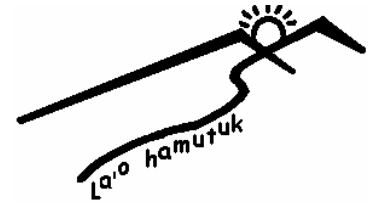


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**Submission to the
Australian Parliament's Joint Standing Committee on Treaties**

from the

**Timor-Leste Institute for Reconstruction Monitoring and Analysis
Guteriano Nicolau Soares Neves and Santina Soares
(authorized by the Institute)**

regarding the

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

to

**Committee Secretary
Joint Standing Committee on Treaties
Parliament House, Canberra Australia**

16 March 2007

Dear Honourable Members of the Parliament of Australia,

The Timor-Leste Institute for Reconstruction Monitoring and Analysis hereby submits information to your committee for consideration as you discuss the Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS Treaty) between Australia and Timor-Leste. We believe that this may be the most important issue for the future of our newly-independent country. We encourage the Australian Parliament to think about your neighbour to the north, in addition to your own national interests, as Australia and Timor-Leste's long-term goals are inextricably intertwined.

Summary

The main points of our submission are:

1. Australia and Timor-Leste are interdependent neighbours, with shared interests.
2. The CMATS Treaty and IUA are legally insufficient and should be revised.
3. Timor-Leste's Government accepted both agreements under tremendous pressure, bordering on extortion.
4. Timor-Leste has an inalienable right to a maritime boundary, which is prejudiced by these agreements. Our independence is incomplete without it.
5. The treaty unfairly favours Australia over Timor-Leste, in violation of current international legal principles.
6. The dispute resolution provisions prevent fair adjudication.
7. This agreement does not support long-term stability in Timor-Leste, which is crucial for both our countries.
8. The hasty entry into force violated democratic rights and principles.
9. Australia is taking advantage of Timor-Leste's current crisis to take our resources.
10. Timor-Leste needs the LNG plant to help develop our economy, and the Sunrise Commission should not be dominated by Australia.

Introduction of our organization

The Timor-Leste Institute for Reconstruction Monitoring and Analysis is a joint Timor-Leste-international non-governmental organization formed in Dili in April 2000. We are commonly known as *La'o Hamutuk* ("Walking Together"), and we strive to improve understanding between Timor-Leste civil society and the many international organizations and institutions which are active in the reconstruction and development process in this country. Over the last seven years, our publications, radio program and web site have analysed and reported on many aspects of petroleum development in Timor-Leste, including the negotiations between the Timor-Leste and Australian Governments on maritime boundaries and revenue sharing. We work closely with a wide range of people and organizations throughout Timor-Leste and around the world, drawing on their experiences and expertise to inform our analysis and reporting. Our website (www.laohamutuk.org) and *OiWeb* CD-ROM include extensive information about Timor Sea resource issues.

We have made three previous submissions to the Australian Parliament. Regarding the Timor Sea Treaty, we submitted to the Joint Standing Committee on Treaties on 31 July 2002 and testified before your committee in Darwin on 3 October 2002. Regarding the Sunrise International Unitisation Agreement (IUA), we submitted to JSCT on 13 June 2003 and to the Senate Economics

Legislation Committees on 18 March 2004. We encourage you to read those submissions, as nearly everything they discuss is relevant to the current inquiry.

We give the Joint Standing Committee on Treaties permission to publish or otherwise circulate this submission in full. We also request the Committee's authorization for us to publish and circulate this submission to other persons. This submission has been authorized at the highest level of our organization.

We appreciate the committee's willingness to consider Timor-Leste's welfare, together with Australia's, and our submission discusses issues important to both countries. We would be grateful for an opportunity to provide further information to your committee, and encourage you to consider holding a public hearing in Timor-Leste, Darwin or any other place where people from Timor-Leste can testify in person, so that you can hear from a few of the many Timor-Leste citizens who see this as critically important for the future of our new country.

According to the Hansard of your hearing on 26 February, the Government witnesses and Members of the Committee are lacking information about Timor-Leste, including the economic and political significance of the CMATS and IUA agreements for our country. We hope that this submission can fill some of the gaps.

We realize that Australia is your principal priority and expertise, but we are your next-door neighbour, and you have been deeply engaged with our country for more than sixty years, especially since 1999. What happens in Timor-Leste affects what happens in Australia and vice versa, and it essential for good neighbours to understand, respect and support each other. We offer this submission in a spirit of constructive cooperation. When we criticize past Australian policies, it is not to find fault but to look for possibilities for improvement.

Background

As you know, the Foreign Ministers of Timor-Leste and Australia signed the Certain Maritime Arrangement of the Timor-Sea (CMATS) more than a year ago. Dili's Parliament ratified the Treaty on 20 February 2007, after which the Australian Government decided to bypass your Parliament's responsibility, and the agreements entered into force on 23 February. We share your unhappiness at this circumvention of democratic and legislative processes, and appreciate your decision to proceed with this inquiry and report.

We ask the Joint Standing Committee to recommend some changes in the CMATS Treaty, which was signed after a long process of negotiation. We believe that the treaty was negotiated in an unbalanced environment, and that it contains serious flaws. For a variety of historical, moral, legal and pragmatic reasons explained below, we urge the Joint Standing Committee to ask the Australian government to improve the treaty in cooperation with the government of Timor-Leste, with the goal of quickly arriving at a revised treaty which is more respectful of legal and human rights, and better protects the interests of both Australia and Timor-Leste.

As members of civil society in Timor-Leste, we would like you to understand that many Timor-Leste citizens believe that our Government and Parliament should not have signed and ratified the CMATS treaty and the IUA. We believe that they were overwhelmed by pressure from the oil companies and the government of Australia. Since before the restoration of Timor-Leste's independence in 2002, Canberra, Woodside and others have repeatedly stated that acceding to whatever proposal Australia had on the table at the time was the only way Timor-Leste can receive much-needed revenues from even part of the oil and gas fields within our territory. Over and over again, we heard from your leaders that if we don't accept your terms, we will regret missing a "market window" or "final offer."

Your Government enforced these arguments with bullying that borders on extortion. In 2003, the held up implementation of the 2002 Timor Sea Treaty, which Timor-Leste believed was urgent to allow Bayu-Undan revenues to start flowing, until Timor-Leste had signed the Sunrise IUA. Canberra used a similar hostage tactic to get Timor-Leste to sign CMATS, refusing to sign off on the Production Mining Code for the Joint Petroleum Development Area (JPDA) which had been finalized in September 2005. Without the PMC, the JPDA licensing round for new areas scheduled for early 2006 could not proceed. After Timor-Leste had signed the CMATS Treaty, Industry Minister Ian Macfarlane found the time to formally approve the five-month-old PMC.

As the CMATS Treaty currently before you demonstrates, the “this is your last, best chance” threats have never been true. By resisting the duress that forced us to sign the IUA in March 2003, Timor-Leste will now receive upstream revenues from about 60% of the known oil and gas fields in our territory (on Timor-Leste’s side of the median line between our two coastlines), an increase from the 42% Australia had agreed four years ago not to steal. However, a fair, impartial process of adjudication or arbitration would probably decide that all of the fields north of the median line and south of the 1972 Australia-Indonesia seabed treaty line rightfully belong to Timor-Leste, and we continue to object to Australia’s repeated refusal to engage in such a process. (Some areas north of the 1972 Australia-Indonesia line also belong to Timor-Leste, but this is not your government’s concern.)

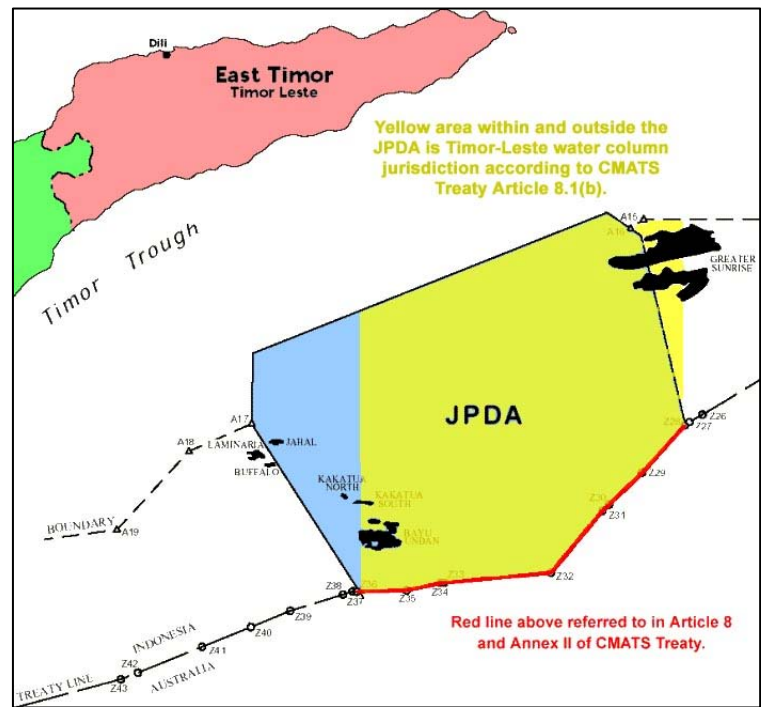
The Treaty blocks resolution of the crucial issue of the maritime boundary

This Treaty doesn’t settle the essential issue: the unresolved Maritime Boundary between our countries. The treaty gives priority to exploit Greater Sunrise (article 2) and share its revenue (article 5), but obstructs the completion of Timor-Leste’s long struggle for independence. We particularly object to CMATS Article 4, which attempts to deprive Timor-Leste of its legal, sovereign right to a maritime boundary for at least two generations.

Every nation has the right to know where its territory ends and those of its neighbours begin. As a continental island with no land borders, Australia may not appreciate that this is essential to national identity and sovereignty. But as a new country that has experienced centuries of foreign rule, we know the importance of defining our nation. We struggled for 24 years against Indonesia’s illegal occupation. And since 1999, with support from around the world, we have been asking Australia to respect our independence and our sovereignty. Many in civil society in both Timor-Leste and Australia share our view that Timor-Leste has the right to know where its territory lies.

The debate over the Timor Sea is not only about oil and gas reserves, but also about other resources in the Timor Sea, security, legal jurisdiction, fishing rights and national sovereignty. We request that the Australian Parliament ask both Governments to continue to negotiate about the maritime boundary while Greater Sunrise is being developed. Just as Bayu-Undan development proceeded throughout the transition from illegal Indonesian occupation through UNTAET to our nation’s independence, Sunrise can be explored and extracted while discussions about the legal delimitation of our territories proceeds.

The lack of attention given to water column issues is illustrated by CMATS Article 8, which refers to a line described in Annex II – a portion of the median line along the southern and south-eastern edges of the JPDA. La'o Hamutuk has been informed that the authors of the treaty meant the JPDA when they referred to the area “north of the line” (Article 8.1(b)) where Timor-Leste will continue to exercise water column jurisdiction. As the diagram at right shows, the words in the treaty do not represent the intention of the negotiators. We have not seen this error mentioned by others and wonder what other pitfalls to understanding will be discovered in the future. Sloppy drafting can pose serious problems in a hastily-written treaty that will long outlive its authors, especially one which forbids any court or arbitration mechanism from resolving disputes



The CMATS Treaty legalizes and extends Australia's illegal occupation of part of the Timor Sea from 30 years (Timor Sea Treaty) to at least 50 years (CMATS Treaty article 3). Australia's illegal occupation of our maritime territory began in 1989, when you signed the Timor Gap Treaty in the midst of Indonesia's bloody occupation, and has continued in various forms since then.

The Australian government has often written that this treaty enables Australia to continue regulating and authorizing petroleum activities outside of the JPDA and south of the 1972 Australia-Indonesia seabed boundary. In the treaty itself (Article 4.2), this concession by Timor-Leste is concealed in convoluted references to past domestic legislation and side-letters. Are the negotiators are ashamed or trying to conceal what they are doing it from the people or Parliaments of Timor-Leste or Australia? At the 26 February hearing of this Committee, Mr Wilkie told Mr Campbell "You have done well there" regarding this provision and his claim that the CMATS Treaty ensures "that there will be no further revenue claims between the two countries." We hope the Committee Report will not echo his pride in bilking our impoverished nation of our resource birthright.

The Treaty Unfairly Favours Australia over Timor-Leste

The Treaty allows Australia to exploit other fields in the Timor Sea outside the JPDA and the Sunrise IUA, including Laminaria-Corallina, Buffalo and other fields which may be discovered in the future (article 4). This allows Australia to receive revenues from current and potential fields in disputed areas, while Timor-Leste cannot. Since Laminaria-Corallina began production while the smoke was still rising from the ashes of our nation 1999, the Commonwealth government has taken in about A\$2,400 million in tax revenues from that project, money which rightfully belongs to Timor-Leste. You should be ashamed for browbeating our government into acquiescing in this continuing theft from our people.

The CMATS Treaty includes the 2003 International Unitization Agreement (IUA), which Timor-Leste declined to ratify until recently. CMATS maintains the provisions of the IUA, which is biased in favour of Australia's economic interest and Australia oil companies. As in our previous submission, we continue to object to the unbalanced Sunrise Commission (IUA Article 9) which deprives Timor-Leste of an equal voice in Sunrise development decisions.

Timor-Leste's success is important to Australia

Australia is a large and rich nation, while Timor-Leste is small and poor. The Sunrise income to Australia over three decades would pay for a few weeks of the Commonwealth government's budget, while Timor-Leste's begrudged 50% would fund our government for more than two decades at current levels. As Australia celebrates the lucrative deal won by Mr Downer's hard bargaining, we hope you appreciate the costs to us: the highest infant and maternal mortality in Asia; inadequate education for our children; no clean water, electricity and adequate roads for the great majority of our population; high unemployment among urban youths. Those are major causes of the ongoing violence in our country, which some analysts perceive is on the verge of becoming a failed state.

We agree with the Australian Government and its citizens that stability and economic development in Timor-Leste are important for Australia's national interest and for regional stability. Australia has shown your commitment by assisting Timor-Leste since 1999 and by sending troops to Timor-Leste in 1999 and in 2006. However, if you respected our maritime boundary rights we would receive our full share of income from Timor Sea oil and gas, which would be vital for the next several decades, ensuring the sustainability of our economic development which would reduce political instability and internal conflict.

The Australian National Interest Analysis states that "It is in Australia's interest to create a long-term stable legal environment for the exploration and exploitation of petroleum resources in the Timor Sea between Australia and East Timor, without prejudicing either country's maritime claims in the Timor Sea." However long-term stability includes the survival of Timor-Leste as a democratic, peaceful state which follows the rule of law. Our maritime claims are indeed prejudiced by this treaty – we cannot even talk about them until Australia has extracted all the non-renewable petroleum from disputed territory. This directly contradicts the interests of both countries and the claimed intent of the Treaty, as described in paragraph four of the National Interest Analysis.

The Treaty is inherently unfair

Although CMATS will increase Timor-Leste's share of Sunrise upstream revenue from 18% to 50%, Australia will maintain dominance over development decisions. According to IUA Article 9.8, which defines the composition of the Sunrise Commission, Australia has two Commissioners and Timor-Leste has only one. This gives Australia more weight than Timor-Leste in making decisions, and is worsened by dispute resolution mechanisms that prohibit solutions based on law or justice.

If any disputes arise over interpretation or implementation of the CMATS Treaty, the Treaty forbids Timor-Leste from exercising its legal rights to involve other parties or arbitration mechanisms, forcing us to resort exclusively to inherently unbalanced negotiations. This is more favourable to Australia, because the negotiations will be effected by disparities in economic, political and military power between our nations.

As citizens of one sovereign nation to another, we appeal for a "fair go."

We ask your parliament to recommend an impartial legal mechanism, such as arbitration or a court, to resolve any differences which may arise over interpretation of the Treaty in the future. Australia has accepted this many times, including in Annex IV of the Sunrise IUA. We see no justifiable reason for not including such a process in CMATS.

We ask your Parliament to recommend a moratorium on exploration and exploitation of new fields in the Timor Sea outside of the JPDA and Greater Sunrise unitised area, to be lifted when the maritime boundary is agreed upon by both countries.

In addition to being biased and domineering, the CMATS Treaty's gag order on bringing maritime boundary issues to international legal fora for half a century may be intrinsically illegal. Some international legal scholars believe that such fundamental rights cannot be surrendered by Treaty.

Serving Australia's National Interests

Last February, the Australian Government submitted a National Interest Analysis on the CMATS Treaty. This analysis cites incorrect facts and illogical reasons to encourage your Parliament to ratify this treaty. We would like to assist you by providing a Timorese perspective.

Paragraphs 8 and 10 state that by sharing upstream revenues 50-50 will advance Australia's strategic interests by enabling the long term economic stability of Timor-Leste. However CMATS contradicts this objective and is unacceptable. These are not Australia's resources to share or not to share. Legally, should they belong to Timor-Leste, and we cannot understand how Timor-Leste's being forced to agree to give 50% of our Sunrise upstream revenues (and perhaps all of the downstream), and 100% of Laminaria-Corallina and other contested fields to Australia supports our country's long-term economic stability.

International legal experts and many citizens in both countries know that those resources belong to Timor-Leste based on current international legal principles, and that Australia's claimed generosity of half of Sunrise should be more accurately described as robbery of the other half and the remaining contested areas.

Australian officials argue that supporting Timor-Leste since 1999 somehow justifies stealing our resources. We appreciate that Australia Government took leading responsibility for military support for Timor-Leste in 1999-2003 and during the 2006-2007 crisis, showing your recognition that economic and political stability in Timor-Leste is important to Australia's national interest. However, the cost to Australian taxpayers of these operations – indeed of all of Australia's assistance to Timor-Leste since 1999 – is significantly less than the A\$2,400 million your government has already received from the Laminaria-Corallina oil field alone, which rightfully belongs to us. Your actions contradict your stated objective.

As you know, Mr Downer rushed the CMATS Treaty into force late last month, pre-empting Parliamentary ratification, in the name of Australia's "National Interest." Even more serious, however, is the pre-emption of democratic processes in both countries.

As Mr Downer wrote to your Committee, bringing CMATS and IUA into force now is "an opportunity to do this prior to presidential and parliamentary elections which will occur over the next few months." Australia will also have elections this year.

Timor-Leste's 2007 elections are the first time in our history as an independent nation that our citizens will vote for our Parliament. It is unseemly to rush a 50-year agreement into effect to prevent the voters from having their say.

Viewing this in the context of current instability in our nation, the presence of a thousand Australian soldiers, and last year's forced resignation of the Prime Minister chosen by the majority of our Parliament, many Timorese see a repetition of Australia's collusion with the illegal Indonesian occupation that killed nearly one third of our people. Democracy, justice, human rights and the rule of law go out the window when billions in oil revenues are at stake. Is Australian government policy still unprincipled, as Ambassador Woolcott cabled from Jakarta to Canberra in August 1975?

"...closing the present gap in the agreed sea border [with Indonesia] ... could be much more readily negotiated with Indonesia than with ... independent ... Timor. I know I am recommending a pragmatic rather than a principled stand, but that is what national interest and foreign policy is all about."

As you know, in the wake of violence in Dili last April and May that took 37 Timorese lives, our government invited your soldiers in to help restore law and order. In the ensuing nine months, nearly 100 more of our citizens have lost their lives due to violence. Tens of thousands are living in camps for displaced persons, and thousands of houses have been destroyed. We appreciate Australia's willingness to help, and we hope this help will be more effective and respectful of our human rights than it has been to date.

In an unfortunate coincidence, Australian soldiers killed two displaced persons in a camp two days after Timor-Leste's Parliament ratified CMATS. Many of our compatriots see a common thread of Australian disregard for Timor-Leste's human and economic rights, or think that Australia, having achieved Timor-Leste's consent to take 50% of Greater Sunrise and all of Laminaria-Corallina and nearby fields, is now less concerned about Timorese lives and our perceptions of Australians.

LNG Plant

As you know, Timor-Leste's economy is very limited, with virtually no industrial jobs and high levels of unemployment. This is a major cause of the unrest which has forced us to ask you for help.

A long-term solution to this problem is essential to the health of both our countries, and to a balanced bilateral relationship. If our economy continues to depend on oil rents alone, Timor-Leste may gradually descend into the pit of the "resource curse" that afflicts so many other impoverished countries which depend on extractive exports.

Our nation's best hope for avoiding this dire scenario is to develop our domestic economy, and one essential way to do this is to leverage our oil and gas reserves to create jobs, skills and infrastructure. Australia recognizes this well; the Northern Territory government often cites it in promoting LNG development in the Territory. But Timor-Leste needs it more.

Australia already receives all of the downstream benefits – jobs and development as well as taxes – from the Bayu-Undan project, even though Timor-Leste receives 90% of the upstream revenues. We appeal to your sense of justice – as well as your national interest in not having a failed state on your doorstep – to encourage that the LNG facility for Greater Sunrise be built in Timor-Leste. It is one of the very few possibilities we have to develop our local economy.

For many years, we have watched the Australian Government and Woodside Petroleum advocate for a gas pipeline from Sunrise to Darwin, either as an enlargement of the Wickham Point plant or a new facility. We urge your government to reconsider that approach, which represents a continuation of short-sighted efforts to maximize the dollars you receive from our oil.

Rather, we encourage you to support an equitable mechanism for making the decision about where Sunrise gas will be liquefied, taking into account the full range of needs and benefits for people in both our countries. One essential step would be to change the Sunrise Commission (IUA Article 9) to include equal representation from both countries, with a fair, impartial process for resolving disputes.

Conclusion

We make this submission as a Timorese non-governmental organization, expressing views which are held by a wide range of people on both sides of the Timor Sea. We respect your judgement and your authority, even if your Government does not. We ask you to look at Australia's interests from a broader perspective, which include the long-term stability and success of our new nation. And we appeal to your consciences and foresight to recommend changes in the treaty based on law which would be better for both our countries.