikely to deny Australia any access to the oil and gas reserves. Hopefully East Timor is aware of this.
- These fields are worth more than \$15 billion and as such Australia must stand firm. Since precedence exists already in which Australia has shared these resources with Indonesia on a 50/50 basis we must not retreat from this stance. If we do, then Indonesia will claim their perceived rights. It is my belief that Australia should never have negotiated this deal in the first place with Indonesia but there is no retreating from that position unless Indonesia moves first. Since they are not party to the ICJ they are unlikely to do anything until East Timor has shown its hand.
- Whilst Australia may now feel 'guilty' at having recognised Indonesia's occupation of East Timor it should not trade away Australia's rightful sovereignty to absolve itself from blame. The military and financial assistance that Australia has given East Timor in the past 2 years to become independent from Indonesia more than balances this issue out. Certainly our children should not be deprived from future revenue streams derived from both the seabed and water column by hastily drawn up treaties to appease this government's conscience.


In summary therefore I am opposed to the Timor Treaty, which effectively gives away 90% of our sovereignty to East Timor and believe

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that we must as an absolute minimum never negotiate away more than 50% of our rights. In addition this will lead to the continued depletion of our fishing stocks by traditional fishermen from both East Timor and Indonesia as well as submit Australia to an increase in illegal boat people. The further the maritime boundary is from our coast the less attractive this illegal trade becomes.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Fischer', with a long horizontal flourish extending to the right.

Hon John Fischer MLC- Mining and Pastoral