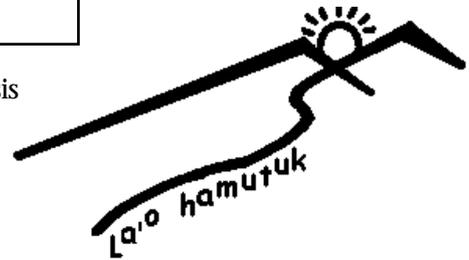


La'o Hamutuk

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

from the
East Timor Institute for Reconstruction Monitoring and Analysis
Adriano do Nascimento, Timor Sea Project Coordinator
(authorized by the Institute)

regarding the
Timor Sea Treaty
between the Government of Australia and the Government of East Timor
and the related Exchange of Notes, done at Dili on 20 May 2002

to
Paul McMahon, Committee Secretary
Joint Standing Committee on Treaties
Department of House of Representatives, Parliament House
Canberra ACT 2600 Australia
Phone: +61 2 6277 4002, Fax: +61 2 6277 4827, email: jsct@aph.gov.au

31 July 2002

Dear Honourable Members of the Parliament of Australia,

The East Timor Institute for Reconstruction Monitoring and Analysis hereby submits information to your Committee for consideration as you discuss the Timor Sea Treaty between Australia and East Timor. 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 new neighbour to the north, in addition to your own national interest, as you consider ratification of the treaty.

Summary of Submission

- Introduction of our organization
- The treaty should not be ratified in the current form.
- The revised treaty should encourage expeditious resolution of the seabed boundaries, with revenues from disputed areas placed in escrow until the boundaries are agreed.
- Australia's support for East Timor is recent, and East Timor cannot take it for granted.

- The rule of law should be practiced as well as preached, otherwise the strong will take advantage of the weak.
- East Timor and Australia's future security depends on a fairer treaty.

Introduction of our organization

The East Timor Institute for Reconstruction Monitoring and Analysis is a joint East Timorese-international non-governmental organization formed in Dili, East Timor, in April 2000. We are commonly known as *La'o Hamutuk* ("walking together") and we strive to improve understanding between East Timorese civil society and the many international organizations and institutions which are active in this country. In our publications, radio program, and web site we have analysed and reported on many aspects of the Timor Sea oil and gas issue. We are a founding member of the civil society Independent Information Centre for the Timor Sea (CCITT), and work closely with a wide range of people and organizations from throughout East Timor and around the world, drawing on their experience and expertise to inform our analysis and reporting.

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 East Timor's welfare, together with Australia's, as you discuss ratification of this treaty. Our submission discusses issues important to both countries. We would be grateful for the opportunity to engage in dialogue with your committee, and request you hold a public hearing in East Timor to take testimony from and ask questions of some of the many East Timorese who see this as a critically important issue for our new country's future.

The treaty should not be ratified in its current form.

We are encouraging both the Australian and the East Timorese parliaments not to ratify the treaty that was signed in Dili on 20 May 2002 by Prime Ministers John Howard and Mari Alkatiri. We believe that the treaty was negotiated too hastily, 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 Standing Committee to ask the Australian government to re-enter negotiations with the government of East Timor, with the goal of quickly arriving at a revised agreement which better protects the interests of both Australia and East Timor.

The Exchange of Notes from 20 May provides sufficient legal basis for development to continue without being interrupted or delayed even if renegotiating the treaty takes some time. This was also the situation during the transitional period. In any case, there are outstanding fiscal, tax and other issues which are not covered even by the currently proposed treaty. We are also concerned that there are no guarantees that East Timor will receive its share of employment, downstream benefits, and other income which will come from the oil and gas development. We do not want to rely forever on handouts and revenues from our resources, but also to develop the jobs, skills, workforce and infrastructure that will help us be truly independent and self-sufficient.

We hope that a renegotiated treaty, supplemental amendments, or another exchange of notes, will include adequate protection of East Timor's sovereignty, boundaries, environment, democracy and economic interests. The current document results from undue pressure by a

large, established, developed nation against a small, brand-new, underdeveloped country. Frankly, we are shocked that a country with the democratic and legal traditions of Australia would abandon fairness and the rule of law to coerce our Prime Minister to sign an unfair agreement within hours of our becoming independent.

The revised treaty should encourage expeditious resolution of the seabed boundaries.

Under the current proposed agreement, Australia has no incentive to enter negotiations to determine the seabed boundaries between Australia and East Timor. As you know, there has never been a boundary delimitation between our two countries. We believe that it is important for our relationship to define our economic zones expeditiously. Furthermore, we are concerned that the revenues from the gas and oil may be exhausted, with Australia receiving far more than its legal share, before the boundaries are resolved. Since the Treaty (Article 22) anticipates it could take more than 30 years to delimit the boundaries, our concern is well-founded.

Consequently, we are suggesting that revenues from oil and gas fields which are within East Timor's Exclusive Economic Zone under Law of the Sea principles (that is, which lie north of the median line between the two countries and within 200 nm of East Timor's shoreline), but which are assigned to Australia by the interim JPDA boundaries in the 20 May treaty, be placed in escrow until the boundaries are determined.

The entire Joint Petroleum Development Area (JPDA) lies north of the median line, so all of its revenues belong to East Timor under international law. The 10% which would go to Australia under the proposed Timor Sea Treaty should go into trust. More importantly, the Laminaria-Corralina, Buffalo, Bluff, Buller and Greater Sunrise oil and gas fields are north of the median line and lie within East Timor's Exclusive Economic Zone under United Nations Convention on the Law of the Sea (UNCLOS) principles. Since settlement of the boundaries could award some or all of the revenues from this field to either of our countries, the revenues from these fields should also be put in trust. By safeguarding the revenues in this way, both countries can be assured that their rights are protected, and that both sides will make good-faith efforts to agree on maritime boundaries expeditiously.

We are also concerned that the unitisation agreement ("Annex E") for Greater Sunrise does not provide sufficient protection that the percentages will be changed, either for the future or retroactively, after the boundaries are decided. It divides the revenues 18.1% (90% of 20.1%) for our country and 81.9% for yours, which is approximately based on the portion of the gas field which lies inside the JPDA. The JPDA border is a historical artefact with no relevance for East Timor's maritime boundaries. When those boundaries are agreed, they will almost certainly be in a different place than the current JPDA. The agreement on Sunrise unitisation must ensure that the percentage division between our two countries will be adjusted to be consistent with the boundaries, and that revenues collected both before and after settling the boundaries are apportioned between our countries as the location of the boundary would dictate, regardless of the illegitimate history of the ZOCA and JPDA borders. The agreement should also state that settlement of the boundaries will take precedence over the current inherited JPDA borders.

Many people here see Australia's continued release of exploration permits in contested areas adjacent to the JPDA as an indication of Australia's true motives.

Australia's recent support for East Timor has not always been the case.

Since 1999, the Australian government has supported East Timor's political and human rights, and we appreciate that. We are grateful to John Howard and Alexander Downer for encouraging Indonesian President Habibie to allow our people to vote on self-determination, and we are grateful for Australia's leadership of InterFET and your continuing military and economic aid to guarantee East Timor's transition to independence.

But we are not confident that support from our neighbour to the south will persist indefinitely. We have not forgotten Australia's abandonment of our people to Japanese occupation in 1942, your government's encouragement of Indonesia's invasion of our country in 1975, and your support for Indonesia's bloody occupation of East Timor for more than twenty years, as recently confirmed by releases of official documents and the Senate Inquiry.

We are particularly troubled when we recall Australia's negotiation, signature and ratification of the illegal 1989 Timor Gap Treaty with Indonesia, which implemented a bilateral agreement to steal resources which rightfully belonged to our people. When we recall the Australian government's 1975 claim that an independent East Timor would not be economically viable, which was used as a reason for Australia to support Indonesia's invasion of our country, our anxiety increases.

Australian humanitarian aid for East Timor since 1999 has been generous, amounting to nearly A\$200 million, and your contribution to InterFET and PKF may be as much as A\$2 billion. But this amount pales in comparison with the more than A\$40 billion in government revenues which will result from the oil and gas fields north of the median line between our two countries. Under the proposed treaty, more than half of these revenues – which belong to East Timor under international law – would be taken by Australia.

If this treaty is implemented but the boundaries are not resolved expeditiously, Australia will be stealing dozens of times as much from East Timor in oil and gas revenues than you have given us in aid and military support. In fact, from 1999 to 2001, Australia received revenues from the relatively small Laminaria-Corallina oil field (which is in East Timorese territory under international law) which are more than three times the cost of Australian humanitarian aid to East Timor during the same period. And since 1989, during the Indonesian occupation and the UN transition period, Australia received more than A\$1 billion additional from the JPDA alone.

Although East Timor is now politically independent, it appears that Australia is trying to achieve by one-sided negotiation and defiance of international law what Indonesia could not accomplish by brutal military occupation.

We are confident that the Australian people, through their elected Parliament and the Joint Standing Committee on Treaties, do not support this blatant grab of our new nation's heritage, and we urge your government to return to the law-abiding community of nations by reinstating cooperation with UNCLOS and ICJ processes for settling maritime boundary disputes. We encourage you to give East Timor confidence that Australia intends to negotiate these boundaries in good faith by placing the disputed revenues in escrow until they are resolved.

The rule of law should be practiced as well as preached.

For more than four centuries, East Timor has been ruled by foreign powers, under autocratic, corrupt regimes that violated our human and political rights for their own political, economic and personal purposes. We struggled against Portuguese colonialism and Indonesian

occupation so that we could govern ourselves in a fair, just and democratic manner. We strived to overcome corruption, collusion, nepotism, repression, arbitrary power, and the use of public resources for private gain.

Now that we have achieved our political freedom and independence, we are learning to follow constitutional, democratic procedures in the relationship between our government and our people. Primary among these is the rule of law – that government consistently applies certain principles which have been agreed upon by the society as a whole, through their elected representatives. No individual's greed is allowed to transgress these principles, regardless of how much power they have, where they were born, or who they are related to. Although we have long believed in the rule of law, we have never been able to practice it until now.

Throughout history, strong, powerful, rich countries have often used their power to unfairly exploit poor countries and steal their resources. We know this only too well from our own experience. But in recent years, with the rise of political freedom and the decline of colonial empires, nations have committed themselves to prevent such exploitation in the future. By relying on international conventions and treaties, all peoples should expect to be treated fairly. The same rules are supposed to apply to the large and the small, the rich and the poor, the white and the black. This legal protection is especially important to countries like East Timor, with little experience in self-government and almost no capability to influence our larger and more powerful neighbours. Although Australia and East Timor now sit at the negotiating table as two sovereign governments, there is still an imbalance of negotiating flexibility, economic power, financial expertise and diplomatic experience.

Australia and others in the international community consistently encourage East Timor's new government to implement democracy, the rule of law, transparency and safeguards against corruption as we develop our governmental structures and practices. We appreciate that encouragement. At the same time, Australia is not practicing what you are preaching. When your country withdrew from legal processes for resolving maritime boundary disputes, you taught us the opposite message – that when the booty is large enough, the legal principles go out the window.

Your government's National Interest Analysis on withdrawal from UNCLOS arbitration, given to this committee on 18 June, says the same thing in more polished language:

“This action was not made public prior to it being taken to ensure the effectiveness of the declaration was maintained. Public knowledge of the proposed action could have led other countries to pre-empt the declaration by commencing an action against Australia in relation to sea boundary delimitation that could not be made once the declaration under article 298(1)(a) of UNCLOS was made.”

In other words, your government acted secretly and urgently to prevent East Timor from utilizing our rights under international law.

The NIA goes on to say:

“The Government's view is that maritime boundary disputes are best resolved through negotiation, not litigation. ... Compared to other countries, Australia, as an island continent, has some of the longest maritime boundaries in the world. It has maritime boundaries with many countries and the Government is concerned that every endeavour should be made to reach an agreed resolution of any maritime boundary disputes through peaceful negotiation.”

In other words, the imbalance in negotiating power between Australia and East Timor should be exploited fully to advance Australia's economic interests. East Timor should have no recourse to the rule of law.

Australia's withdrawal from the compulsory dispute resolution mechanisms of UNCLOS and the ICJ may prevent us from receiving the guidance and rulings of internationally recognised avenues for reaching an arbitrated settlement if negotiations cannot reach agreement. This is the first time since 1975 that Australia has limited the jurisdiction you accept from the International Court of Justice. We encourage Australia to reinstate your willingness to accept all avenues which international law provides for countries to peacefully resolve boundary issues.

Australia's lesson in *realpolitik* will help East Timor learn that international relations is a cold, cruel world, where actions speak louder than words and greed is more important than principle. But the economic and political cost to our people is unacceptably high.

East Timor and Australia's future security depends on a fairer treaty.

East Timor's future stability and survival as a democracy, as well as the ability of our people to achieve a tolerable standard of living and public services, depends on the money from the oil and gas resources. Although the Timor Sea disputed area contains virtually all of East Timor's potential exportable resources, Australia has four times as much oil and gas elsewhere, in territory which is unquestionably Australian under international law. Do you want to steal our future to fatten your wallet?

As you know, our new nation is just beginning to recover from a quarter-century of brutal Indonesian military occupation, climaxed by the massive destruction of "Black September" 1999 which ended when Australia and InterFET finally came to our support. We are creating our democratic institutions, our infrastructure, our social services and our economy from virtually zero. East Timor currently relies on international donors for survival, an unhealthy and short-term situation. We depend on our natural resources – particularly our oil and gas – to provide the means to build our nation and provide for our people.

Australia, working in concert with the oil companies, has exploited our current precarious situation to force East Timor to sign an treaty which jeopardizes our economic and territorial rights.

At present, 40% of the JPDA revenues that Australia accepts as belonging to East Timor being held in escrow, effectively as ransom to pressure our country to ratify the 20 May Treaty. We see this as unjustifiable coercion, exacerbating the imbalance that already exists between our two countries. We ask Australia to release this money, so that East Timor will be less dependent on aid in this critical period. Both countries have agreed that East Timor is entitled to 90% (not only 50%) of the JPDA revenues, and this agreement should apply to revenues not only since 5 July 2001, but actually to all revenues from the JPDA since 1989. A reasonable compromise could be to begin the 90% share for East Timor as beginning when we voted for independence in August 1999, a process recognized by both Australia and Indonesia.

We believe that the era of empire and colonisation is over – and we encourage Australia to bring its conduct into line with 21st century ideas of national and human rights and ethical behaviour.

Around the world, the phenomenon of "failed states" is growing, with horrendous consequences for the citizens of these nations. Their neighbours also feel the impact, as they

cope with floods of refugees, providing life-saving emergency assistance, and the need for humanitarian military intervention.

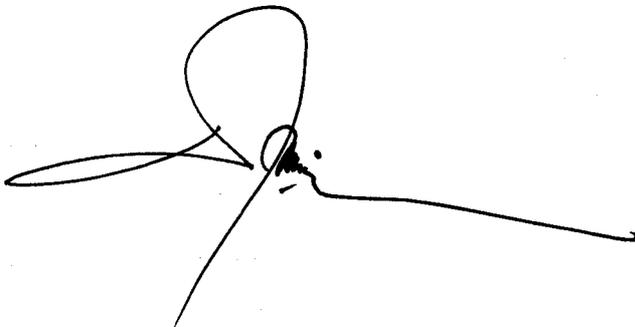
We are confident that the Australian Parliament does not want East Timor to fail – that you understand the disaster this would be for both our countries. But without economic security, and without the ability to rely on the rule of law both within our country and internationally, this is a serious risk.

East Timor is a new nation, developing our economy and democratic traditions. We have much to learn from Australia's long and rich heritage of freedom, democracy and economic development. But we also see, as both the 1989 Timor Gap Treaty and the 2002 Timor Sea Treaty demonstrate, that lust for money, especially when the prize is large enough, can override legal and democratic principles.

Please help East Timor enter the community of law-abiding nations, and return Australia to that community. And please help ensure our economic and democratic development, as well as the hard-won sovereignty of our boundaries. We place our trust in the people of Australia, and in this Joint Committee, and are confident that ethical practices and the rule of law will place limitations on greed and power. That is the best way to initiate a mutually prosperous and friendly relationship between two democratic nations on both sides of the Timor Sea.

Thank you very much for your consideration, and we look forward to the opportunity to discuss these issues in more detail with your Joint Standing Committee as you continue to deliberate this complex and difficult question.

For further information or questions, contact:

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