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PRESIDENT
Sharan Burrow
SECRETARY
Greg Combet

Ref: SB/AM:dd

10 September 2002

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

E-mail: jsct@aph.gov.au

Dear Sir/Madam,

RE: ACTU Submission to the Review of Timor Sea Treaties

Please find attached the ACTU Submission to the Joint Standing Committee on Treaties on Australia's Proposal to Ratify the Timor Sea Treaty.

Yours sincerely,

SHARAN BURROW
President

**Australian Council of Trade Unions (ACTU)
Submission to the Joint Standing
Committee on Treaties
on Australia's Proposal to Ratify the
Timor Sea Treaty**

September 2002

D No. 31/2002

1. INTRODUCTION

- 1.1. The ACTU and its affiliates have had a long involvement in the independence struggle in East Timor. Currently it has programmes of direct assistance with the emerging union movement of East Timor and is working closely with the international union movement and the International Labour Organisation (ILO) in East Timor.
- 1.2. The ACTU is co-operating closely with the technical and legal branches of the ILO, in Geneva, Bangkok and Dili, as well as with the Konfederasaun Sindikatu Timor Lorosae (KSTL, the emerging national union centre of East Timor), in the development of industrial relations regulations and other technical programmes of assistance.
- 1.3. The KSTL has been supported and funded to provide opportunities – meetings, round tables, conferences – for the issue of developments in the Timor Sea to be analysed and discussed.

2. ACTU EXECUTIVE DECISION

- 2.1. At its Executive meeting in May 2002 the ACTU urged that any treaty must “guarantee the participation of the East Timorese in three important areas:
 - (i) a fair share of employment
 - (ii) access to training for workers
 - (iii) a role in monitoring a fair split in resources and profit”

(see Appendix 4)
- 2.2. A further meeting of the Executive in July 2002 believed that a joint and equitable treaty should be based on the following principles:
 - (i) a mutually acceptable agreement on maritime boundaries based on internationally agreed principles within the UN Convention on the law of the Sea;
 - (ii) the equitable distribution of resources from the Timor Sea development including both Bayu-Undan and Greater Sunrise;
 - (iii) the effective participation of East Timorese workers, including training, at all levels of the Timor Sea development;
 - (iv) employment principles which ensure respect for ILO labour standards and Australian and East Timor labour laws/awards or agreements;

- (v) the active involvement (as in Australia through the JSCT) of the East Timor community in the ratification process;
- (vi) acceptance by JSCT to ensure East Timorese testimony before the Committee.

3. EAST TIMOR UNION (KSTL)

- 3.1. At the conclusion of a meeting co-ordinated by the KSTL in Dili, the KSTL together with LAIFET (the Labour Advocacy Institute of East Timor) stated that:

"We stand today poised on the threshold of Independence, ready to take our equal place amongst the family of nations after centuries of pain and struggle. Our relationship with Australia in the Timor Gap will be an indicator of our international acceptance as an independent new nation. Without the full and meaningful participation of East Timorese in the Timor Gap, our new sovereignty will be but an illusion."

- 3.2. They noted that:

"Any treaty or agreement between our countries on the Timor Gap must commit both parties to two basic principles:

1. *Adherence to the conventions and courts of international law and therefore independent determination of international maritime boundaries that define our sovereign territories.*
2. *Any determination or agreement must also guarantee the participation of East Timorese in three important areas. Our share of employment, our access to training and our role in the monitoring of compliance must match the division of revenues between our two countries.*

Oil companies must therefore pay equal wages for equal work under equal conditions. Comprehensive training in all areas of work must be provided for all East Timorese workers, to be fully funded by any difference between Australian and East Timorese wages."

- 3.3. The statement concluded:

"Australia must therefore reverse their recent and unexpected withdrawal from UNCLOS and reinstate their adherence to its coverage and determinations. East Timor must also ratify the United Nations Convention on the Law of the Sea at the first opportunity. (Appendix 1)

4. A UNIQUE TREATY

- 4.1. The Committee is being asked to review and comment on an unusual and unique treaty process. It is a treaty with a new nation. The outcomes of this Treaty will effectively determine the future of the whole population of East Timor. Few other treaties have such a direct impact on the future well being, health and security of a nation than this one.
- 4.2. The ACTU believes that because of the unique character of this Treaty, the impact on well being of the nation of East Timor, and the skills, resources and capacity of those most affected by the Treaty – the East Timorese community, the Committee will need to take some unusual steps.
- 4.3. The Committee should ensure for example, that there are opportunities for the effective participation (appearances before the Committee, translation of the Treaty, etc) of East Timorese in the deliberations of the Committee either in Darwin or Dili.

5. RECOMMENDATIONS

1. EQUITABLE AND JUST MARITIME BOUNDARIES

- 1.1. The ACTU has grave reservations concerning those elements in the Treaty and the Exchange of Notes which refer to both the maritime boundaries and the proposed unitisation of Greater Sunrise. Therefore, in making any recommendation to the Government, the ACTU recommends that the Committee explicitly state, recognise and emphasise that the Treaty and the Exchange of Notes in accord with the expressed understanding of the Government of East Timor (Financial Review, 2/9/02), recognises:
 - (a) *“that the Democratic Republic of East Timor does not thereby recognise the validity of the ‘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’ (the ‘Timor Gap Treaty’)”*¹.
 - (b) *“that nothing contained in this Treaty and no acts taking place while this Treaty is in force shall be interpreted as prejudice or affecting Australia’s or East Timor’s position on or rights relating to a seabed delimitation or their respective seabed entitlements.”*²

¹ Exchange of Notes constituting an agreement between the Government of the Democratic Republic of East Timor and the Government of Australia concerning arrangements for exploration and exploitation of petroleum in an area of the Timor Sea. (para. 8)

² Timor Sea Treaty between the Government of East Timor and The Government of Australia (Dili, 20 May 2002) Timor Sea Treaty, Article 2(b)

- 1.2. The ACTU believes that the Committee include in its report a strong recommendation that the Australian Government take immediate steps to begin the process of negotiating permanent maritime boundaries with East Timor. Such steps would provide the basis, and foundation in the spirit of the Preamble "for continuing and strengthening friendly relations", for the renegotiation of the production sharing formula (*Annex E, under Article 9(b)*).

2. PARTICIPATION IN TREATY PROCESSES

- 2.1. The ACTU believes the current Australian treaty process for the ratification of bilateral/multilateral treaties, the UN's specialist organisation ILO Conventions, and UN conventions, is a model which could be considered by the Government of East Timor and therefore recommends that the Committee take steps to communicate the processes and structure of the Australian treaties administration and practice.

- 2.2. Given the significance of this Treaty, it is recommended that the Committee ensures that access (including assisting the East Timor Government in translating the treaty into Tetun and Bahasa) is provided for East Timor to appear before the Committee.

3. CAPACITY BUILDING

- 3.1. **Given** the uniqueness of this Treaty,

Recognising that it is in Australia's national interest to ensure that this Treaty will bring benefits to the East Timorese community, and being,

Aware of the wide range and diversity of skills required both directly and indirectly in its implementation it is recommended that the Committee ensure the:

- (a) effective participation of East Timorese in all phases of the implementation of the treaty;
- (b) commitment of the Australian Government to providing resources for infrastructure capacity building, including skills development, related to the marine environment (Article 10); customs, quarantine and migration (Article 15); hydrographic and seismic survey capacity (Article 16); surveillance and security measures (Articles 18 & 19); search and rescue (Article 20); and air traffic services (Article 21).
- (c) need is recognised by the Australian Government including the commitment of resources to ensure that the East Timorese members of the Designated Authority have the capacity to fulfil their roles as outlined in Annex C under Article 6(b) (v) of the Treaty.

4. EMPLOYMENT AND WORKING CONDITIONS

4.1. The ACTU strongly recommends:

- (a) that the Committee make a detailed analysis of the need and the steps to be taken including consultation with Australian National Training Authority (ANTA) and other related industry training organisations, and National Occupational Health and Safety Commission (NOHSC) to ensure the effective implementation of the Article 11 (Employment) and Article 12 (Health and Safety for Workers);
- (b) that all companies involved in the development and implementation of the Treaty be required as part of their contractual arrangements to commit themselves to the ILO Declaration of Fundamental Principles of Rights at Work.
- (c) that the Designated Authority have both the skills and be provided with the resources to carry out its particular responsibilities as detailed in Annex C(h).

5. MONITORING AND EVALUATION

The ACTU strongly recommends that:

- (a) the Committee revisit the Timor Sea Treaty in one year from ratification to examine the implementation of the Treaty in the context of the Preambular objectives of East Timor's economic development, the degree to which it has "provided a firm foundation for continuing and strengthening the friendly relations between Australia and East Timor, and the steps being taken to resolve the final determination of seabed delimitation."
- (b) the Committee make representations to AusAid to encourage the availability of resources to East Timorese community organisations including unions to ensure their capacity and skills in monitoring and evaluating the implementation of Treaty.

APPENDICES:

1. *Participation equals ownership of our future: Independent Statement on the Timor Gap*, 17 May 2002, KSTL & LAIFET
2. *Concerns on training and recruitment for the Timor Gap*, ACTU correspondence with Chief Minister of East Timor, 20 March 2002
3. *East Timor MPs Question Timor Gap Plan*, Workers Online, 3 May 2002
4. *Australia Playing Games with East Timor's Independence*, ACTU Media Release, 17/5/02

Dr. Mari Alkatiri
Chief Minister &
Minister Department of Economy and Development
UNTAET Government and Public Administration Building
Dili, East Timor

20th March, 2002

cc: Dr. Arsenio Bano, Minister for Labour and Solidarity
Sr. Egidio Jesus, Secretary of State for Natural and Mineral Resources

Dear Dr. Alkatiri,

Re: Concerns on training and recruitment for the Timor Gap

This letter follows January 15th meeting between Sharon Burrows, Michael Doleman, and yourself where a proposal on training and recruitment for Timor Gap was requested by your department. A proposal was subsequently submitted and has been discussed in further detail by tele-conference between the relevant parties. On the 15th and 16th March 2002, a joint seminar was held by ACTU (Australian Council of Trade Unions) and KSTL (Konfederasi Sindakatu Timor Lorosae) on employment and training in the Timor Gap at which you spoke. Several pressing concerns emerged from the seminar:

1. Jobs

Currently, there are several oil vessels working in Timor Gap. None of these vessels contain East Timorese or Australian workers. This is despite Article 11 of the Memorandum of Understanding for Joint Petroleum Development ("the MOU" for the "JDPA") that provides for East Timorese workers being given preference for employment for the offshore mining in the Joint Petroleum Development Area.

By extension, and in a treaty between Australia and East Timor, the only other workers that should be employed would be Australian. Instead it is our understanding that the nationalities of those employed are British, Dutch, New Zealand, Yugoslav, Philippino, Pacific Island and ironically, Indonesian.

At time of the seminar it appeared that not one East Timorese nor one Australian was employed on the project under any agreement that may have reflected the standards that existed in the previous Timor Gap Treaty where the only nationalities that were employed were those of the signatory nations – Australia and Indonesia; added to that the conditions of employment were embodied in that treaty as being those of the highest level.

This latest development sets a dangerous precedent for the future employment and training prospects of East Timorese and Australian workers who it appears will be denied employment in this area due to oil companies' preference for foreign workers.

Therefore we call on both the East Timorese and Australian Governments to take

immediate steps to ensure that Australian and East Timorese workers are the only source of labour employed in the current working of the oil.

2. Training

Immediate employment of East Timorese in the oil fields necessitates that East Timorese start immediate on-the-job the training on board the vessels engaged in the JPDA.

Immediate employment, however, must be accompanied by a long term strategy of training to ensure that East Timorese have the skills necessary to access employment opportunities on an equal basis with Australian workers in the future.

The seminar was also informed of plans for training East Timorese in Papua New Guinea, which is also not a signatory to the MOU for the JPDA. It is certainly not feasible that this particular training project could reach the standards required in Australia or, more notably, the standards required by the previous Timor Gap Treaty between Australia and Indonesia. It would certainly not provide the long term investment and structure necessary to create a skilled working base to ensure the on-going employment of East Timorese workers at all levels of employment in this area.

ACTU have put forward a proposal, supported by KSTL, to the East Timorese government that provides for long term investment into the training of the East Timorese workforce and ensures the equality of treatment of East Timorese and Australian workers. The proposal envisions that the oil companies would pay an equal amount for the equal work of Australian and East Timor workers. The difference in amount between to-be-established wage standard for the East Timorese and the Australian wage standard would be paid into a fund to provide the training for the East Timorese workers. This would provide the long-term investment required to establish the skills base required for equality of job opportunity and ensure equality of treatment for East Timorese and Australian workers.

3. Negotiation

Issues of employment, the establishment of a training strategy and accompanying mechanisms, and the determination of the minimum wage and wage standard for East Timor worker are on-going matters of great importance for government, workers and companies alike. Therefore, in line with *ILO Consultation (Industrial and National Levels) Recommendation 1960 (No.113)*, any future discussions and negotiation regarding these critical issues must be discussed on a tripartite basis to ensure that all views and interest are considered in the final outcomes.

Representatives of the workers, both Australian and East Timorese, should be officially involved in any future discussion or negotiation on these matters from this point forth to ensure negotiations are conducted on this tripartite basis.

Furthermore, Australian trade unions have a long history of involvement in large-scale oil negotiations, and would therefore bring a high level of expertise and experience to the negotiations. Our inclusion in negotiations would not only ensure

workers interests are represented but would be beneficial to East Timor's overall interests in relation to Timor Gap.

We look forward to hearing your response to our concerns and to being informed as to how tripartite discussions are to be conducted.

Yours sincerely

Sharan Burrows President ACTU

CC:

Michael Doleman, Secretary MUA

Wally Pritchard, MUA

John Maitland, CFMEU

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Issue No. 134

03 May

EDITORIAL

News

The Hijacking of May Day

Unionists watching the shambolic and violent affair that was the M1 protest could be forgiven for wondering what has become of the traditional workers' day?

FEATURES

Interview: Youth Group

Federal Labor's youngest frontbencher, Nicola Roxon, on how the ALP can win back the hearts and minds of the young.

History: Back To The Future

As building unions put old animosity aside, Neale Towart looks at the history of the 'demarc' - and the steps taken to avoid them.

Industrial: On the Street

Jim Marr looks at the human cost of Treasurer Peter Costello's refusal to fund a pay rise for community workers.

Unions: The New Deal

Adam Kerslake outlines the importance of the ground-breaking pact between unions in the building and civil construction industries.

Legal: The Police State Road

Rowan Cahill argues that the Howard Government's new anti-terror laws carries echoes of a more sinister past.

Women: What Women Want

When 300 ALP women from

East Timor MPs Question Timor Gap Plan

As East Timor approaches its independence on 20 May, Australia is pressurising the East Timorese leadership to ratify the 5 July 2001 Timor Gap Memorandum of Understanding (MoU).

Australia wants the MoU signed, sealed and delivered by or immediately 20 May. And if that happens, East Timor stands to lose billions of dollars in royalties from the oil and gas tax revenues in the Timor Sea and thousands of much needed jobs.

However, several members of the elected East Timor's Constitutional Assembly (which will become East Timor's new parliament) now want to delay the signing of the MoU for at least six months—they want a parliamentary committee to fully investigate all aspects of the draft agreement. They are mainly from the main opposition parties—Partido Democrático (PD) with seven members in the assembly and Partido Social Democrata (PSD) with six members in the assembly.

This latest development arose after they heard legal experts advised the weekend seminar held in Dili in March that East Timor should own most of the natural gas and oil fields in the Timor Sea.

According to Eusebio Guterres, a PD member of the assembly who attended the seminar, the new East Timorese Parliament has to ratify any agreement signed. He believes all members of the assembly must be fully briefed before making that decision.

Eusebio is a lawyer and former director of the Labour Advocacy Institute East Timor (LAIFET).

'The MPs cannot make a sound and correct decision that would benefit the people of East Timor, unless they fully understand the issues involved. That's why we need a parliamentary committee to review submissions from the companies, lawyers, economists, geologists, engineers, scientists and other consultants,' Eusebio said.

'Parliament must not be used just as a rubber stamp,' he added.

It appears most assembly members have been kept in the dark and have little understanding or knowledge about the MoU—only a handful of people

around Australia converged on Canberra for the National Labor Women's Conference they had more than quotas on their minds, Alison Peters reports.

Politics: Street Party

Paul Howes looks at how May Day was celebrated around the Globe by those involved in trade unions and those who are not.

International: The Costs of War

Ariel Sharon is facing growing pressure from Israeli unions over the conduct of his war on Palestine, reports Andrew Casey.

Review: Songs of Solidarity

It had rock, grunge, pop and rap. The May Day union anthem song contest had everything, including an element of surprise thanks to competition winner Swarmy G.

Satire: Bono Satisfies World Hunger for Preachy Rockstars

U2's lead singer Bono has launched a daring solo mission to end the world's hunger for rock stars who use their high profiles to crap on self-righteously about charitable causes.

Poetry: Woomera

Divide and rule, that age old tactic...the lips of defence personnel inexcusably sewn to dehumanise an imaginary threat, the lives of asylum seekers incomprehensively dehumanised so as to defend a threatening image.



NEWS

► **Yarra Seamen Take Border Stand**

► **War on Terror Targets Unions**

► **Year Zero for Building Unions**

► **Kinkos Copies Anti-Union**

involved in the negotiations--most of them foreign UN advisers to Chief M Alkatiri and Foreign Minister Horta

The seminar was also told by a leading oil and gas engineer, Geoff McKe the former head of US oil company Uncoal, John Imle that it is possible a possibly less expensive to build pipelines from the gas fields of Bayu-Und and Greater Sunrise to East Timor then to Darwin. These information had made available to senior members of the United Nations Transitional Aut (UNTAET) and the East Timor Transitional Authority (ETTA) for the past t years.

At stake is \$US50.4 billion of potential tax revenue from the three oil and fields in the Timor Sea--Bayu-Undan (US\$12.4 billion), Greater Sunrise (billion) and Laminaria/Corralina (\$US2 billion). In addition, if the gas were piped onshore, it would create an estimated 4,000 jobs and billions of doll industrial spin-offs.

The MoU is largely based on the 1989 Timor Gap Treaty with Indonesia. I established a Zone of Co-operation (ZoC) to divide up the oil and gas res between Australia and Indonesia on a 50:50 split in Zone A of the ZoC. It favours Australia because it uses the continental shelf seabed boundary r than the medium-line (half way) boundary between the two coastlines.

Bayu-Undan falls inside Zone A. However only 20% of the eastern gas fie Greater Sunrise is inside Zone A--the remaining 80% is in Australia's Excl Economic Zone (EEZ)--so is the western oil field of Laminaria/Corralina.

In drafting the MoU, the medium line boundary was not applied. And to a the disadvantage of East Timor, Zone A is retained as the Joint Petroleu Development Area (JPDA). But instead of a 50:50 split, Australia agreed t increase East Timor's share to 90%. This means East Timor is entitled to of Bayu-Undan but only 18% of Greater Sunrise under the 90:10 revenue but no revenue from Laminaria/Corralina.

However, if the medium line boundary is applied--the whole of Bayu-Und would fall inside East Timor's EEZ. And if East Timor than applies the eas and western lateral boundaries, at least 80% of Greater Sunrise and 100 Laminaria/Corralina would fall inside East Timor's EEZ.

'We want the maritime boundaries between East Timor and Australia settl an independent arbitrator. After that is done, we cam discuss the formula revenue sharing,' Eusebio said.

Eusebio also refutes Foreign Minister Alexander Downer's claim that Aust has been generous to East Timor and he is correct in saying so.

The oil field of Laminaria/Corralina which should belong to East Timor ha began production--providing US\$300 million in tax revenue for Australia i and US\$350 million in 2001.

As can be seen, for the past two years a total of US\$650 million has been siphoned off from East Timor. In other words Australia's generous contrib to East Timor has been paid for by money which rightfully belongs to the as the years go by it would be East Timor contributing to Australia's coffer then the other way round--where is the generosity!

Eusebio and his colleagues are worried if the MoU is ratified, East Timor

Script

not be able to revisit points of contention at a later date.

▶ **Nike Told to Shoosh on Sweatshops**

Their concerns are shared by three eminent international law specialists-- Professor Vaughan Lowe from Oxford University, Christopher Carleton fr UK Marine Hydrographic Office and Australian barrister, Christopher War

▶ **Rapper Wins Wobbly Anthem Prize**

In a legal opinion released on 22 April 2002 they stated: 'It is important th Timor be fully advised prior to entering into any agreement that defines th limits of its rights over the seabed, even a "temporary" or provisional agre because any such agreement may materially affect East Timor's long-ter entitlement to the resources of the seas and seabed off its coasts.'

▶ **Technicians Take Aim At Canon**

The full legal opinion with a detailed map can be found on the website: www.gat.com/Timor_Site.

▶ **Unions Target Labour Hire Bidding War**

In helping to draft the MoU, UNTAET has failed in its duty of care. And in Australia has take advantage of East Timor's lack of experience and kno

▶ **Rally Targets Tight-Arse Costello**

It must not be forgotten that it was largely due to the UN's and Australia's inaction that led to over 75% of East Timor's infrastructure being destroye September 1999 by the TNI sponsored militia violence.

▶ **Councils To Be Audited On Language Allowance**

Had Ian Martin, the then UNAMET head of mission and the UN taken a to stand with Indonesia, and had Foreign Minister Downer and his Departm withheld vital information, the destruction of East Timor might have been avoided. Let's not forget Downer was still talking about 'rouge elements' Dili began to burn in early September 1999.

▶ **Scope For Payback In Privacy Limitations**

Australia and the UN must therefore make amends with East Timor by pr them with the best possible deal.

▶ **Heavyweight Push For Medibank Private To Stay Public**

HT Lee

▶ **What About Dad? - TWU**

▶ **East Timor MPs Question Timor Gap Plan**

▶ **Artists' Union Bans Voice For Peace**

▶ **Activist Notebook**


COLUMNS

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The Soapbox

Maurie on May Day

PSA supremo Maurie O'Sullivan had them in the palms of his hands when he delivered the traditional May Day Toast.

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The Locker Room

Impractical Punting

Most of life is six to five against. That is, unless you know a Packer or a Waterhouse. Phil Doyle expands.

Bosswatch

Show Me The Money!

It may be May Day - but life in the banking industry has never been sweeter - unless you're in the gambling caper.