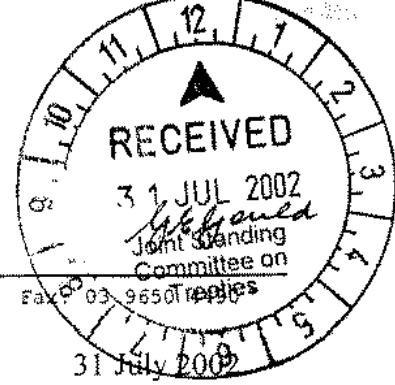




The Uniting Church in Australia
Synod of Victoria and Tasmania
~~Justice and International Mission Unit~~
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The Secretary
Joint Standing Committee on Treaties
Suite R1-116
Parliament House
Canberra, ACT, 2600

Timor Sea Treaty
Submission No:34-1.....

Dear Secretary,

I am writing on behalf of the Justice and International Mission Unit of the Synod of Victoria and Tasmania to state our opposition to Australia ratifying the current *Timor Sea Treaty between the Government of Australia and the Government of East Timor*. The Unit respectfully requests that the Joint Standing Committee on Treaties recommends that the treaty be modified to ensure that East Timor receives sovereignty over all oil and natural gas deposits in the Timor Sea that it would be entitled to under the international law governing maritime boundaries.

The Unit accepts that the *Exchange of Notes Constituting an Agreement between the Government of Australia and the Democratic Republic of East Timor Concerning Arrangements for Exploration and Exploitation of Petroleum in an Area of the Timor Sea Between Australia and East Timor* is needed to allow existing oil and natural gas exploitation activities to continue uninterrupted. However, we are concerned that monies that East Timor would otherwise be entitled to will be placed into an interest bearing escrow account and will only be paid to East Timor with the entry into force of the *Timor Sea Treaty*. The Unit is deeply concerned about the pressure that this places on East Timor to accept the *Timor Sea Treaty*.

The Uniting Church in Australia has taken an active and on-going commitment to the well-being and human rights of the people of East Timor. The National Uniting Church in Australia has staff committed to working on issues relating to East Timor and Indonesia in the Unity and International Mission agency. In 1994 the National Assembly of Uniting Church representatives from throughout Australia called on the Australian Government "to recognise the right of self determination of the East Timorese people". They further committed the Uniting Church to "encourage the leaders of the Catholic and Protestant Churches in East Timor in their desire to work for social justice, and in their efforts to achieve meaningful participation by East Timorese indigenous people in decisions that affect their future."

Further, the Synod of Victoria has maintained an active involvement in the Jubilee Australia Debt Relief Campaign. One concern that this campaign has repeatedly raised with the Australian Government is that East Timor is not placed into a position where it is forced to choose between being caught in unsustainable debt burdens or the well-being and basic social and economic rights of its people. This involves ensuring that East Timor is able to generate sufficient income for development and to provide for the basic social and economic rights of its people. We note that in order to avoid getting into a situation of unsustainable debt, the Government of East Timor has adopted a 'no loans' policy. East Timor's government budget for the coming year is reported to be only US\$77 million. East Timorese non-governmental

organisations (NGOs) have stated that revenues from oil and natural gas currently represent East Timor's greatest hope for meeting the East Timorese people's basic needs including economic development, health and education. In the words of La'o Hamutuk, The East Timor Institute for Reconstruction Monitoring and Analysis, regarding oil and natural gas revenues from the Timor Sea:

"While the loss for Australia would certainly be significant, for East Timor the gain could very well prove to be the difference between remaining a poverty-stricken country and one that is able to satisfy the basic socio-economic needs of all its citizens."

East Timor has desperate development needs. East Timorese non-governmental organisations report that when Indonesian forces withdrew from East Timor in 1999, they destroyed 75% of the country's infrastructure. East Timor has only a 40% literacy rate, a GNP per capita of US\$340, life expectancy of 48 years and an infant mortality rate of 135 per 1,000 live births. The maternal mortality rate is reported to be twice that of other countries in Southeast Asia and the Western Pacific.

The Unit notes that Australia has reduced its overseas development assistance to East Timor by 12.7% in the 2002-2003 budget, to a mere \$36.0 million. Media reports claim that the current *Timor Sea Treaty* will deliver Australia in excess of \$55 billion in oil and natural gas revenues over the next thirty years that would belong to East Timor if international law for maritime boundaries was applied.

The Unit is deeply concerned regarding the justice and morality of the *Timor Sea Treaty between the Government of Australia and the Government of East Timor*. The Unit is concerned that the *Timor Sea Treaty between the Government of Australia and the Government of East Timor* allows for Australia to gain oil and natural gas revenue it would not be entitled to if international principles for determining maritime boundaries and the exploration and exploitation of oil and natural gas deposits within such boundaries were applied. The Treaty will deprive East Timor of much needed revenue to meet its development needs. The Unit shares the concerns of East Timorese NGOs that the Treaty will also fail to deliver sufficient employment opportunities for the people of East Timor, as the exploitation of the oil and natural gas deposits will be done by companies that largely employ Australians. The Unit would prefer to see Article 11(a(ii)) of the treaty strengthened to set targets for the proportion of East Timorese nationals employed in exploration and exploitation activities related to the oil and natural gas fields.

The Unit is concerned that the Treaty has been imposed on East Timor at a time when it has a weak bargaining position. Any negotiations on the maritime boundary are likely to take years, while East Timor's economic needs are immediate. East Timor is also conscious of its need to maintain a good relationship with Australia. These factors have made it difficult for East Timor to negotiate from a position based on the principles of international law.

Article 22 of the *Timor Sea Treaty* states:

"This treaty shall be in force until there is a permanent seabed delimitation between Australia and East Timor or for 30 years from the date of its entry into force, whichever is sooner."

Thus, if successive Australian Governments wish to maintain the existing share of oil and natural gas deposits in the Timor Sea, based on the 1989 *Timor Gap Treaty* with Indonesia, they only need to block agreement on a maritime boundary with East Timor and refuse dispute resolution through the International Court of Justice or the *UN Convention on the*

Law of the Sea. The Unit believes that the 1989 *Timor Gap Treaty* was immoral and illegal as it was based on the illegal annexation of East Timor by Indonesia.

The Unit notes that the treaty will deliver East Timor 90% of the revenue from the Bayu Undan oil and gas field, expected to come to US\$3 billion. However, East Timor will only get 18% of the revenue from the Greater Sunrise field with reserves estimated at \$30 billion over the life of the project from 2009 to 2050. East Timor's legal advisers are reported to have advised that if international principles applied East Timor would get most if not all of the Greater Sunrise field. The Unit further notes that East Timor believes that it is entitled to the Corallina/Laminaria oil and gas field, which currently provides US\$300 million in royalties to Australia.

The Unit is also concerned that if the *Timor Sea Treaty* comes into force, despite the statement in Article 2(b) of the Treaty, it will influence the final determination of the maritime boundaries at the expense of East Timor. Legal opinion offered by Dean Bialek, Lecturer at the Law School of the University of Melbourne, is that if East Timor accepts the *Timor Sea Treaty* it is improbable that a tribunal adjudicating upon the Australian-East Timor boundary would seek to alter in East Timor's favour an arrangement that has been negotiated and signed between parties. It is much more likely that a tribunal would regard the Treaty and its "without prejudice" clause on the future maritime boundary as limiting the area in need of delimitation to that enclosed by the Joint Petroleum Development Area.

If the principles of the *UN Convention on the Law of the Sea* were to apply then East Timor would get all the revenue from the oil and natural gas deposits contained within its boundaries. Further, the Convention stated that for countries with less than 400 nautical miles of sea between them, the international boundary should be at the mid-point.

It is reported by East Timorese NGO, La'o Hamutuk, that in 2001 in talks on the Timor Sea, Australia refused to discuss maritime boundaries between the two countries, agreeing only to discussion of how production revenues would be shared.

If Australia is genuine about supporting the East Timorese people then it will allow them to have the oil and natural gas deposits that would belong to them under international law governing maritime boundaries.

Yours sincerely,

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