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## Istoria badak no Estatuta Tasi Timor

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### **Istoria badak no Estatuta Tasi Timor**

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#### *Introdusaun*

Iha fulan hirak nia laran, asuntu Tasi Timor mosu no domina fali ona notisia sira iha rai laran no iha Australia. Notisia sira iha rai laran, partikularmente, foka ba Tratadu ikus liu nian mak *Certain Maritime Arrangements in the Timor Sea (CMATS)*. Dala barak, tuir hau nia observasaun, iha komprensaun ne'ebé dala ruma la los, no la kompletu kona ba prosesu ida ne'e no hamosu konfuzsaun barak iha públiku. Iha tempu hanesan, mosu mos pergunta barak iha públiku kona prosesu ida ne'e. La'o Hamutuk rasik, ONG ida ne'ebé fo analiza komprensivu kona ba asuntu ida ne'e *update* informasaun kona ba prosesu tomak ne'ebé akontese iha tinan ida nia laran liu hosi sira nia pajina Website <http://laohamutuk.org/Oil/Boundary/CMATSindex.htm>. Iha loraon 10 fulan Marsu 2014, Tom Clarke husi ONG Timor Sea Justice Campaign iha Australia hakerek artigu ho titulu "*Timor's Oil*" ne'ebé publika iha <http://rightnow.org.au/writing-cat/article/timors-oil/> lori fo deskrisaun istóriku ida kona ba prosesu ne'e. Iha media internasional, iha ona artigu lubuk ida ne'ebé hakerek fo deskrisaun kona ba oinsa prosesu lao too agora, maibé barak liu hare hosi perspetiva Australia nian. Infelizmente, iha Timor-Leste rasik, diskusaun no komentariu sira ne'ebé iha tendensia atu hare hosi perspetiva ida deit, falta de deskrisaun klaru kona ba oinsa prosesu too agora, no tratadu hira ne'ebé asina ona nem mensiona. Iha âmbito diskusaun ida ne'e, hau hakerek artigu ida ne'e lori bolu fila fali ita nia memoria kona ba saidak mak akontese ona durante tinan 40 nia laran.

*Hosi Tratadu Timor Gap to'o Tratadu CMATS: Deskrisaun Istoria ida*

Koalia kona ba asuntu Tasi Timor, nu'udar essensia ida atu ita hotu tau ba konsiderasaun katak prosesu

ida ne'e komplexu tanba riku soi mina no razaun geo-strategis seluk. Segundu, iha prosesu atu hetan solusaun ba Tasi Timor, iha ona tratadu lubuk ida ne'ebé mosu, komesa hosi kona ba fronteira tasi okos – *Seabad Boundary* – entre Australia no Indonezia to'o CMATS, entre Australia no Timor-Leste. Tanba ne'e, ita sei la bele komprende CMATS ho komprensivu, se ita la komprende tratadu sira ne'ebé antes ne'e asina ona, hanesan Tratadu Timor Gap, Tratadu Tasi Timor, Akordo Unitizasaun Internasional, no CMATS no oinsa tratadu sira ne'e impaktu ba fronteira maritima entre país rua. Terseiru, atu komprende CMATS, ita presiza komprende kontextu ida ne'ebé mak CMATS asina, no nia impaktu ba kestaun Fronteira Maritima. Parte ida ne'e fornese deskrisaun badak kona ba prosesu ida ne'e, foka partikularmente ba Tratadu sira asina ona.

Dezde 1970 e tal too agora, iha ona akordu lubuk ida ne'ebé mak Indonezia, Australia no Timor-Leste asina lori regulariza no rezolve problema Tasi Timor. Em jeral, akordu sira ne'e la fo solusaun permanente ba Fronteira Maritima entre Timor-Leste no Australia. Primeiru mak iha tinan 1972, Governu Indonezia no Australia hetan Akordu kona ba Fronteira Tasi Okos – *Seabad Boundary Agreement*. Akordu ida ne'e bazeia ba prinsipiu *Continental Shelf*, ne'ebé em vigor iha tempu ne'eba. Australia rasik to'o agora, sei prefere prinsipiu ida ne'e tanba favorese liu Australia nia pozisaun. Portugal ne'ebé sai nu'udar administrador kolonial iha tempu ne'eba la hola parte iha negosiasaun ida ne'e tanba prosesu ba UNCLOS la'o hela iha tempu ne'eba. Ho nune'e, ba Portugal, diak liu hein liu internasional mak defini duke liu hosi prosesu negosiasaun. Tanba Portugal la partisipa, espasu ida iha Tasi Timor la rezolvidu. Espasu ida ne'e mak ikus mai hanaran "Timor Gap."

Depois Indonezia invade Timor-Leste iha 1975, no iha 1979, komesa negosia kona ba Timor Gap. Depois tinan sanulu negosiasaun, iha 1989, Australia ho Indonezia asina Tratadu Timor Gap. Ba Timor, importante katak Tratadu Timor Gap estabese Zona Kooperasaun – *Zone of Cooperation (ZOCA)* entre país rua; zona ida ne'e ikus mai hanaran JPDA. Bazeia ba Tratadu Timor Gap, Australia ho Indonezia fahe rendimentu hosi ZOCA hanesan; 50-50. Iha razaun polítika relasiona ho okupasaun Indonesia nian iha Timor mak sai hanesan fundasaun ba iha akordu ida ne'e. Hanesan autor barak hakerek ona, ho akordu ida ne'e, Australia hetan benefisiu komersial, no Indonezia hetan rekoñesementu ba ninia okupasaun illegal iha Timor-Leste.

Depois administrasaun Indonezia nian remata iha 1999, iha loron 10 de Fevereiro 2000, UNTAET ne'ebé administra Timor-Leste durante periodu tranzisaun asina Nota Intendimentu – *Memorandum of Understanding* – ida ho Australia lori kontinua fali akordu Timor Gap. Em prinsipiu, laiha mudansa iha Nota Intendimentu ne'e. Buat ne'ebé muda mak naran Indonezia troka de'it ho Timor-Leste. Iha 5 de Julu, 2001, Untaet hamutuk ho Dr. Mari Alkatiri asina Aranjamentu Tasi Timor – *Timor Sea Arrangement* – ho Australia hodi troka Nota Intendimentu antes ne'e. Laiha mudansa ba buat seluk; Aranjamentu ida ne'e aumeta Timor-Leste nia rendimentu hosi 50 ba 90 hosi rendimentu *upstream* nian, no husik. Katak invece de 50-50. Ho aranjamentu ida ne'e, Timor-Leste sei hetan 90% no Australia hetan 10% hosi JPDA. Akordu rua ne'e nonok kona-ba area ne'ebé la tama iha JPDA, hanesan Laminaria-Corallina, ne'ebé to'o agora Australia hetan tokon \$200 kada tinan. Iha

Antes Timor-Leste restora fali ninia independensia, iha 21 de Marsu, 2002, Australia dada an sai hosi prosesu internasinál atu rezolve fronteira Maritima nian, UNCLOS. Ida ne'e taka dalan ba parte rua atu uza mekanizmu internasional lori rezolve Fronteira Maritima.

Iha 20 de Maiu 2002, wainhira Timor-Leste restora tia ninia independensia, Timor-Leste no Australia asina Tratadu Tasi Timor. Provizaun importante balu ne'ebé presiza deskreve iha ne'e. Primeiru, artigu (4) hosi Tratadu Tasi Timor kontinua ho fahe rendimentu 90 – 10. Segundu, Tratadu ne'e mos estabese *Timor Sea Designated Authority (TSDA)* ne'ebé ikus mai transforma ba ANP. No Terseiru, artigu (22) defini kona ba durasaun Tratadu ida ne'e, ne'ebé atu too tinan 30. Artigu ida ne'e mos garantia

kompañia sira katak sira nia atividade sei la hetan impaktu, maski Tratadu Tasi Timor la vigor ona.

Tratadu Tasi Timor define no regula kona ba prosesu dezenvolvimentu iha Area Dezenvolvimentu Petroleum Konjunta – *Joint Petroleum Development Area*. Area seluk ne'ebé la defini mak Greater Sunrise, Buffalo no Laminaria Corallina, ne'ebé besik liu Timor-Leste, no hanesan legalista barak argumeta ona, tuir prinsipi liña media nian, sira ne'e 100% Timor nian. Espesifiku ba Greater Sunrise, kadoras ida ne'e komplikadu tanba ninia pozisaun rasik mos komplikadu. 20.1% hosi Greater Sunrise tama tia iha JPDA no 79.9% iha JPDA nia liur. Maibé atu dezenvolve Greater Sunrise, presiza halo ida de'it. Ho realidade ida ne'e, Australia ho Timor-Leste presiza akordu ketak ida atu lori defini Greater Sunrise.

Artigu (9.a) hosi Tratadu Tasi Timor hateten katak “*Any reservoir of petroleum that extends across the boundary of the JPDA shall be treated as a single entity for management and development purposes.*”

Interpretasaun simples hosi ne'e katak rezerva Petroleum nian balu ne'ebé mak tama parte balu tama iha JPDA tenki trata hanesan entidade ida atu fasilita jestaun no dezenvolvimentu. No artigu (9.b) hateten katak “(b) *Australia and East Timor shall work expeditiously and in good faith to reach agreement on the manner in which the deposit will be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation.*” Katak Australia no Timor-Leste tenki servisu ho lalais no iha “*Good Faith*” atu hetan akordu iha ne'ebé kadoras ne'e sei exploita no fahe benefisiu ne'ebé hanesan hosi atividade explotaun ida ne'e.

Anexu E. pontu A hosi Tratadu Tasi Timor defini ona katak Timor-Leste no Australia konkorda atu unitiza Greater Sunrise bazeia ba ninia pozisaun jeografika; katak 20.1% iha JPDA no 79.9% JPDA nia liur (Anexu ne'e hateten katak atribui ba Australia). Ho baze ida ne'e, komesa Jullu 2002, Australia no Timor-Leste komesa ronde negosiasaun kona ba IUA. Prosesu negosiasaun ida ne'e kompleksu, no involve saida mak Senador Bob Brown hosi Partidu Verde Australia nian bolu “*Blackmail*” Governu Australia ba Timor-Leste. Termus ida ne'e Senador uza lori esplika aktu Australia nian ne'ebé mak Australia lakoi ratifika Tratadu Tasi Timor, hodi nune'e halo atrasa dezenvolvimentu Bayu Undan, to'o Timor-Leste asina IUA. Ho realidade katak Timor-Leste presiza osan lalais, atrasa iha dezenvolvimentu Bayu Undan, sei iha impaktu maka'as liu ba Timor.

Parte rua asina Akordu Unitizasaun Internasional – *International Unitization Agreement (IUA)* iha lora 6 de Marsu 2003; maibé maski Parlamentu Australia nian ratifika IUA iha 29 de Marsu 2004, Governu Timor-Leste la submete IUA ba Parlamentu Nasional atu ratifika.

Ida ne'e taka tia dalan ba prosesu negosiasaun. Ba kompañia ne'ebé mak hetan kontratu iha Greater Sunrise, ida ne'e, sei afekta sira nia interese. Ba sosiedade sivil sira ne'ebé servisu halo kampaña maka'as iha tempu ne'eba, ba sira, defini uluk Fronteira Maritima mak importante liu duke negosiasaun kona ba faha rendimentu. Ida ne'e relasiona ho integridade teritorial Timor-Leste nian.

Iha Oitubru 2002, parte rua komesa fali negosiasaun kona ba Unitizasaun Sunrise. Depois prosesu negosiasaun ne'ebé naruk, to'o ikus mai, Australia ho Timor-Leste asina akordu CMATS iha lora 12 de Janeiru 2006. Provizaun importante balu ne'ebé importante hosi CMATS mak tuir mai ne'e. Primeiru, artigu (5.1) hosi CMATS define katak parte rua tenki fahe rendimentu hanesan hosi explotaun *upstream Sunrise* nian. Segundu, Artigu (12.1). hateten katak Tratadu dia ne'e sei vigor to'o tinan 50; signifika katak artigu ida ne'e troka fali artigu (22) hosi Tratadu Tasi Timor nian. Kuartu, artigu (12.2) fo mos kondisaun kona ba oinsa tratadu ida ne'e bele suspende kondisaun rua: (1) wainhira planu dezenvolvimentu seidauk aprova iha tinan nen nia laran, komesa hosi lora ne'ebé CMATS tama vigor, no (2) wainhira seidauk produz iha tinan sanulu nia laran, komesa hosi lora ne'ebé tratadu ne'e vigor. Bazeia ba artigu (12.2.1), CMATS nia periodu termina ona iha 8 de Marsu 2013. Maibé to'o agora, seidauk iha parte ida mak husu atu halo suspensaun ba CMATS. Signifika katak, CMATS sei vigor hela.

Hosi akordu sira ne'e, laiha ida mak rezolve kestaun fronteira maritima. Akordu sira ne'e, por natureaza, iha karakter komersial maka'as liu; katak oinsa atu dezenvolve kadoras mina sira iha Tasi Timor no oinsa atu fahe rendimentu duke atu determina Fronteira Maritima permanente entre pais rua. Tanba ne'e, to'o agora, pais rua seidauk iha Fronteira Maritima. Pelu kontrariu, Akordu CMATS bandu parte rua, Timor-Leste no Australia atu koalia kona ba fronteira Maritima durante tinan 50 nia laran no bandu parte rua atu halo meius rua atu estabelese fronteira maritima durante periodu ne'e. Hanesan Jefrey J. Smith, legalista ida hosi Canada esplika iha *Questions and Answers in the Matter of CMATS*, [http://laohamutuk.org/Oil/Boundary/CMATS\\_QA\\_JJSmith.pdf](http://laohamutuk.org/Oil/Boundary/CMATS_QA_JJSmith.pdf), "the Treaty is expressly not a maritime boundary treaty. It is a joint or shared area development treaty. The Treaty prohibits both States from making any effort to establish maritime boundaries over either a continental shelf division or an exclusive economic zone at any time during its term."

Dezde inisiu, hanesan negosiasaun iha ne'ebé de'it, pais boot, riku, no forte, iha kilat musan barak liu atu uza. Asaun Australia nian lori sai hosi prosesu legal internasional nian taka tia dalan ba parte rua atu uza mekanizmu internasional. Iha tempu hanesan, ho faktus katak Timor-Leste la iha osan, ida ne'e favorese ba Australia. Timor-Leste laiha opsaun viavel seluk, so deit bele hein no depende ba rendimentu hosi Tasi Timor. Australia uza ida ne'e ho diak wainhira haka'as Timor atu asina Akordu Unitizasaun Internasional, se lae Parlamentu Australia la ratifika Tratadu Tasi Timor. Katak wainhira Tratadu Tasi Timor la tama vigor, Timor sei la hetan osan lori finansia ninia atividade dezvoltamentu. Prosesu ida ne'e mak to'o ikus mai hanaran Blackmail.

Iha prosesu negosiasaun, involve mos grupu solidaridade barak mak hola papel impotante lori muda opiniaun publiku iha Australia. Grupu sira hanesan *Timor Sea Justice Campaign*, *East Timor Action Network* iha Estados Unidos da Amerika, intellectual no akademiku sira, kaer papel lori muda ema barak nia hanoin, liliu iha Australia. Ba Timor, no mos ba grupu solidaridade sira, negosiasaun ida ne'e hanesan husu Governu Australia atu rekoñese direitu sira ne'ebé mak Timor iha bazeia ba prinsipiu internasional. Tanba ne'e, iha prosesu negosiasaun hosi 2002 to'o 2006, kampaña barak halo somente husu Australia atu iha "Good Faith" iha prosesu negosiasaun. Maibé ida ne'e la akontese. Tanba ne'e, wainhira Timor no Australia asina CMATS, organizasaun *Timor Sea Justice Campaign* konsidera ne'e hanesan "Another Chapter of Australian Foreign Policy Betrayal." Tuir estimasaun La'o Hamutuk nian iha tempu ne'eba, ho CMATS, signifika katak Timor-Leste hetan deit 60% hosi 100% ninia direitu tuir prinsipiu internasional.

Maibé hosi perspectiva Governu Australia, ho akordu sira ne'e, manifesta Australia nia jenerosidade ba povu Timor-Leste. Iha ninia submisaun ba Parlamentu Australia nian, Governu Australia hakerek katak "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."

Maibé ba parte ne'ebé suporta definisaun fronteira maritima, liliu grupu sosiedade sivil sira, asegura estabilidade longu-termu nian entre Australia no Timor-Leste diak liu mak determina fronteira maritima permanente. Grupu ne'e mak kontra argumentu Australia nian katak saida mak Australia halo nu'udar atu karidade ida ba viziñu Timor-Leste. Ba sira saida mak Timor husu mak ninia direitu ne'ebé rekoñese liu hosi mekanizmu internasional sira.

Hare ba estratejia Australia nian, hanesan prova ona hosi arkivu istoriku sira katak Australia dezde inisiu suporta Indonesia ninia okupasun, tanba hosi perspectiva Australia, negosiasaun ho Indonezia facil

liu ba Australia kompara ho negosiasaun Timor-Leste ida ne'ebé independenti.

To'o agora, CMATS sei vigor. Problema ne'ebé foun mosu katak Timor-Leste "hanesan" foin diskobre iha fim 2012 katak Australia halo atu espionajem ba Timor-Leste durante iha prosesu negosiasaun. Timor-Leste uza provizaun Tratadu Tasi Timor nian, ne'ebé hateten kona ba parte rua tenki negosia ho "good faith" atu invalida CMATS, atu nune'e bele negosia fali parte CMATS ida ne'ebé bandu parte rua atu labele koalia kona ba Fronteira Maritima. Iha inísiu, Timor-Leste hakerek karta ba Australia atu diskuti kona ba asuntu ida ne'e, maibé Australia rejeita. Iha Abril 2013, Timor-Leste komesa prosesu arbitrajem, husu atu invalida tia CMATS tanba laiha "good faith" iha negosiasaun. Maski ida ne'e la'os buat foun, maibé atu hare hosi parte estratejia, hanesan Edward Rees, iha entrevista ho Journal the *Guardian* hateten <http://www.theguardian.com/world/2014/jan/23/timor-leste-v-australia-analysis>, Timor koko foti vantajem hosi eventu global rua; kazu Wikileaks no kazu Snowden.

Australia halo asalta lori foti dokumentus sira no kaer tia eis intelijensia no Australia nian ne'ebé sai testamuña ho razaun seguransa nasional Australia nian. Depois de hatama keixa, iha loron 17 de Dezembru 2013, iha loron 3 de Marsu 2014, Tribunal hasai desizaun preliminar husu Australia atu taka metin dokumentus ne'e. Kazu ida ne'e kona deit ba dokumentus ne'ebé mak Australia foti. Hanesan karta hosi Timor-Leste nian ba ICJ, hakerek, *"The facts underlying this request case set forth in the Application and, in summary, are as follows. On 3 December 2013 officers of the Australian Security Intelligence Organisation (ASIO), acting under warrants issued by the Attorney-General of Australia attended an office/residence in Canberra at 5 Brockman Street, Nasrabundah, in the Australian Capital Territory, Australia and seized documents, data and other property which belong to Timor-Leste and /or which Timor-Leste has the right to protect under international law ('the documents and data') from those premises. The owner of the above-mentioned official residence is Legal Adviser to and a Legal Representative of the Government of East Timor."* Importante atu nota katak desizaun ICJ ida ne'e laos kona estatuta CMATS, la'os kona ba pipeline, e laos kona ba Fronteira Maritima.

## **Konkluzan**

Artigu ida ne'e hanesan informasaun kona ba antesente, prosesu, no tratadu sira ne'ebé asina ona. To'o agora, CMATS sei vigor, maibé seidauk klaru kona ba oinsa atu dezenvolve Sunrise. Desizaun tribunal ne'ebé iha, husu Australia atu taka metin dokumentus ne'ebé mak Australia foti. Kona ba estatuta CMATS rasik, ho evolusaun ida agora nian, maski legalmente, CMATS sei vigor, kestaun mak oinsa atu dezenvolve Greater Sunrise. To'o ikus, parte rua mak tenki tur hamutuk atu negosia fila fali. Kestaun mak Australia sei hakarak ka lae atu tur hamutuk fali lori negosia, e se atu negosia karik, atu negosia kona ba saida.