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Submission by the East Timor *Action* Network

to the

Joint Standing Committee on Treaties of the Australian Parliament

in relation to the Committee's inquiry on

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

7 March 2017

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Introduction

The East Timor and Indonesia *Action Network* (ETAN) is a United States-based civil society organization which supports the right of the people of Timor-Leste (East Timor) to self-determination. For the last quarter-century, we have urged the U.S. and Australian governments, the United Nations and others to respect the sovereign rights of the Timorese people to establish their own nation and to define the terrestrial and maritime limits of their territory.

ETAN has long lamented Australia's refusal to cooperate in establishing a permanent maritime boundary with its northern neighbor, and we made submissions on this topic to the Joint Standing Committee on Treaties in 2002¹ and 2007.² In our 2007 submission, we wrote that

"The Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS) does not serve the people of either Australia or Timor-Leste. Australia has put its own and some oil companies' short-term financial interests over fundamental principles of democracy, the rule of law, economic justice, and respect for national sovereignty. This treaty and the way it was negotiated and ratified will only sow the seeds of long-term animosity and conflict between Australia and its neighbor to the north."

A decade later, it is now clear that this pessimistic prediction was accurate. Nevertheless, we appreciate that the Australian government has finally agreed to terminate the CMATS Treaty in its entirety, including its oppressive "gag rule" and the deceptive "zombie provisions" which could have sprung back to life after the treaty had been "terminated." Now that Canberra has begun to be more reasonable, we hope it will continue to reverse past policy and fully respect Timor-Leste's sovereignty and the rule of law.

An impartial third party should establish a boundary fair to both sides.

In 2002, ETAN urged Australian policymakers

"To base their position in any negotiations on the sea boundaries between East Timor and Australia on current international law, without consideration of the illegitimate 1989 Timor Gap Treaty between Australia and Indonesia. Agreement on sea boundaries should precede any further agreements on revenue sharing. ... [and]

"To accept international arbitration as a way to resolve these issues. The government of Australia should rejoin the maritime boundary dispute settlement mechanisms of the International Court of Justice (ICJ) and the U.N. Convention on the Law of the Sea (UNCLOS). If the Australian government truly believes in the legal legitimacy of its positions, it should not fear these neutral fora."

We continue to believe that arbitration by an impartial third party is the fairest way to decide where the boundary should be drawn. We urge Australia to return to the judicial mechanisms for resolving boundary disputes, so that the equally sovereign nations of Timor-Leste and Australia can demonstrate respect for each other and for the rule of law.

¹ <http://etan.org/news/2002a/07timoil.htm>

² <http://etan.org/news/2007/03cmats.pdf>

It is unlikely that a fair boundary can be arrived at through “confidential” negotiations between two nations as unequal as Timor-Leste and Australia. With the Timor-Leste government under political stress due to upcoming elections, and under economic stress due to the imminent depletion of its only producing oil and gas field, only a bully would drag them behind closed doors to hammer out an agreement between parties with vast disparities in oil dependency, petroleum reserves, economic resilience, political and diplomatic experience, human and material resources, and negotiating flexibility.

The predominant principle which underlies recent legal decisions on maritime boundaries is the median line, and that would be a good starting point for a just solution. However, identifying the appropriate median line between Australia and Timor-Leste is complicated by the impact of nearby small islands and the involved history of occupation, illegal and unratified treaties, and interim revenue-sharing agreements.

Although some in Australia worry that settling the maritime boundary with Timor-Leste could also involve Indonesia, this is not correct. Indonesia gave up its claim to the contested seabed east of the JPDA in Article 4 of the 1972 *Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia establishing Certain Seabed Boundaries in the Area of the Timor and Arafura Seas, Supplementary to the Agreement of 18 May 1971*. In addition, Article 3 of that Agreement makes it clear that Australia and Indonesia were uncertain about the eastern and western extents of Portuguese Timor’s maritime territory, acknowledging that the end points of the gap in the boundary line may have to be adjusted when further delimitation agreements are concluded with other governments.

Furthermore, the 1997 *Treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an Exclusive Economic Zone Boundary and Certain Seabed Boundaries* was never ratified and has no effect. In that negotiation, Australia accepted a median line water column boundary in territory then illegally occupied by Indonesia. Australia should apply the same principle to the rightful owner of the territory, the Democratic Republic of Timor-Leste.

The Timorese people place respect before money.

Timor-Leste has established one of the most transparent mechanisms in the world to manage its petroleum revenues. Its Petroleum Fund, in which it has saved most of the oil and gas income received during the last decade, is a far-seeing measure which could help bridge to the inevitable post-petroleum era.

But the bridge may not go far enough. Timor-Leste is currently one of the most petroleum-export-dependent countries in the world, and even if it receives 100% of the revenues from Greater Sunrise, this will not be enough to fund state activities for more than one generation.

Timor-Leste took a financial risk when it terminated the CMATS Treaty – a future boundary settlement could cause Dili to receive less money than the 50% upstream share of Greater Sunrise it would have gotten under CMATS. Furthermore, the dream that south coast petroleum infrastructure can drive Timor-Leste’s non-oil economy may prove illusory. However, the overwhelming desire of the Timorese people, as reflected

by their elected officials, is to settle the maritime boundary fairly according to international law, despite these risks. For them, this is about sovereignty and respect, not about money.

Justice, not charity

Some Australian people advocate that the huge differences between people's lives in Timor-Leste and Australia – in areas such as poverty, education, employment, infrastructure, nutrition, and health care – deserve compassion from Australia, which needs the oil and gas money far less than its neighbor. However, ETAN is not arguing that point. Although some governments occasionally act based on empathy, we believe that the rule of law is a more reliable foundation for policy.

We are only asking that Timor-Leste be able to complete its hard-won struggle for independence by defining its territory according to international law.

It took 23 years of brutal Indonesian occupation before Canberra recognized Timor-Leste's sovereign rights over its land; Australia has continued to occupy much of Timor-Leste's sea for 19 years since then.

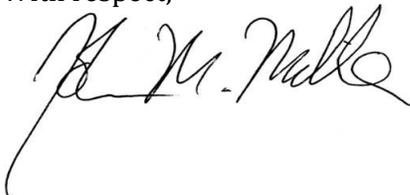
The termination of all of CMATS and the beginning of boundary talks indicate that the Australian government has finally begun to realize that it should end its occupation of the Timor Sea. We urge Canberra to enter into binding mediation or arbitration by impartial international mechanisms such as the International Court of Justice and the International Tribunal for the Law of the Sea.

In the National Interest Analysis for this inquiry, the Australian government writes that:
"Australia has committed to engage in the conciliation in good faith, reflecting our commitment to settle disputes peacefully and consistently with international law, including UNCLOS."

Please extend that laudable commitment beyond the conciliation and apply it to the entire process of settling the maritime boundary between Australia and Timor-Leste.

Thank you for our consideration, and we would be happy to provide additional information or to answer any questions.

With respect,



John M. Miller
National Coordinator