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Submission to the Australian Parliament

from the

Timor-Leste Institute for Development Monitoring and Analysis

to

Foreign Affairs Sub-Committee

Joint Standing Committee on Foreign Affairs, Defence and Trade

Parliament House, Canberra Australia

regarding the Inquiry into

Australia's relationship with Timor-Leste

28 March 2013

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Summary

- Our relationship should be based on mutual respect for sovereign and human rights.
- Timor-Leste's proximity to Australia is an opportunity, not a risk.
- We appreciate Australian support since 1999, but history still haunts our peoples, as does Australia's continued theft of Timor-Leste's oil and gas resources.
- Australia's generous assistance can meet our people's needs more effectively by prioritizing human security and reducing unnecessary overhead.
- Timor-Leste and Australia should settle our maritime boundary based on current international law and good-faith arbitration or negotiation, including use of legal processes.
- Australian military forces should be more forthcoming and accountable when their activities here injured or killed Timor-Leste citizens.
- Ties between our peoples provide good examples for better links between our states.

Introduction

La'o Hamutuk/Walking Together, the Timor-Leste Institute for Development Monitoring and Analysis, is a Timor-Leste civil society organization which started in 2000. We analyse, monitor, publish and advocate regarding programmes and policies of Timor-Leste's government, development partners and multilateral agencies. Through this work, we try to help all Timor-Leste's people – women and men, current and future generations – to participate in sustainable, just, inclusive and transparent development which respects human rights and people's cultures.

We appreciate the opportunity to offer this submission as part of your inquiry into the relationship between our nation and yours. We hope that our information and concerns will help you understand our relationship better, so that it can be more equitable and fair for both of our countries. We are optimistic that your report will strengthen bilateral relations based on mutual respect, to improve the lives of both of our peoples.

Australia is in Timor-Leste's strategic neighbourhood.

Timor-Leste is a new and small nation, very close to Australia, with the worst poverty in the region. During the past decade, we have established good relations with our valued and important neighbour to the south. We believe that our nations will both benefit when our bond is based on equality, including full recognition of each other's people, rights and national sovereignty.

Timor-Leste can be an economic and political doorway for Australia into Southeast Asia, as we border Indonesia and will soon join ASEAN. We encourage Australia to see Timor-Leste as a strategic partner, and to consider our proximity as an opportunity rather than a security risk. Some Australians see Timor-Leste is a potential transit point for refugees and "illegal" immigrants, but there is much more to our country than that.

This submission would not represent Timorese perspectives if we failed to remind you that most Timorese people remain acutely aware of Australia's chequered history with regard to our people. We appreciate that Australian and Timorese people supported each other during World War II, although we wonder if Japan would have invaded Timor-Leste (at the cost of more than 40,000 Timorese lives) if Australian soldiers had not come first.¹ We appreciate our friendly relationship during most of the Portuguese colonial period, and your stalwart support since 1999.

However, we cannot forget Australia's diplomatic support for Indonesia's illegal invasion in 1975 and your legal recognition and profit-seeking from their 24-year-long bloody occupation of our country, and we sometimes wonder if current Australian diplomatic intransigence regarding Timor-Leste's oil and gas resources has its roots in that less legal period.²

¹ See paragraphs 23-24 of Chapter 3 of *Chega!*, the final report of Timor-Leste's Commission for Truth, Reception and Reconciliation, available at <http://www.cavr-timorleste.org/chegaFiles/finalReportEng/03-History-of-the-Conflict.pdf>

² *Ibid.*, Chapter 3, paragraphs 61, 70, 125-130, 143, 218, 225-226, 255, 279, 295, 338, 468, 486, 499-501, 544-547 and others.

Australia is a key partner for Timor-Leste.

After we voted to end the Indonesian occupation, Australia took on key responsibilities in INTERFET, helping us emerge from a quarter-century of violent, illegal Indonesian rule. During our political-military crisis in 2006, Australia led the International Stabilisation Force (ISF) to help us calm tensions, creating the peaceful environment we enjoy today.

In addition, Australia has been a key development partner for Timor-Leste. Although other development partners have been reducing their support since 2002, Australia continues as our largest donor. Currently, Australia contributes about \$100 million to Timor-Leste every year.

La'o Hamutuk is grateful for many Australian programs. Programs in areas like water supply, scholarships, support for civil society and volunteers support our people's needs. Most Timorese people live in poverty, without access to running water, with inadequate food, education and health care. We hope that your aid will continue in the future, to help Timor-Leste's people achieve the quality of life that every human being deserves.

Although we appreciate Australia's support, we would like to suggest improvements to make it more effective. Australia has prioritized the "justice" and "security" sectors: courts, military and police. We feel that future assistance should give higher priority to social justice and human security, to address problems of hunger, education, poverty, and preventable disease, thereby improving the lives of our people.

Timor-Leste has reduced child mortality, but proportionally ten times as many children under five still die in Timor-Leste as in Australia. These unnecessarily truncated lives – approximately 1,500 every year – are victims of inferior health care, malnutrition, inadequate water and sanitation, difficulty reaching health centres, lack of parental awareness and poverty. We encourage Australia to give more attention to these sectors. Australian support for "security" – enhancing the ability of armed women and men to intimidate everyone else into behaving – can help reduce the approximately 70 Timorese people killed by violence every year, but it does not address the more urgent needs of most of our people.

In addition, Australian aid dollars often go to Australian companies, organizations and consultants, rather than helping Timorese people. We see much of your taxpayers' money paying companies and agencies which administer or implement the programs, salaries for international advisors, and other overhead which reduces the amount available to improve lives. We know that many Australian citizens share these concerns, and hope you are able to address them.³

Finally, we would like to remind you that total Australian assistance to Timor-Leste has been far less than the money Australia has received from oil and gas fields which belong to Timor-Leste under current international legal principles. Between 1999 and 2012, the Commonwealth Government collected more than \$2 billion from the Laminaria-Corallina

³ In 2009, La'o Hamutuk estimated that less than 11% of \$5.2 billion in global assistance "to" Timor-Leste during the previous decade had entered into our country – see <http://www.laohamutuk.org/reports/09bgnd/HowMuchAidEn.pdf>. We do not have current or specific data for Australian aid, but encourage your Inquiry to obtain this information.

oil field⁴ which Indonesia illegally signed over to Australia, as well as approximately \$1.6 billion from the 10% of Bayu-Undan, Kitan and Elang-Kakatua upstream revenues you secured under the 2002 Timor Sea Treaty we signed on our first day of sovereignty.

Australia should be willing to fairly resolve our common boundary.

Since restoring independence in 2002, Timor-Leste has created our state and built infrastructure and economy to replace what Indonesia destroyed in 1999. Compared with Australia, we have very few human and natural resources, including oil and gas. However, the petroleum reserves under our part of the Timor Sea are essential to improving the lives of our people, and give us a little time to develop a more sustainable, less import-dependent, non-oil economy. At present, they underwrite about 95% of Timor-Leste's state income and comprise two-thirds of our entire economy.

Unfortunately, these limited resources are being purloined by our larger, wealthier neighbour. How can we build better lives for our people while we allow Australia to pocket much of our wealth from Laminaria-Corallina, Sunrise, Bayu-Undan and Kitan?

Under well-established current international legal principles, the maritime boundary between our nations should be drawn along the median line between our coastlines. Australia accepted this principle in your July 2004 treaty with New Zealand, as well as in your March 1997 treaty with Indonesia. For those neighbours, Australia moved beyond the obsolete "continental shelf" argument to accept current global practice. We ask that you do the same with Timor-Leste.

Geologists agree that the tectonic boundary between Australia and Asia is north of our island – that is, that Timor-Leste and Australia are on the same continental shelf. International lawyers agree that the "Timor Trough" is not an economic, political or geographic boundary. When will Australian politicians join this consensus?

The Democratic Republic of Timor-Leste has the same political and sovereign rights as the larger, more affluent, older Commonwealth of Australia. But history shows that our southern neighbour has repeatedly taken advantage – both during and after the Indonesian occupation – to usurp what is rightfully ours.

In March 2002, less than two months before Timor-Leste restored independence, Australia declared that you would no longer abide by impartial legal mechanisms – the International Court of Justice and the International Tribunal for the Law of the Sea – to settle boundaries fairly.⁵ Only hours after we attained nationhood, you used our necessity for Bayu-Undan revenues to coerce us into signing the Timor Sea Treaty, and then refused to ratify that treaty until our Government signed the Sunrise IUA. Three years later, through the CMATS Treaty, you blocked all discussion of the maritime

⁴ See http://www.laohamutuk.org/Oil/Boundary/laminaria_revenues.htm

⁵ See Declarations dated 21 March 2002, available at <http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3&code=AU> and http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm#Australia%20after%20ratification. The National Interest Analyses explain that these actions were taken without Parliamentary notification to prevent "other countries" from using these legal mechanisms.

boundary question in return for taking “only” 50% of Timor-Leste’s rightful upstream revenues from Greater Sunrise.⁶

We realize that our perception of this history may be different from yours. But we cannot understand why the democratic nation of Australia, which respects human rights and rule of law for its own citizens, is unwilling to apply those principles to its northern neighbour. Is Australia so afraid of a fair boundary settlement that you would rather be a bully than a good international citizen? Why do you continue to exploit advantages you obtained during the shameful and bloody Indonesian occupation of our country?

We urge you to return to UN mechanisms for resolving maritime boundary disputes. Please respect our legal rights, as your equally sovereign neighbour, and allow an impartial third party to resolve our differences. Article 33 of the United Nations Charter says *“The parties to any dispute ... shall ... seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”* As a member of the UN Security Council, Australia should take the path of legality and mutual respect by engaging in good faith negotiations and dispute resolution processes to decide our maritime boundary.

Once that is done, controversies over Sunrise development and other Timor Sea issues will be much easier to work out.

Australian money pays for many trainers, advisors and consultants to build Timorese capacity and systems for a democratic state governed under the rule of law. Should we ask some of them to go to Canberra to help your Government relearn these principles?

The ISF should be more accountable.

In September 1999, the InterFET peacekeeping force entered Timor-Leste under a UN mandate, securing the territory and handing it over to UNTAET. Although InterFET had its shortcomings, it played an important role in stabilising Timor-Leste. Well-trained and well-disciplined Australian troops provided a clear contrast to the Indonesian military.

In 2006, our Government requested international assistance to avert imminent breakdown of law and order. Australian troops again deployed to Timor-Leste as part of an International Stabilisation Force (ISF), helping to control the situation. Although many Timor-Leste citizens believe ISF could have left in 2008, the force finally withdrew two months ago, following a second round of successful elections. La’o Hamutuk monitored some ISF activities, occasionally engaging with Australian officials.

In August 2010, the Australian Department of Defence admitted that since 2008, Australian ISF soldiers had been in nine vehicle crashes in which civilians were injured.⁷

⁶ La’o Hamutuk has made three submissions to the Joint Standing Committee on Treaties, which are available at <http://www.laohamutuk.org/Oil/Boundary/jsc1lh.html> (2002), <http://www.laohamutuk.org/Oil/Sunrise/LH%201UA%20submission.pdf> (2003) and <http://www.laohamutuk.org/Oil/Boundary/JSC/07LHtoAusJSCTreCMATS.htm> (2007).

⁷ *Sydney Morning Herald*, 6 August 2010, <http://www.smh.com.au/world/army-refuses-to-pay-crash-victims-20100805-11kqj.html>

Unfortunately, the Status of Forces Arrangement between Timor-Leste and Australia exempted ISF personnel from Timor-Leste laws and judicial systems, and the ISF was not under UN jurisdiction. Timor-Leste citizens had no venue for effective action to resolve complaints against ISF.

The Australian Department of Defence has not provided information about incidents that injured Timor-Leste people. Indeed, in the case of a horrific crash on 23 May 2009 that severely injured two brothers (Adelino Madeira, a 33-year-old schoolteacher and father of two, and 38-year-old Lourenco Madeira, a farmer with four children), the Department withheld all details from the public until an Australian journalist asked questions. It was later revealed that the Australian army vehicle had collided with the brothers' motorcycle so hard that both needed hospitalization; their injuries have permanently limited their ability to work.⁸ They later each received \$US1,500 from Timor-Leste, but nothing from Australia. Australia's Department of Defence continues to refuse to say whether Adelino and Lourenco were given an apology or a formal report of what had happened.

La'o Hamutuk discussed other cases in our 2008 Submission to your Committee's Inquiry into Human Rights Mechanisms and the Asia-Pacific,⁹ including a father who was killed when an ISF truck collided with his motorcycle in August 2007. Five years later, no formal apology or compensation has been forthcoming. In another case, the family of an elderly woman pedestrian killed by an Australian military vehicle in December 2009 received mixed messages (as did your Parliament) and confused compensation.¹⁰ Unfortunately, this has been the pattern for nearly all Timorese injured or killed by ISF weapons or vehicles.

Australia's Department of Defence should provide full details of all incidents involving its personnel that injured or killed Timor-Leste people, including details about cause of injury, outcome of investigation, any apology made or compensation paid. Even though ISF has now come home, many cases are unresolved and should be addressed promptly.

People to people links

As you know, the peoples of Timor-Leste and Australia have long been good partners. Our people supported Australian soldiers during the Second World War, and many Australian people were in solidarity with Timor-Leste during our struggle against the illegal Indonesian occupation (even though your Governments were not until the end).

Today, many Australian localities continue to support our communities, such as the cooperation between people in Mornington Peninsula Shire and Lautem District. Timorese and Australian universities often exchange people and ideas, and Australian volunteers, through AVI and various non-governmental initiatives, provide important

⁸ For one example where Commonwealth Government action stopped inappropriate ADF activity, see <http://www.laohamutuk.org/Justice/ISF/10SoldiersPolitics.htm>. However, the Commander of the Australian Defence Force provided inaccurate testimony to your Parliament, as described on this web page.

⁹ Available at <http://www.laohamutuk.org/Justice/08LHSubOz.pdf>. See also our 2010 letter to the ADF, at <http://www.laohamutuk.org/Justice/ISF/LHtoHouston8Mar10.pdf>

¹⁰ The Age, 4 May 2010, <http://www.theage.com.au/national/defence-flip-on-timor-death-20100503-u3uv.html>

support and assistance. These exemplary connections between our people and our nations enhance understanding and respect for each other's cultural and social values.

Therefore, we expect that the Australian Parliament and Government will follow these models, seeing the ties between our peoples as examples of the sort of mutually beneficial, equal, respectful relationship that we should build between our states.

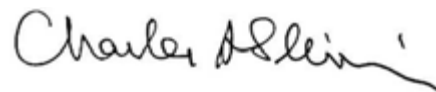
We are happy to answer any questions or provide additional information regarding issues discussed in this submission, and would welcome the chance to appear in person before your Sub-Committee.

This submission is authorized by our organization, including for publication.

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