

October 29, 2002

Ms Julie Bishop  
Chairperson  
Joint Standing Committee on Treaties  
Parliament House  
Canberra,  
AUSTRALIA

Dear Madam Chair,

**Re: Timor Sea Treaty**

I would like to thank the Committee for permission to make this late submission to assist your final deliberations.

Yours sincerely,

Geoffrey A. McKee  
Principal Petroleum Engineer

Attach.

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## 1 Introduction

The writer is a chemical engineer by training, an independent oil & gas industry consultant since 1996, with knowledge of Timor Sea petroleum development issues gained during 6 year's prior service as staff engineering advisor with a ZOCA joint venture partner<sup>1</sup>. This experience has, over the past two years, led to several Timor Sea petroleum-related consulting assignments in Dili. During this time I have published several commentaries on related issues.<sup>2</sup>

We have promoted since 2000 the feasibility of gas pipelines crossing the Timor Trough so that East Timor can in the future gain the direct infrastructure benefits from Timor Sea gas developments. During the period June–August 2000 we communicated information on this issue to the appropriate UNTAET and transitional government officials.<sup>3</sup>

My first visit to East Timor, in October 2000, was to assist a local aid agency prepare a tender for the Timor Gap Joint Authority's *Program Manager for the Petroleum-related Education, Training and Employment for East Timorese*.<sup>4</sup> This tender was based on the "timorization" approach for maximum local involvement in the planning and decision making process. In March 2001, at the invitation of a senior UNTAET economic advisor, I was privileged to meet with Mr. Mari Alkatiri, then Economic Affairs Minister in the East Timorese Transitional Authority. The purpose of the meeting was to present our report to Mr. Alkatiri entitled *Engineering Options for Import of Natural Gas to East Timor*. This report was, in essence, a proposal to carry out a pre-feasibility study (with INTEC Engineering,<sup>5</sup> Perth office) into innovative and additional development options for Timor Sea gas that would eliminate East Timor's energy dependency.<sup>6</sup> My second visit to East Timor was in March 2002 to

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<sup>1</sup> The writer served on the staff of Bridge Oil Limited from 1987 until 1996. In November 1991 the Joint Authority (established under the *Timor Gap Treaty*) granted the ZOCA 91-13 area to a joint venture consisting of Phillips Petroleum Company (37.5%), Oryx (ZOC) Energy Pty Ltd (25%), Bridge Oil Limited (22.5%) and Hardy Timor Gap Petroleum Ltd (15%). Texan raider *Parker & Parsley Inc* acquired Bridge Oil's assets in 1994. In May 1996 the new owner on-sold the Australian assets to *Santos Ltd* and the Timor Sea asset (22.5% interest in ZOCA 91-13) to *Phillips Petroleum*, leading to Bridge Oil's demise.

<sup>2</sup> See "The new Timor Gap: will Australia now break from the past?" by Geoffrey A McKee published in *Inside Indonesia* No.62, April-June 2000, [www.insideindonesia.org/edit62/mckee3.htm](http://www.insideindonesia.org/edit62/mckee3.htm)

<sup>3</sup> Letters to Dr. Jose Ramos-Horta, Vice-President CNRT and Ambassador Peter Galbraith, Director of Political Affairs, UNTAET. Subject: Petroleum Infrastructure Benefits for Timor Lorosa'e. Dated June 30, 2000. Additional letters (Subject: Development of Timor Lorosae's Petroleum Resources) were hand-delivered to Engineer Joao Carrascalao, Minister for Infrastructure, Transitional Cabinet of East Timor, and Dr. Ramos-Horta at the CNRT National Congress, Dili, August 2000.

<sup>4</sup> This project was announced on 4 October 2000, by the then Minister for Resources Senator Nick Minchin. It involved funding of US\$700,000 per annum for 2 years from Joint Authority revenues to train East Timorese in petroleum administration and policy development. Also, a steering committee would be set up to look at petroleum-related education and training for East Timorese candidates.

<sup>5</sup> The services that INTEC offers in relation to marine pipelines encompass the full cycle of project development and execution. This includes research and development, data gathering and route selection, feasibility and cost studies, design engineering, geohazard analysis, procurement and contracting. For further information refer to their website at <http://www.intec-hou.com/>

<sup>6</sup> Our presentation on 16 March 2001 to Mr. Alkatiri discussed East Timor's future energy supply. It covered questions such as existing diesel fuel supply for power generation; reasons for replacing diesel

make a presentation at a Timor Sea petroleum seminar in Dili, at the invitation of PetroTimor.<sup>7</sup> My talk was titled *The impact of an Exclusive Economic Zone Delimitation on East Timor's petroleum revenue*.<sup>8</sup>

## 2 This submission's viewpoint

Firstly, I would like to advise the Committee that comments and opinions expressed here are made entirely on my own behalf and not at the behest of any client or 3<sup>rd</sup> party. I write primarily as a petroleum project development engineer without specific competence to speak on maritime boundary or international law issues. However I have added some broad comments regarding possible solutions to potential disagreements between East Timor and Australia in relation to the proposed *International Unitisation Agreement*.

The main purpose of this submission is to provide the Committee with information about an issue that both the Bayu-Undan joint venture operator and the Northern Territory government have tried to "bury".

I am referring to the now confirmed feasibility of a Timor Sea gas pipeline across the Timor Trough to East Timor.

With recognition of this feasibility comes the vision of LNG export facilities and infrastructure located in and directly benefiting East Timor.

Without acceptance of this feasibility this vision is extinguished and this appears to have been the situation during negotiations leading to the *Timor Sea Arrangement*.<sup>9</sup>

Why is this so?

It is suggested that the Bayu-Undan joint venture operator has misled both the East Timorese representatives and the 1999 Australian Senate Enquiry in order to advance the Darwin pipeline option.<sup>10</sup>

By eliminating debate on a viable alternative to the Darwin pipeline option on wholly technical engineering grounds, arguing from unaccountable authority alone, the

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with gas; amount of gas required; methods of moving gas to East Timor; economics of gas supply; and decision-making steps that can be taken now.

<sup>7</sup> See "Timor gas billions all at sea" page 1 story by Hamish McDonald, *Sydney Morning Herald*, 27 March, 2002. A report on the seminar's political fallout including Australia's withdrawing from UNCLOS dispute resolution procedures and the East Timor chief minister's hurried consultation with a maritime boundary legal expert in London.

<sup>8</sup> A copy of the presentation can be viewed or downloaded from [http://www.gat.com/Timor\\_Site](http://www.gat.com/Timor_Site)

<sup>9</sup> The *Timor Sea Arrangement* was an agreement initialed on 5 July 2001 by representatives of the *Transitional Government of East Timor* and the Australian Commonwealth Government. It continued the joint development area based on the same lines of demarcation (not maritime boundaries) negotiated earlier between Australia and Indonesia. Under the Timor Sea Arrangement, the joint development area ZOCA or "Zone of Cooperation Area A" is renamed JPDA or "Joint Petroleum Development Area". The *Timor Sea Arrangement* (TSA), for most practical considerations, replaced the Timor Gap Treaty. On the first day of East Timor's official independence, at a signing ceremony in Dili, the TSA was converted into a fully-fledged treaty known as the *Timor Sea Treaty* (TST). An exchange of notes acts as a legal and fiscal 'stopgap' pending ratification of the treaty by the respective governments. The current deliberations by this Joint Standing Committee on Treaties are understood to be a due-diligence prelude to the ratification of the subject treaty by the Australia's parliament.

<sup>10</sup> Jane Counsel, "Send gas to East Timor – expert" *Sydney Morning Herald*, September 26 2002

commercial operator – with connivance from other interested parties such as the Northern Territory government - has successfully manipulated the course and outcome of the negotiations.

It will be made reasonably evident in this submission that a Timor Sea gas pipeline to East Timor is feasible and desirable from both an economic and technical standpoint.

The Committee should now understand this situation better from Mr. Imle's comments and insights put forward at the public hearing in Canberra on October 8, 2002, as part of the PetroTimor submission. This writer cannot come close to matching Mr. Imle's knowledge gained at the highest corporate levels in the international oil & gas business, never the less I do wish to make a separate and independent submission which generally supports what he is saying.

The general principle for proposals such as an onshore LNG export facility for East Timor is that, when there are competing development plans, governments can swing the decision if they have the necessary advice and understanding. They can ensure by fiscal and taxation adjustments that their preferred option provides the greatest rate of return on investment to the commercial operators and the most competitive gas price for the customer.

UNTAET and the East Timorese transitional authority have failed to adequately investigate and advocate this proposal in the national interest of East Timor. The reason for this remains somewhat of a mystery but evidently lack of time, resources and independent advice may be contributing factors. Some say incompetence of UN bureaucrats might be a factor and the refusal of the UN field team to get the required support from New York. Several East Timorese leaders and officials have gone as far as arguing *against* having infrastructure in their country, advocating Darwin as the preferred site for LNG export.<sup>11 12</sup> This indicates the pervasive influence of the commercial operators and the Northern Territory government.

The fixed direct investment opportunity of LNG export facilities in East Timor, creating jobs, education, training, spin-off industries, is of vital economic interest to the new nation.

It is quite clear this alternative infrastructure location (East Timor) is contrary to Australia's "national interest" when this interest is defined in purely economic terms. Additionally, there is a natural *competition* between states for infrastructure investment, and East Timor for understandable reasons has so far not been able to match Australia in this race to secure international risk capital.

Because of these economic realities, Australia has - some would argue quite rightly - used her superior resources, long term development vision, technical knowledge and tactical negotiating abilities to further the "national interest". This has deprived East Timor of the most important nation-building benefit to be derived from her Timor Sea

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<sup>11</sup> Interview with Mari Alkatiri, Source: GTNews - [www.gtnews.com](http://www.gtnews.com) - ©2002, [http://www.gtnews.com/articles\\_se/4609.html](http://www.gtnews.com/articles_se/4609.html) visited September 18, 2002. Mr. Alkatiri was quoted as supporting a pipeline to Darwin based on the same incorrect technical arguments as put forward by the Northern Territory government.

<sup>12</sup> Letter to the *Sydney Morning Herald* September 26, 2002, by Jonathan Morrow, Head, Timor Sea Office, Office of the Prime Minister, East Timor Government. Mr. Morrow wrote "we have no interest in providing incentives or subsidies to companies to invest in sub-economic infrastructure projects [in East Timor]". However this statement ignores the fact that East Timor is providing subsidies and incentives for the competing (and possible sub-economic) LNG infrastructure project in Darwin.

resources, namely infrastructure and an energy export industry located on her shores.

My contention is also that, as a result of a concerted misinformation campaign, and a peculiar collusion with this situation by some East Timorese leaders and non-East Timorese UNTAET officials, the *Timor Sea Treaty* falls short of what is required to underwrite the successful start-up of the new, impoverished nation state.

The Committee will accept that the *Timor Sea Treaty* as it currently stands is set up to deliver LNG export infrastructure to Australia and not East Timor. Since for this reason the treaty is in Australia's national economic interests, I cannot see how the Committee can do other than recommend to the Australian parliament that it be ratified.

But for the East Timorese, ratification may not be a cause for celebration, for the reasons outlined in this and many other submissions.

They should be allowed more time to sort out the confusion and predicament that the *Timor Sea Treaty* creates for their newly independent nation, both in respect to the infrastructure issue and maritime boundary issue.

Regarding the maritime boundary issue, the closing sentence of Robert King's submission is relevant here.

"The costs of allowing an unresolved boundary dispute to fester may turn out to be unexpectedly high"<sup>13</sup>.

### 3 General Conclusions

1. The *Timor Sea Treaty* poses a classic political dilemma for East Timor in relation to her maritime boundary entitlements and also her bilateral relationship with Australia. In the current political situation East Timor cannot "cave in" to Australia nor can she "fight" Australia on the boundary issue.

The young nation also faces the perceived "you are either with us or against us" prerogative of a coalition of powerful interests. These consist of commercial joint venture partner interests, together with the interests of the Northern Territory government and the Commonwealth government.<sup>14</sup> Dr. Andrew McNaughtan, convener of the Australia-East Timor Association, has kindly given me permission to append for the Committee's interest his analysis of these complex security and bi-lateral relationship dilemmas. This analysis (see Attachment 1) has been prepared by McNaughtan *from an East Timorese perspective*, since it was prepared for use by people in East Timor who asked him for help in understanding the complex issues.

2. Although there are some finer legalities and official protestations to the contrary, East Timor has in effect become a successor-state to Indonesia in the former – and some say illegal - *Timor Gap Treaty*. The significant differences are firstly, in the

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<sup>13</sup> Robert King's submission (no. 43) to the Joint Standing Committee of Treaties, Timor Sea Treaties, page 48.

<sup>14</sup> Australia, and even the United Nations, must also deal with the "you are either with us or against us" policy of USA, the world's most powerful nation.

share of Joint Authority revenue (FTP and Profit Oil) attributed to each government, and secondly, in the division of power in the treaty's joint administering authority. East Timor has seemingly gained from these changes.

There has been speculation by commentators on possible reasons for Australia's agreement to amend specific terms of the *Timor Gap Treaty* in East Timor's favor. Four different theories have been put forward at different times (there may be more). Firstly, one line of thought is that the changes were made through Australian "generosity" alone, motivated by guilt associated with a past recognition and support for Indonesia's invasion. The second conjecture is that deviation in the normal 50-50 apportionment of government royalties and taxes (to 90-10 in East Timor's favor) represents implicit recognition by Australia of East Timor's median line claim in relation to the east-west seabed boundary. The third view is that the 90-10 deal was a *quid pro quo* in exchange for Australia securing all (and far more valuable) infrastructure benefits associated with Timor Sea gas production.<sup>15</sup> The fourth view is that Australia made a simple pragmatic calculation that East Timor was going to need vast amounts of Australian support anyway, so it may as well come from petroleum revenue rather than from taxpayer-funded foreign aid allocations.<sup>16</sup> Possibly all these factors contributed to the negotiated changes to the *Timor Gap Treaty*. The greater administrative power that East Timor has achieved in the treaty's Designated Authority and Joint Commission tends to support the view that Australia was forced to recognize the legitimacy of East Timor's sovereignty claims, as explained in Professor Gillian Triggs' and Dean Bialek's recent paper.<sup>17</sup>

3. Notwithstanding the shift from 50/50 to 90/10 apportionment of government revenue arising from the JPDA, under the *Timor Sea Treaty* East Timor will lose approximately 60% of total theoretical revenue possible if it received a favorable permanent settlement of its Timor Sea maritime boundaries under international law. Additionally, she could lose 100% of all infrastructure benefits under current development plans. This is a very poor negotiating score-card for East Timor, and a great success for Australia.
4. The Bayu-Undan commercial joint venture partners, led by Phillips Petroleum, through an adept public relations campaign, maneuvered East Timor into the untenable position of being answerable for any delays that negotiating stumbling-blocks may have on their development plans.

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<sup>15</sup> The infrastructure *quid pro quo* agreement is put forward by the Northern Territory's Chief Minister Clare Martin in her address to the National Press Club Canberra by, 3 April 2002. "East Timor is about to benefit from a 90:10 royalty split from the Bayu-Undan project which is only fair as the gas pipeline must come to Australia rather than to East Timor due to a major trough in the ocean between the gasfield and our small neighbor". In this case, the Chief Minister is repeating as fact the erroneous argument that piping gas to East Timor is impossible.

<sup>16</sup> See "The bottom line was not altruism", commentary by Geoffrey Barker, *The Australian Financial Review*, May 21, 2002.

<sup>17</sup> The legal ramifications of the 90/10 production-sharing arrangement are discussed in Professor Gillian Triggs' and Dean Bialek's paper entitled "The New Timor Sea Treaty and Interim Arrangements for Joint Development of Petroleum Resources in the Timor Gap". In this comprehensive analysis (issued to attendees at the 26-27 September 2002 "JPDA Summit" in Melbourne) the authors note "The *Timor Sea Treaty* sails as close to recognition of East Timor's sovereignty over the disputed seabed as it is possible to maneuver without conceding the point entirely"

5. The *Timor Sea Arrangement* was negotiated too quickly by an under-resourced and non-independent East Timorese transitional administration desperate to secure a source of future government revenue. The timing of East Timor's endorsement of the *Timor Sea Arrangement* was dictated by a mid-July 2001 deadline put forward by the Bayu-Undan commercial operator, and not by a successful conclusion to negotiations.
6. Phillips Petroleum have grossly misled the East Timorese negotiators in relation to the feasibility of a pipeline and associated LNG export facility located in East Timor. This development vision could have been East Timor's greatest strength in the negotiations. The misleading information deliberately put out to extinguish this vision has compromised the negotiating process. This was achieved not through honest and reasoned argument but through deliberate deception and distortion of facts.
7. Had the East Timorese leaders understood the feasibility of such a vision, and sought high-level and independent advice from friendly governments on how it could be realized, then the negotiations may have had an entirely different character and outcome for the East Timorese.
8. If the treaty is not ratified by the end of the year, then Phillips Petroleum and their joint venture partners have warned that they will not be in a position to proceed with Phase 2 of Bayu-Undan project. This project would see gas piped ashore to a Darwin LNG export facility and the entire Bayu-Undan 2P gas reserves (equivalent to approximately 66 million tonnes of LNG) exported to Japan.<sup>18</sup>
9. If the pipeline to Darwin is indefinitely deferred as a result of non-ratification of the Treaty in the time-frame demanded by the commercial operator, then this will open up more possibilities for East Timor. They will have the time to seriously investigate and facilitate the alternative development plan of piping Bayu-Undan gas to East Timor. This will be an "upside" of a delay to ratification, from an East Timorese national interest perspective.
10. Revenue from Phase 1 of the Bayu-Undan project (recovery of near 400 million barrels of liquids by gas recycling) will not be significantly affected by a delay to Phase 2. Arguments put to the Committee that a deferral of Phase 2 would be "catastrophic" for East Timor are considered alarmist.
11. The Committee must consider all aspects for and against ratification, and should not give undue weight to "deadlines" from commercial operators. Even if the treaty is ratified quickly by both parties, there is no guarantee at this stage that the Darwin pipeline will eventuate. The project has its own problems with economic justification and dependency on subsidies from East Timor. There is also environmental and safety uncertainties due to the sensitive location of the proposed Whickam Point site in the middle of Darwin harbor.
12. Revenues to East Timor from Phase 1 of Bayu-Undan will be substantial, regardless of the outcome or timing of Phase 2. These revenues will be assured in the short term, and will buy East Timor time and resources to examine an alternative development scenario for Bayu-Undan gas. A pipeline to East Timor may be investigated and planned whether the Timor Sea Treaty is ratified or not.

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<sup>18</sup> "Bayu-Undan under threat", Oil & Gas Today headlines for Friday 18 October 2002, <http://news.ogtoday.com>



13. East Timor's control of the planned Designated Authority and Joint Commission means that the Darwin pipeline may not be approved if a more profitable alternative for both the commercial joint venture partners and East Timor is developed. If the *Timor Sea Treaty* is ratified, Article 8 of the treaty may be used by East Timor to secure infrastructure benefits. Article 8 dictates that Australia will have jurisdiction over a planned pipeline from Bayu-Undan to Darwin but East Timor will have jurisdiction over a planned pipeline to East Timor. Under the treaty, Australia is not to object to a pipeline to East Timor where this is proposed on a commercial basis.
14. Though the December 2001 understandings agreement with Phillips Petroleum, East Timor plans to subsidize a gas development plan that favors Australia and not East Timor. A more economically rational policy for East Timor would be to subsidize the Bayu-Undan partners to bring the LNG export facility to East Timor where it is closer to the Asian markets. Such incentives offered by East Timor would have an economic return to the new nation orders of magnitude higher than from the currently negotiated subsidies. These aid Australia's economy many times more than the additional revenue realized for East Timor.

## **4 Recommendations**

No specific recommendations are made since these are considered a matter for the Committee to decide, based on its own deliberations of all the evidence and opinions put before it.

As will already be apparent, information and opinions submitted here are mainly to highlight the importance of pipeline and infrastructure issues in particular and to make other comments for the historical record.

## **5 Discussion**

### **5.1 Conduct and outcome of the negotiations**

The Committee has received numerous submissions that flag a concern with this issue. The following notes generally add some detail to the points raised.

#### **5.1.1 Development pressure from commercial interests**

The tactic of "pressure by brinkmanship" put in place by Bayu-Undan operator Phillips Petroleum appears to have been successful on a number of occasions. This tactic is based on a public warning that the project would not proceed unless certain demands or conditions were met. The consequences of non-cooperation would mean that East Timor would have no project and therefore no royalties and tax revenue. Such tactics are not criticized here, since they are quite legitimate and designed to move the project forward in the shareholder's interests. These tactics are based on an understandable impatience to get on with the job. But in dealing with a devastated country that was not yet independent and lacked the appropriate organs of government, more time was needed, and more understanding required.

There have been four examples of how the outcome of negotiations have been affected by commercial pressure.

1. In September 1999 the operator warned that Phase 1 of Bayu-Undan (liquids recovery) would not proceed unless the respective governments of Australia and Indonesia and the East Timorese resistance representatives gave certain oral and written undertakings that the Timor Gap treaty would be “honored”.<sup>19</sup> This situation was instrumental in securing in October 1999 a written undertaking from East Timor’s leaders-in-waiting Messrs. Gusmão, Ramos-Horta and Alkatiri. This letter is reported to have stated that they would ensure that future fiscal terms would be “no more onerous” than existing Timor Gap Treaty PSC terms.<sup>20</sup> This undertaking was made under the backdrop of horrifying TNI-inspired turmoil in the resistance leader’s homeland.
2. There was a “deadline” of mid-July 2001 put to the East Timorese and Australian negotiators for finalizing new treaty arrangements. This was a result of the timing of commercial arrangements with Multiplex regarding construction of a planned Darwin pipeline and with El Paso in relation to a letter of intent for export of LNG to the west coast of the US. The *Timor Sea Arrangement* was delivered on 5 July 2001, just in time.
3. Never the less, after delivery of the *Timor Sea Arrangement*, Phillips Petroleum announced that they would defer indefinitely the pipeline to Darwin. This situation was instrumental in securing the Bayu-Undan participants Understandings Agreement of December 2001.
4. At the present time, as the Committee is fully aware, there is a similar commercial pressure applied to both governments in the form of a warning given by Phillips Petroleum that unless the *Timor Sea Treaty* is ratified by an end-of-year deadline, the planned Darwin LNG project will be “lost”. This situation may be instrumental in securing a quick ratification of the treaty.

#### 5.1.2 Excessive Australian influence over outcome of negotiations

A workshop inspired by the Department of Industries, Science and Resources, arranged very soon after UNTAET took control of administration in East Timor appeared to set the stage for Australian government and the companies’ hegemony over the information-supply and the decision-making process. This workshop was held in Dili, 17–19 January 2000, attended by about 50 geologists, lawyers, engineers, economists and other experts from Australia and the United Nations. Woodside Petroleum and Phillips Petroleum were represented at the workshop. Mr. Jim Godlove, of Phillips Petroleum, said following the workshop, ‘There was strong expressions of support for continuation of the *Timor Gap Treaty* and any continuation of the terms of the Treaty’.<sup>21</sup>

As is well known there were numerous Australian citizens in key positions inside

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<sup>19</sup> Walsh K E *The Sunday Telegraph* September 19, 1999. “Phillips has given the governments of Indonesia and Australia, and representatives of the East Timorese, until the end of October to guarantee that the Timor Gap Treaty – a joint agreement allowing private oil and gas exploration in the Timor Sea – will be honored....If oral and written assurances are not received....Phillips and its co-venturers will not proceed with the Bayu-Undan development, a US\$1.4 billion liquids-recovery and gas recycling project.”

<sup>20</sup> The letter is discussed on page 63 of “East Timor”, Final Report of the Senate Foreign Affairs, Defense and Trade References Committee, December 2000, citing Paul Tait, ‘East Timor backs gas project but warns on treaty’, *Reuters*, 10 November 1999.

<sup>21</sup> ‘Support for Timor Gap Treaty at Dili workshop’, *Australian Associated Press*, 20 January 2000.

UNTAET.

The current Head of the Timor Sea Office at the Office of the Prime Minister, East Timor, is an Australian, Mr. Jonathan Morrow.

It is reported that a chief advisor on maritime boundaries was Mr. Grant Boyce, a colleague of Australia's most eminent political geographer, Professor Victor Prescott.

UNTAET's advisor on tax policy during the latter part of 2001 when Phillips Petroleum was negotiating with East Timor was an Australian, Mr. Bruce Taplin.

Mr. Robert King drew historical reference to the negotiations between Australia and Indonesia leading to the 1972 maritime boundary treaty. There was a belief that Australia had gained knowledge of the Indonesian negotiating position through illicit means.<sup>22</sup>

It therefore would appear to be more likely than not that the same may have occurred in negotiations leading to the *Timor Sea Treaty*.

There has been active participation of the NT government in the negotiations<sup>23</sup>

More subtle diplomatic touches such as sending a VIP jet to Dili to chauffeur the East Timorese prime minister-elect to Canberra for high-level talks also may have helped to tip the power balance in Australia's favor.<sup>24</sup>

### 5.1.3 Secrecy

Within East Timor, interested civil society groups were excluded from any meaningful information about the negotiations, according to information from Dili.<sup>25</sup>

UNTAET's "culture of secrecy and isolation" came into public view in January 2001 with the publication of a leaked UNTAET policy memorandum. This prohibited UNTAET mission personnel from communicating with anyone about the mission or other issues related to East Timor for the rest of their lives, unless they had specific written permission from top UNTAET officials.<sup>26</sup>

In this imposed distrustful and inward-looking atmosphere, exchange of information and ideas with the outside world was difficult.

### 5.1.4 East Timorese inexperience and lack of resources

As the Committee is aware, the fundamental purpose of the Timor Sea Treaty is not to set up a fiscal and legal regime for its own sake but to enable the development and production of the petroleum resources for the benefit of both the owners and the

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<sup>22</sup> See Robert King's submission (no. 43) page 7

<sup>23</sup> Submission by the Northern Territory government (no. 48), in covering letter signed by Claire Martin

<sup>24</sup> "VIP jet for Timor leader as stakes rise in energy game", Craig Skehan, Sydney Morning Herald, May 10, 2002

<sup>25</sup> "Meeting in Dili with (unofficial) Mines & Energy Group". Report by Mr. Robert Wesley-Smith, Australians for a Free East Timor, August 7, 2000.

<sup>26</sup> See East Timor news list, Sent: Friday, 5 January 2001 Subject: LH: text of UNTAET gag rule, submitted by Charles Scheiner, La'o Hamutuk in East Timor. Mr. Scheiner commented "An East Timorese Cabinet member I asked about this memo acknowledged that he had received it and that it applied to him as "UNTAET Personnel." He indicated that he still intended to speak freely to the press and to the people of his country. But most lower-level UNTAET workers may not ignore directives like this because they fear repercussions."

contractors. But there are many ways to develop resources and the owners of the resource have a responsibility to ensure that, of the development plan options available, they promote the one that is in their country's best interests. Australia has done a splendid job here, but not East Timor. Since East Timor now has a greater *de-facto* ownership and control of the Bayu-Undan resource than does Australia, it has a greater responsibility to ensure that this resource is developed in a manner that best suits East Timor's future economic needs and national interest.

The Committee will understand, through their own individual experience with Australian governmental processes, that considerable *funds, time* and *skilled human resources* are required to complete all the necessary technical and policy-development work required as a pre-condition for this task. Compared to Australia's access to these resources, East Timor had little. This is believed to be a significant factor in the outcome of the negotiations, especially in relation to the infrastructure issue. Many submissions take the same view.

#### 5.1.5 The Timor Sea Treaty was not negotiated by an independent nation

The perception of East Timorese NGO La'o Hamutuk in Dili was that "our Prime Minister was coerced into signing an unfair agreement within hours of our becoming independent"<sup>27</sup>.

When the predecessor *Timor Gap Treaty* was signed on December 11, 1989, our triumphant Foreign Minister Mr. Gareth Evans exclaimed: "The *Timor Gap Treaty* is the most significant bilateral agreement concluded in the forty year history of Australia's relations with Indonesia". This treaty, despite being ratified by parliaments of both Indonesia and Australia, did not endure because it was built on an unstable foundation.

It can be said that the *Timor Sea Treaty* is the most significant bilateral agreement concluded in the ten hour history of Australia's relations with an independent East Timor. This in itself represents an objective unstable foundation.

Referring to the new revelations about the feasibility of a pipeline across the Timor Trough, Australian oil & gas industry historian Rick Wilkinson has wryly observed:

"Although recognized as a wild card, the fact that such a scenario has been mooted adds further tension to the whole debate and puts Timor Sea negotiations on an even more delicate footing. Instead of a day of conclusion, Independence Day is shaping up to be a brief pause in the continuing saga of the Timor Gap"<sup>28</sup>.

#### 5.1.6 Financial inducements

Clearly there are now *quid pro quo* agreements between Bayu-Undan operator Phillips Petroleum and East Timor's negotiators.

Mr. Nazroo described the December 2001 Understandings Agreement as essentially East Timor providing incentives to the companies to enable them to make an economic investment in the Darwin pipeline/LNG project.<sup>29</sup>

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<sup>27</sup> Submission no. 14 to Joint Standing Committee on Treaties, by The East Timor Institute for Monitoring and Analysis (La'o Hamutuk), 31 July, 2002.

<sup>28</sup> Rick Wilkinson, in "The Oil Patch" for Wednesday 15 May 2002, <http://news.ogtoday.com>

<sup>29</sup> Mr. Mike Nazroo, Vice-President, Commercial, Phillips Petroleum Co. Australia Pty Ltd. Statements at the public hearing in Perth, October 2, 2002

What this means is that East Timor is actually subsidizing Phillips Petroleum to implement a development plan that is not the best plan for East Timor.

Phillips Petroleum has said that without these subsidies from East Timor, the project would be sub-economic.

Financial inducements from the commercial Bayu-Undan operator and linked to the approval of the Darwin pipeline project may have had the desired effect of gaining additional support for this development plan. For example, the US\$5 million committed by Phillips for on-the-job training of East Timorese is *subject only to the LNG project going ahead*.

Similarly, the cut-price LPG supply deal worth US\$20 million to East Timor over 20 years is again *subject only to approval of the Darwin pipeline project*.

#### 5.1.7 Divisions and discontent inside East Timor

The submissions from the East Timorese civil society groups and NGO's should be sufficient to persuade the Committee of this potential political problem inside East Timor, due to the perceived unfair scorecard after the negotiations.

In particular I refer to the submissions from Partido Democratico (number 18), La'ohamutuk (number 14), Forum Nasional ong Timor Lorosa'e (number 9) and CIITT, the East Timor Independent Information Center for the Timor Sea (number 13) and LAIFET, the Labour Advocacy Institute of East Timor (number 23).

Professor James Fox has referred to "the generation of '75" and the "generation of '99" and explained some irreconcilable differences in experience and outlook between these generational groups.<sup>30</sup> Members of the above NGO's would in most cases fall into the latter category. Anthropologist and former Soeharto regime dissident George Aditjondro described these two political groupings as "Portuguese educated" and "Indonesian educated".

The most powerful East Timorese players in the negotiations with Australia were Mr. Mari Alkatiri and Mr. Jose Ramos-Horta who fall into the first category and who have close family ties with Australia.

To quote from an article written two years ago: "Indonesian-educated East Timorese activists may challenge 'selling the farm' by their Portuguese-educated leaders. They do understand the issue".<sup>31</sup>

Political divisions around the *Timor Sea Treaty* may become more apparent as time progresses if unemployment and corruption start to have negative social impacts within East Timor. The Indonesian-educated population and opposition political parties in particular will have a credible and realistic scapegoat. That scapegoat will be the *Timor Sea Treaty* especially if it transpires that Darwin inherits all the infrastructure benefits and jobs. As the conduct of negotiations and the consequent lost economic opportunities become more widely known within East Timor, the treaty will start to unravel whether it is ratified or not. This doomsday scenario may be avoided by large-scale fixed direct foreign investment in East Timor creating jobs,

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<sup>30</sup> "Defense and security issues – Australia, East Timor and Indonesia", Jim Fox, Director, Research School for Pacific and Asian Studies, Australian National University, Canberra. Address to "JPDA Summit" in Melbourne, September 26, 2002.

<sup>31</sup> *Supra*, note 2.

education and training and spin-off businesses. Unfortunately, political risk factors associated with newly independent nations will discourage foreign investment of the type needed if political and social problems grow.<sup>32</sup>

Onshore processing of East Timor's petroleum wealth is the one logical and feasible option that could have been incorporated into recent Timor Sea negotiations and backed up with political risk mitigation measures implemented with the help of the international community.

With or without a permanent delimitation of maritime boundaries, East Timor may yet secure the vision of an on-shore LNG export industry, provided there has been not been a binding quid pro quo deal made by the current leadership with Australia.

#### 5.1.8 Excessive pressure to ratify quickly

Any miscalculation or mistake by East Timor in relation to any aspect of the *Timor Sea Treaty* has considerably more impact on that country's economic future than did the *Timor Gap Treaty* on the economic future of Indonesia. Yet it was a full year after the signing of the *Timor Gap Treaty* that it was ratified by the Indonesian parliament.<sup>33</sup>

Therefore East Timor needs at least this period of time to ratify, and some would argue for much more time considering the importance of the Treaty for the country's future.

## 5.2 More on "National Interest"

Many submissions argue that an economically viable East Timor is in Australia's national interest and therefore Australia should not oppose East Timor's maximal seabed claims in the Timor Sea.

Last year even Australia's foreign minister appeared to lend support to this view. "We have a quite clear national interest in ensuring as best we can that East Timor is a stable and prosperous society", he said.<sup>34</sup>

The only submissions that did *not* express concern about the outcome of negotiations are those from Australian governmental authorities and from the Australian-based Timor Sea commercial joint venture partners and associated Australian businesses. *This is because there is a straightforward conflict of interest between Australia and East Timor in relation to how the Timor Sea resources will be developed.*

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<sup>32</sup> Political risk issues were discussed at the "JPDA summit" in Melbourne on 27 – 27 September, 2001. Ms. Anne Russell-Cook, Australasian Political Risk Manager, American International Group (AIG) discussed sovereign risk, land access, 'green tape', 'red tape', social risk, infrastructure damage, civil unrest, natural disasters, labour relations and arbitrary or discriminatory government actions. She described project and investment related risks as confiscation, expropriation, nationalization, forced abandonment or divestiture, selective discrimination, political violence, currency inconvertibility and non-honoring of arbitration award. The problem for East Timor is that if poverty and unemployment persist and become more widespread, political risk for project finance will increase. Therefore the opportunity for minimizing future political risk would be at the start of independence by large-scale foreign investment under conditions where the international community can accept some of the political risk. It is only from petroleum export projects located on East Timor's soil that investment on the scale required can be visualized in the short term.

<sup>33</sup> "Indonesia ratifies Timor Gap Treaty", UPI news report, 12 December 1990

<sup>34</sup> Robert King's submission, page 30

Australian businesses looking forward to Timor Sea based infrastructure projects see that “ratification is clearly in the national interest”.<sup>35</sup>

Claire Martin, the Northern Territory’s chief minister, is the most notable public exponent of the view that Australia’s national interests are best served by securing the onshore downstream benefits of Timor Sea gas production.

"I've been pleased with the initial support from the Prime Minister and Opposition leader Simon Crean for Timor Sea gas to come onshore, however it's time to step up the campaign and secure this resource for Australia," she said last week.<sup>36</sup>

If the Northern Territory government’s case is accepted, then it logically follows that it is not in Australia’s national interest that these infrastructure benefits (meaning LNG processing and export facilities) be located on East Timor’s shores. Accordingly, Australia would be justified on national interest grounds in sabotaging any East Timorese moves to investigate this alternative development plan. The Committee might ask themselves “has this already occurred?”

At the time of writing, The Northern Territory’s chief minister is continuing to mount an energetic campaign. She is to be admired for her commitment and courage.

As Claire Martin says "We need Bayu-Undan and Sunrise to come onshore to Darwin to gain maximum benefit for Australia and secure a long-term supply of gas for business and domestic use".

"These projects combined will provide a A\$50 billion injection into the Australia economy alone and create an extra 10,000 jobs”.

The word “East Timor” could replace “Australia” in these statements, but while Claire Martin is fighting for her constituents the leaders on the other side of the Timor Trough appear powerless to address this infrastructure issue.

### 5.3 Pipeline technical issues

#### 5.3.1 Peddling the myth of impossibility – 1999 to 2002

“Through a combination of denial, obfuscation and misleading statements, the media, senior officials and the public were deliberately and systematically deceived”.

This statement was taken from the recent Senate Enquiry report on a certain maritime incident to our north, during the last election campaign.<sup>37</sup> It will serve to demonstrate that such behavior is not unthinkable in Australia. By some standards this sort of mendacity may even be considered praiseworthy if it achieves what is seen to be the greater good.

It is argued that Phillips Petroleum and associated interested parties have behaved in a similar manner to undermine the vision of LNG export industry located in East Timor. It was important for the company to achieve this goal in order to facilitate the realization of the less economically attractive but also less politically risky Darwin

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<sup>35</sup> See for example the submission by Multiplex Constructions Pty Ltd (submission no. 35)

<sup>36</sup> “NT and Canberra in Timor talks Darwin - Maintaining her push for Timor gas to come onshore, Northern Territory’s Chief Minister Clare Martin is to meet with the Prime Minister in Sydney on the 6th November 2002” <http://news.ogtoday.com> October 23, 2002.

<sup>37</sup> Sydney Morning Herald, October 24, 2002, “Inquiry damns Reith’s ‘deliberate distortion’

LNG export project alternative.<sup>38</sup>

The process of manufacturing consent in East Timor in favor of Darwin-based Timor Sea infrastructure can be traced back to Mr. Jim Godlove's statements at the Senate Enquiry public hearings in Darwin on 8 September 1999.<sup>39</sup> This interview took place only shortly after the historic ballot in East Timor. At that time 250,000 East Timorese were being herded into West Timor by the Indonesian military and the systematic destruction of East Timor's infrastructure was about to commence. It was not until October 25 1999 that UNTAET took over the administration in East Timor.

The transcripts of the interview are copied below for the Committee's reference.

Senator Lightfoot, the chairman, asked:

“Mr Godlove, you have said that your future planning is to put infrastructure-particularly with respect to the treatment of gas, LNG and other areas of petrochemicals-into the Northern Territory. It is around Darwin somewhere, one assumes, where you could have perhaps hundreds of millions of dollars-or perhaps billions, if the field were big enough. Notwithstanding the associated geological problems undersea, where most of the gas at least would come from, is there a possibility that infrastructure could be transferred to East Timor and away from the Northern Territory?”

To which Mr Godlove replied:

“From an engineering standpoint, no; it is not possible for us to take gas by pipeline from the Bayu-Undan field to Timor. The trench is too deep and too seismically active, and the limits of technology simply prevent that. Phillips funded a very significant engineering study into this, and we presented those results to the Indonesian authorities as well as to the Australian authorities. It is acknowledged that indeed, for engineering reasons, it is just not possible to take the gas to the north. So the only logical destination for this gas would be the Northern Territory”.

Ten days after Mr. Godlove's Senate Enquiry statements, when East Timor was still burning, a media release from the Department of Foreign Affairs and Trade confirmed the government's desire for a pipeline to Darwin:

“The eventual export of petroleum by pipeline from the Timor Gap to Darwin would bring considerable benefits in terms of Australian regional development. It is very important that there is a seamless transition or arrangements governing petroleum exploitation in the Timor Gap” said the Foreign Minister.<sup>40</sup>

Within a few months East Timor's negotiators began echoing Mr. Godlove's advice, not realizing that it was incorrect advice:

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<sup>38</sup> “World Risk: exclusive survey 2002”, *Resources Stocks*, May/June 2002, [www.miningnews.net](http://www.miningnews.net). Cover story titled “Australia shines again amid time of terror. For the second year in a row Australia has won the gong as best place in the world to invest in resources according to the annual RESOURCESTOCKS/AIG investment risk survey. By Stephen Bell”

<sup>39</sup> Commonwealth of Australia, Proof Committee Hansard, Senate Foreign Affairs, Defense and Trade References Committee, Reference: Economic, social and political conditions in East Timor. Wednesday, 8 September 1999, Darwin.

<sup>40</sup> Minister for Foreign Affairs, ‘Timor Gap Treaty Negotiations to Begin’, media release, 18 September 2000; ‘Renegotiation of Timor Gap treaty to begin’, *AAP*, 18 September 2000.



"Alkatiri said downstream projects requiring Timor Sea gas to be piped ashore could only be developed in Australia as a deep underwater trench prevented pipelines to East Timor."<sup>41</sup>

### 5.3.2 The "significant engineering study" – why still a secret?

Over two years ago the writer sought to discover the contents of the engineering study referred to by Mr. Godlove at the Senate Enquiry.

On July 3, 2000 we asked Mr. Godlove if he could advise who conducted the engineering study, whether the Joint Authority had approved the Darwin pipeline proposal, and whether he personally believed it was "impossible" to construct a pipeline across the Timor Trough.<sup>42</sup> We had been in occasional correspondence with Mr. Godlove since April 1999, and had already had technical discussions with INTEC Engineering<sup>43</sup> regarding the feasibility of a Timor Trough crossing. Mr. Godlove confirmed "the study concluded that routing a pipeline to the north was neither technically or economically feasible at this time due to depth and seismic activity in the trough. This conclusion was accepted by the Joint Authority". Mr. Godlove advised however that he was not at liberty to discuss the details of the study or advise who carried out the study.<sup>44</sup>

We wrote to Mr. Robert Mollah, Australian Executive Director of the Joint Authority, asking whether it was possible for access to the engineering study.<sup>45</sup> Mr. Mollah replied on August 1, 2000 that "the Joint Authority is not in a position to release such a study at this time".<sup>46</sup>

We therefore commenced to seek "inside information" from oil industry contacts. On July 26, 2000 a source advised "J P Kenny did a study in 1996 that basically assessed a few routes and put budgetary costs together. Phillips Petroleum were putting a case for the Darwin line to the Indonesian government at the time. The bottom line is that a Timor Trough pipeline is feasible. From memory, diameter was an issue, and dual lines would be required if the single preferred line size was above 26-inch".

Based on this lead we were able to discover from other reliable oil industry sources the specific details of the engineering study undertaken by international pipeline consultants J P Kenny.<sup>47</sup>

In summary, the J P Kenny study commissioned by Phillips Petroleum examined

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<sup>41</sup> Reuters, 26 June 2000

<sup>42</sup> Private communication. E-mail from: "Geoff McKEE" <gamckee@ozemail.com.au> To: "Jim Godlove (Phillips Petroleum)" <jwgodlo@ppco.com> Subject: questions Date: Mon, 3 Jul 2000 07:27:19

<sup>43</sup> *Supra*, note 5

<sup>44</sup> Private communication. E-mail Subject: Re: questions To: gamckee@ozemail.com.au From: "Jim Godlove" <jwgodlo@ppco.com> Date: Wed, 5 Jul 2000 19:13:17

<sup>45</sup> Private communication. E-mail From: "Geoff McKEE" <gamckee@ozemail.com.au> To: "Timor Gap Joint Authority" <darwinoffice@timorgap.org.au> Subject: ATTN: Mr Robert Mollah Date: Thu, 20 Jul 2000 17:10:17

<sup>46</sup> Private communication. E-mail From: Eunice Cashmore <DarwinOffice@timorgap.org.au> To: Geoff McKEE <gamckee@ozemail.com.au> Subject: RE: ATTN: MR ROBERT MOLLAR Date: Mon, 24 Jul 2000 07:45:36

<sup>47</sup> For information on J P Kenny Worldwide Deepwater Pipelines and Subsea Facilities Experience, see <http://www.jpkenney.com/DeepwaterExp.htm>

three northern routes (all from Bayu-Undan). These were to Oesu on the east coast of Roti; direct to Suai; and direct to Viqueque. Estimated capital cost was, respectively, US\$700 million; US\$580 million; and US\$610 million for dual 26-inch pipelines. These estimates were in dollars of the day (1996). It was found that pipelay tension exceeded practical limits for a single 36" pipeline above depths of about 1500m. Therefore the dual 26" pipeline option was used.

This reliable but unofficial information revealed, two years ago, that the subject engineering study in fact concluded the *opposite* to what the Senate Enquiry was advised.

### 5.3.3 Revenue alone versus fixed direct investment

Robert King's submission to the Committee contained a reference to the economic and social downside for developing countries that are almost totally dependent on resource revenue.<sup>48</sup>

Sarah Cliffe, head of the World Bank's Mission in East Timor, warned of some dangers:

"Over-reliance on one or two exports-whether coffee or oil - makes the country too vulnerable if the price falls". She referred to the possible uses of oil and gas revenues, warning that this "windfall" brings with it some risks. Economies that have had high revenues from oil and have spent these immediately have often raised urban wages and incomes so fast that other industries cannot afford to operate and go out of business. Later, when the oil has run out, the economy has no sustainable alternative to provide incomes and employment"<sup>49</sup>

The NT government's submission refers to infrastructure benefits as "other genuine national interest considerations that may well outweigh royalty and tax revenue benefits".

"Australia might get royalties under the floating LNG scheme, but no value added. It would be a reversion to the old days where developers saw Australia just as a mine or a quarry" said Ms. Claire Martin.

Mr. Andrew Andrejewskis described the potential value added benefits at the public hearings on 3 October, 2002.

"On the assumption that both Sunrise and Bayu-Undan would come onshore, the benefits to Australia, including the Northern Territory, on a net present value basis, discounted at six per cent over 26 years—that is, six years for construction, 20 years for operation—would increase Australian gross domestic product by \$56 billion. It would be an increase in net exports of \$33 billion, an increase in Commonwealth revenue of approximately \$10 billion and create indirectly and directly 11,900 jobs. This is Australia-wide, including the Northern Territory".<sup>50</sup>

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<sup>48</sup> See extensive quotes on page 37 of Mr. Robert King's submission, from the *Far Eastern Economic Review*, a 30 November 2000, 'East Timor's Resource Curse?'

<sup>49</sup> S. Cliffe's address to the CNRT Congress in Dili, August 2000.

<sup>50</sup> Mr. Andrew Andrejewskis, page TR72, Hansard for Joint Standing Committee on Treaties, public hearings, 3 October 2002 in Darwin.

The Committee will understand that these “value added” arguments are of more relevance and importance to East Timor than they are to Australia, due to the disparity in living standards between the two countries.

The case for the necessity of fixed direct investment in East Timor – bringing jobs, education, training and spin-off industries - hardly needs to be made. It has not been strongly made by the East Timorese Timor Sea negotiators, apparently because they were led to believe a pipeline across the Timor Trough was not possible.

#### 5.3.4 Are there sufficient domestic gas markets in Australia for Timor Sea gas?

It is concluded that Australian domestic gas supply is not a consideration for Timor Sea gas in the foreseeable future.

According to the latest ABARE gas supply/demand study, the demand for gas in New South Wales, South Australia, Tasmania and Victoria is expected to continue to be met by existing sources up until 2019-20 in combination with increased production of coal seam methane in New South Wales.<sup>51</sup>

What this means is that domestic gas supply from Timor Sea gas is not likely in the foreseeable future.

Mr. Matthew Coffey from Darwin made a good point to the Committee when he said:

“We need to bear in mind that a pipe of any volume coming 435 kilometers to Darwin from Sunrise or 484 kilometers from Bayu-Undan has never been done anywhere in the world at that length and at the volumes that have been talked about by the NT government”.

If piping gas to Darwin for domestic supply is ever economically justified, then there are currently stranded gas resources that could be brought to Darwin more economically and these are in Australian territorial waters. These fields are namely Petrel, Tern, and Blacktip with combined reserves in the order of about 2 trillion cubic feet.

Shell and Woodside commenced a major study in 1999 to investigate gas supplies from Greater Sunrise to the Northern Territory and Queensland, with a long term objective to supply the Eastern states.<sup>52</sup>

A Shell spokesman said recently "After a commitment of nearly \$200 million on extensive engineering and marketing efforts aimed at securing onshore domestic gas customers, we cannot find customers who are able to secure volume or price commitments which are needed to get Sunrise up and running."<sup>53</sup>

Phillips Petroleum have also initiated a similar study aimed at the domestic Australian market.<sup>54</sup>

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<sup>51</sup> “Australian gas supply and demand balance to 2019-20”. ABARE report for the Commonwealth Department of Industry, Tourism and Resources, published August 2002.

<sup>52</sup> News Release, Woodside Petroleum Ltd, Shell Development (Australia) Pty Ltd, Duke Energy International & Subsidiaries, June 21, 1999 “Shell, Woodside and Duke Energy International Announce a Joint Study of the Infrastructure Requirements for the Delivery of Timor Sea Gas to the Northern Territory and Queensland”

<sup>53</sup> “Shell maintains floating LNG the way to go “, AAP Newsfeed report, May 1, 2002

<sup>54</sup> Phillips news by e-mail, November 11, 1999 “New Alliance for Bayu-Undan Gas”. Perth, WA, 23 November 1999. An Australian subsidiary of Phillips Petroleum Company (“Phillips”) and Epic Energy have entered into an alliance to conduct market development activities to commercialize gas

The Committee will understand that due to adequate existing and potential new supplies of gas in the Eastern States it will be very difficult to justify the pipeline infrastructure to transport Timor Sea gas to these destinations in the short term. Indeed, this is why Phillips Petroleum and its co-venturers have currently committed the entire Bayu-Undan gas reserves for export to Japan, with nothing remaining for domestic supply.

Woodside, as the Greater Sunrise field operator, similarly favors LNG export (by means of a floating production facility) rather than domestic supply for lack of Australian gas markets.

The argument made by the Northern Territory government that the Darwin is the logical destination for a Timor Sea pipeline due to the availability of a domestic gas market is therefore very problematic.

This domestic gas argument favoring Darwin appeared to be made recently by East Timor's Prime Minister:

"If I were an investor, I would want the pipeline to go to Australia for two reasons," he explains. "Firstly because Australia will buy gas – you could bathe Timor in gas but there is no market. Secondly, the sea to Australia is not so deep, but the sea to Timor is extremely deep. Technically it is possible to send a pipeline to Timor, but one meter of pipeline costs much more in deeper waters. An investor would lose money."<sup>55</sup>

What is apparent here is the dubious quality of advice on which East Timor's Prime Minister must act. Besides being inaccurate on the domestic gas aspect, this statement is mistaken on the pipeline capital cost issue (based on the J P Kenny engineering study and the more recent INTEC study). Further, it overlooks the subsidies and concessions that must be made by both East Timor and Australia to create an acceptable return for the investors in a Darwin pipeline and associated LNG export facility. An LNG export project for East Timor is not dependent on there being any gas markets that country. However, if gas were exported from East Timor, then a source of cheap and clean energy would be available for local industries and domestic supplies.

Coal Seam Gas (CSG) has enormous potential to replace existing reserves in Australia and this gas is located close to existing pipeline infrastructure in Queensland and NSW, making it potentially less costly than gas requiring a new 2000 km pipeline from Darwin to Moomba. Already over 20% of Queensland's supply is from CSG.<sup>56</sup> Sydney Gas Company alone claims it has over 60 trillion cubic feet (tcf) of potential recoverable reserves of CSG, compared to about 3.4 tcf for Bayu-Undan and 8.6 tcf for Greater Sunrise.<sup>57</sup>

### 5.3.5 Is the Timor Trough too seismically risky for a submarine pipeline?

At the public hearings on 3 October Mr. Andrew Andrejewskis, the NT governments director of petroleum, described a map of the Timor Sea area to the Committee in a

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from the Timor Sea throughout Australia, it was announced today.

<sup>55</sup> *Supra*, note 11.

<sup>56</sup> See "Flowline", magazine of the Australian Petroleum Production & Exploration Association, most recent issue.

<sup>57</sup> See Sydney Gas Company's web site at [www.sydneygas.com](http://www.sydneygas.com)

curious manner, as follows (*italics mine*).

“Although I am sure you have probably seen maps like these ad nauseam, to set the context I would like to point out: the land mass of Australia, the international boundary, the JPDA, *the Timor trough which is 2,000 to 3,000 metres deep on an active zone where the Australia geological plate is moving to the north-west*, and the Democratic Republic of East Timor.

The Committee may have noticed Mr. Andrejewkis’ departure into the scholarly subject of Timor Trough seismicity. The idea that a pipeline to Timor is technically and economically feasible is troubling to the Northern Territory government for obvious reasons. Therefore to subvert the very idea is tantamount to supporting the Northern Territory’s “vital interests” to secure the Timor Sea LNG export infrastructure.

It appears that, after the recent failure of the argument that a Timor Trough pipeline is “impossible” due to water depth, the only argument remaining for the NT government is the risk of geo-hazards in the Timor Trough i.e., earthquakes.

But the deepwater pipeline experts tell us that geo-hazards represent a low level of risk compared with normal, conventional hazards such as material defects or corrosion.<sup>58</sup>

Dr. Tim Charlton, a world authority on the tectonics of the Timor Trough,<sup>59</sup> advised the writer that the risk of geo-hazards in the Timor Trough will be no greater or less than those effecting the pipeline that was planned to hook up Greater Sunrise. This conclusion is supported by the pictorial representation of earthquake history in the area, published in Woodside's recent Environmental Impact Statement for the Sunrise development.<sup>60</sup>

One post graduate geologist, currently studying the seismicity of the Timor Trough, explained "Yes, you are right in quoting the Timor Trough as seismically inactive. There are few references on the matter, one of them by Robert McCaffrey (1996) who analyzed the GPS and seismicity data around Banda Arc and concluded that there has been no subduction in the Timor Trough. In other words, there is a very low possibility of seismicity."

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<sup>58</sup> “Risk Assessment of Deepwater Gas Trunklines” by Peter Carr (Peter Carr Consultants Ltd) and Robert Preston (JP Kenny Ltd), 2nd International Deepwater Pipeline Technology Conference, March 1999. The authors conclude: “The primary areas of risk and uncertainty for deepwater gas trunklines are perceived to be buckling during construction and geo-hazards during operation. The development of risk models to address these issues has been described. Application of the geo-hazard risk models to a 500-km 24-inch gas trunkline in a seismic deepwater region has shown that the geo-hazards represent a low level of risk compared with normal, conventional hazards such as material defects or corrosion”.

<sup>59</sup> Charlton completed a doctoral thesis on this subject. Refer Charlton, T. R. 1987 “The tectonic evolution of the Kolbano-Timor Trough accretionary complex, Timor, Indonesia”. (Ph.D. Thesis) [http://www.gl.rhbnc.ac.uk/seasia/html/body\\_theses.html](http://www.gl.rhbnc.ac.uk/seasia/html/body_theses.html)

<sup>60</sup> "Earthquake History in the Sunrise Gas Field Area Since 1900", Figure 6-4, Project No.: DE2090.100, Figure prepared by T.Lee, Date Prepared: 16/10/01, Sinclair Knight Merz. Draft Environmental Impact Statement for Woodside Energy Ltd, December 2001.

### 5.3.6 Is the Timor Trough too deep for a submarine pipeline?

It was announced only this week, on October 21, 2002, that construction of the Black Sea pipeline had been successfully completed.<sup>61</sup> <sup>62</sup> This existing deepwater pipeline, laid at 2,150 meters water depth, is living proof that a pipeline across the Timor Trough is well within present pipelaying capabilities. The Black Sea area has very steep shore approaches, is seismically active, prone to mud volcanoes, mud and rock fall and has an aggressive H<sub>2</sub>S-rich sediment.<sup>63</sup> By comparison the Timor Trough is much more favorable for pipelaying. There now should be no debate about the technical feasibility of a pipeline across the Timor Trough.

The figure below show the depth comparisons of a Timor Trough pipeline and the Black Sea pipeline. Also shown is the Oman-India pipeline proposal that was fully engineered but did not proceed.<sup>64</sup>

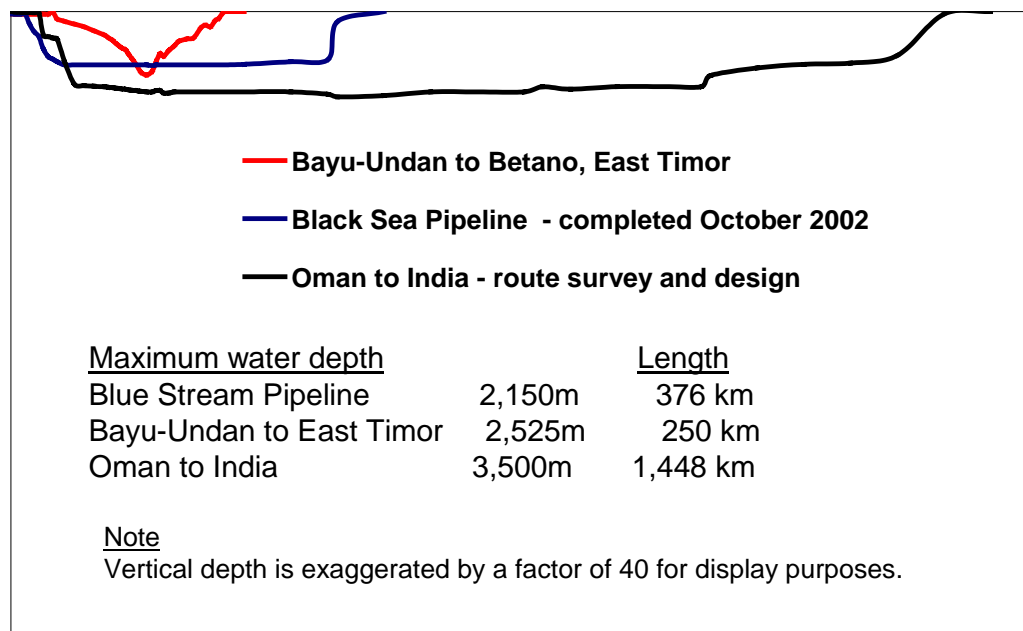
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<sup>61</sup> "World's deepest undersea gas pipeline completed" Ankara, 21 October, OGT—Two pipes were welded together yesterday to finish construction of US\$3.2 billion Blue Stream, the world's deepest undersea gas pipeline that will bring Russian gas to Turkey under the Black Sea. The 360-km underwater segment of the 446-km dual pipeline was laid at a record depth of 2,100 m below the surface of the Black Sea by the Italian engineering company Saipem. Turkey's energy Minister Zeki Cakan welded the end of the pipeline, stretching from the Russian port of Dzhubga to Turkey's Black Sea port of Samsun, to a separate 501-km pipeline running from Samsun to the capital Ankara. The line is expected to begin test deliveries of natural gas to Turkey within a month. Turkey will receive an annual 3 billion m<sup>3</sup> of natural gas in 2003. This will increase to 16 billion m<sup>3</sup> a year in 2008.

<sup>62</sup> On 3rd February, 1999 the large Italian construction conglomerate ENI and the Russian company Gazprom, the world's biggest producer of natural gas, signed a memorandum of understanding on 50/50 participation in the implementation of a project called Blue Stream. This provides for the construction of a 376 km gas pipeline from the Russian to the Turkish coast, across the Black Sea. See [http://www.eni.it/english/notizie/riviste/ecos1\\_99/ec1\\_99\\_p06.html](http://www.eni.it/english/notizie/riviste/ecos1_99/ec1_99_p06.html) and <http://www.eni.it/snam/english/infogas/archivio/maggio00/07.html> for further information about this deepwater pipeline.

<sup>63</sup> "H<sub>2</sub>S Challenge for Black Sea Pipeline", CAPSIS, 1999, from <http://www.capsis.co.uk/maininfo/news0604.html>, visited July 24, 2000.

<sup>64</sup> The Oman - India Gas Pipeline detailed design was based on export of 1 bcf/day of gas with an inlet delivery of 6000 psi, through an offshore pipeline that crosses through water depths down to 3,500 meters. The project included onshore compression facilities in Oman with export through a land pipeline of between 34-inch and 28-inch diameter, the offshore section (approximately 1,100 kilometers of 24-inch diameter pipe), the onshore India facilities and SCADA system. Both J P Kenny and INTEC were involved in the design of the Oman-India pipeline (not constructed). See <http://www.jpkenney.com.au/resumes/data/res068.htm> visited 24 July, 2000. See also "Oman-India Pipeline Route Survey", J.E. Mullee, INTEC Engineering, Inc. presented at the 27th Annual Offshore Technology Conference in Houston, Texas, U.S.A., 1-4 May 1995, at [http://www.intec-hou.com/OTC/OTC\\_7676.shtm](http://www.intec-hou.com/OTC/OTC_7676.shtm) 7/24/00



The significantly easier shore approaches for a Timor Trough crossing, are evident although water depth is slightly greater in the center section compared to the Black Sea pipeline.

### 5.3.7 Timor Trough pipeline economics

The currently planned pipeline from Bayu-Undan to Darwin is reported to cost US\$500 million dollars and the LNG Export facility a further US\$1 billion.<sup>65</sup> This planned 480 km pipeline is believed to be of size 24-inch diameter and have a capacity of 0.5 billion cubic feet of gas per day (bcf/d), suitable for a 'single train' 3 million tonne/year (mtpa) LNG plant.

The recent INTEC study indicates that the capital cost of a 230 kilometer 28-inch pipeline from Bayu-Undan across the Timor Trough to East Timor, capable of transporting twice this capacity (i.e., 1 bcf/d for a 2-train 6 mtpa LNG plant) is US\$343 million.<sup>66</sup> This is 70% of the cost of the currently planned pipeline to Darwin. For purposes of comparison, the capital cost of a pipeline from Bayu-Undan across the Timor Trough for a 3mtpa LNG plant in East Timor is estimated to be only about 60% of the reported cost of the currently planned pipeline of the same capacity to Darwin.

### 5.3.8 Political risk is the perceived problem for foreign investment in East Timor

Woodside's view is that "it will be many years before East Timor demonstrate its sovereign risk credentials".

<sup>65</sup> Mr. Mike Nazroo, Vice-President, Commercial, Phillips Petroleum Co. Australia Pty Ltd, Comments at public hearing of Joint Standing committee on Treaties, October 2, 2002, Perth.

<sup>66</sup> The INTEC engineering study, commissioned by PetroTimor, can be viewed or downloaded from [www.gat.com/Timor\\_Site](http://www.gat.com/Timor_Site)

As mentioned in earlier comments, the international community has an interest in reducing political risk levels in East Timor. It is a “chicken and egg” situation, with fixed direct investment at the start-up of the new nation reducing political risk, but a lack of foreign investment increasing political risk with time if it results in unemployment and civil unrest.

#### **5.4 The Timor Sea maritime boundary issue**

##### 5.4.1 Does international law in relation to seabed boundaries serve Australia’s interests?

“The Committee RECOMMENDS that, in its negotiations with UNTAET on the future of the Timor Gap Treaty, the Australian Government should take into account current international law in relation to seabed boundaries, the history of our relations with the East Timorese people, the need to develop good bilateral relations with East Timor and the need for East Timor to have sources of income that might reduce dependency on foreign aid”.

This final recommendation of the acclaimed 2000 Senate Enquiry into East Timor has been discarded by the government’s withdrawal from UNCLOS dispute resolution procedures.<sup>67</sup>

##### 5.4.2 The experts disagree and there is now way of resolution

The Committee will have noted differing expert opinions on the issue of East Timor’s proposed lateral EEZ boundaries under international law.

On the one hand, we have the opinions of Professor Vaughan Lowe et al.<sup>68</sup>

On the other hand, we have the opinions of Australian’s Mr. Pat Brazil, Professor Victor Prescott, Professor Gillian Triggs and Mr. Dean Bialek, who all take issue with various aspects of the Lowe et al opinion. Mr. Dean Bialek however appears to have many points of agreement with the Lowe et al opinion.

What Mr. Brazil did not mention in his submission was Australia’s withdrawal from UNCLOS dispute resolution. This is a material fact that makes his opinion of no practical use, for it cannot be tested by a higher authority.

Australia’s withdrawal from UNCLOS dispute resolution procedures has made the current spectrum of expert views irreconcilable. There appears no resolution in sight. As Canadian oceanographer and barrister Jeffrey Smith observed “your government appears to have created a recipe for lawlessness in her maritime affairs.”

Mr. Campbell has put to the Committee the concept of a “lingering nonsatisfaction” that states may experience as a result of maritime boundary determinations made by

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<sup>67</sup> “Changes to International Dispute Resolution”, News Release, from the Attorney-General, the Hon. Daryl Williams AM QC MP and the Minister for Foreign Affairs, the Hon. Alexander Downer MP. 25 March 2002. The Attorney-General Daryl Williams and the Minister for Foreign Affairs Alexander Downer today announced changes to the terms upon which Australia accepts international dispute resolution mechanisms, particularly as they apply to maritime boundaries. These changes relate particularly to the International Court of Justice (ICJ) and to dispute settlement under the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

<sup>68</sup> “Opinion in the Matter of East Timor’s Maritime Boundaries”, 11 April 2002, by Vaughan Lowe, Chichele Professor of Public International Law, Oxford University, UK; Commander Chris Carelton, Admiralty Consulting Services, UK Hydrographic Office; and Dr. Christopher Ward, barrister at law, Sydney NSW Australia. Available for download at [http://www.gat.com/Timor\\_Site/lglop.html](http://www.gat.com/Timor_Site/lglop.html)



courts.<sup>69</sup> However, many submissions argue the opposite case, in that unequal negotiations may lead to “lingering nonsatisfaction” in East Timor.

#### 5.4.3 Does East Timor intend to terminate a ‘short-lived’ treaty after it is ratified?

Several Dili-based East Timorese NGO’s and many parliamentarians became concerned about the conduct and outcome of the negotiations after the public release of the Lowe-Carelton-Ward opinion. This was after the 27 March 2002 seminar sponsored by Petrotimor and attended by many East Timorese constituent assembly members.<sup>70</sup> The result appeared to be a political difficulty for the East Timorese government and Prime Minister Mr. Mari Alkatiri in particular. There was a perception that the negotiators may be either “selling the farm” or being “taken to the cleaners” by Australia. Within East Timor, the public perception of government incompetence needed to be changed if the leaders are to retain respect and the power that flows from that.

The East Timor government strategy for healing the “perception problem” among its long-time supporters appears twofold. Firstly, it is to claim that the *Timor Sea Treaty* is only an “interim and temporary measure” pending a final delimitation of the seabed boundaries that will happen soon. Secondly, people are reminded that the *Timor Sea Treaty* is the product of a democratically elected government and therefore should be respected as such and not criticized. In other words, it was an agreement made with the full support of the East Timorese assembly.<sup>71</sup>

If East Timor were serious about securing a permanent delimitation, it would have acted earlier – before signing the *Timor Sea Arrangement* in July 2001 - to initiate action or proceedings on this issue.

A leaked document has shown that the substance of the maritime boundary opinions revealed to the parliamentary members in Dili on 27 March 2002, was not new to the East Timorese leader.

The Darwin-based East Timor support group AFFET (Australian for a Free East Timor) published a commentary on and excerpts from this leaked memorandum.<sup>72</sup>

“AFFET has recently discovered from inside UNTAET/ETTA, a startling revelation. In February 2001, a full 4 months before the *Timor Sea Arrangement* was initialled, UNTAET's former senior economic adviser Mr. Ramiro Paz issued to the Mr. Alkatiri an in-depth report that dealt exclusively with the maritime boundary conclusions very similar in fact to those offered publicly at the March 2002 seminar. This is a comprehensive report that makes strong recommendations, indeed a plea, that ETTA must not sell East Timor short by agreeing to the wrong lateral closing lines defined by the illegal *Timor Gap Treaty*. We quote following a couple of paragraphs from the

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<sup>69</sup> Hansard of public hearing in Canberra, October 8, 2002. Page TR233.

<sup>70</sup> See ACTU Submission “Review of Timor Sea Treaties”, Submission no. 62 to Joint Standing Committee on Treaties, 10 September, 2002, Attachment, Workers Online : News : 2002 - Issue 134 : “East Timor MPs Question Timor Gap Plan” by H.T. Lee

<sup>71</sup> Refer statements by representatives of the Dili Timor Sea Office, at the August 30, 2002 seminar in Sydney organized by AETA, the Australian-East Timor Association.

<sup>72</sup> “Battle lines drawn over Timor Sea production- extra comment” AFFET press release by Mr. Robert Wesley-Smith, spokesperson, PO Box 2155 Darwin NT 0801, 9 April 2002.

February 2001 Paz report:

‘The main concern to ETTA and to the sovereign government should be the establishment of an Exclusive Economic Zone (EEZ) in the Timor Sea to replace the transitional agreement set by the *Timor Gap Treaty* between Australia and Indonesia. The important issue to keep in mind is that such a zone would be enclosed by three equidistant lines - two lateral (east and west) with Indonesia and Australia and the third (in the South) with Australia. The definition of such an EEZ (or part of it) is vital, for only then can the sovereign state of East Timor be able to award legally binding contracts for the exploitation of natural resources (oil, gas, minerals, fisheries, etc). Only then will East Timor be able to exercise sovereignty over its maritime territory. The above points to the fact that time is of the essence and that the matter of maritime boundaries can no longer be neglected by ETTA. As you well pointed out conflicting issues with other coastal states is not an issue of the *Timor Gap Treaty*, it is a matter of international boundaries’.

Mr Paz continues:

"International maritime boundary institutions and experts have devoted time and interest to East Timor's three equidistant lines in the Timor Sea. The reason is obvious: the hydrocarbon resources proven to be present there. Not being an expert in the matter, I would not venture to comment or guarantee their validity. Nevertheless, I can point out that my informal consultations with geological and legal experts have led me to believe that: if the three equidistant lines of the Timor Sea boundaries are drawn according to the technical requirements stipulated in UNCLOS three major oil fields now situated in the ill defined (and probably illegal) Australian seabed, would fall into East Timor's newly defined EEZ. This should quintuple East Timor's expected revenues and is the whole point of sovereignty: vast oil and gas production and reserves will guarantee the political and economic independence of East Timor. Moreover, anything else would mean the creation of a formal nation-state, dependent on new and "modern" waves of colonialism’.

The AFFET spokesperson concluded “Having attended the seminar in Dili, we can say that there is essentially no difference in principle between the above advice and that given to the attendees”.

Some expert legal commentators have claimed that the *Timor Sea Treaty* jeopardizes any chances of East Timor gaining a future favorable permanent delimitation. This issue was raised by the Chair, Ms. Julie Bishop, in her questioning of Mr. Campbell at the 8 October hearings in Canberra, using the concept of “estoppel”.

Jeffrey Smith, a former maritime consultant to UNTAET, describes this risk as "modus vivendi". He says this was discussed at length in the Tunisia-Libya 1984 seabed delimitation decision of the ICJ. Mr. Smith explains in simple terms "Live with a certain administrative line or permit block areas between states for long enough, and you will be bound by the de facto boundary resulting from it".

Mr. Campbell and presumably the Commonwealth Government tend to support the

opinions of Mr. Brazil and Professor Prescott. We assume that East Timorese government lean towards the opinion of Professor Lowe et al, judging from public statements.<sup>73</sup> But nobody really knows.

#### 5.4.4 Australia's assertion of sovereignty in East Timor's claimed area

It is customary for countries with overlapping seabed claims to dispute the award of exploration permits issued by the other nation in the disputed area.

A UNTAET source advised that on 3 July 2001 the East Timorese Transitional Administration signed a cabinet declaration to the effect that the Timor Sea Arrangement does not authorize or permit Australian exploration or exploitation in areas outside the JPDA that are under the seabed claimed by East Timor.

Yet Australia has proceeded to issue permit NT02-1 that is located immediately adjacent to the eastern lateral perimeter of the JPDA.<sup>74</sup> If East Timor were serious about claiming a permanent delimitation incorporating this area, it would have raised a normal diplomatic objection to the issuing of this permit by Australia.

But Mr. Dean Bialek has expressed the opinion that "The Australian government must also consider the repercussions of its recent release of offshore petroleum exploration areas in close proximity to the reserves discovered in the Greater Sunrise/Troubadour area."<sup>75</sup>

#### 5.4.5 The "without prejudice" clause

Some experts have suggested that the "without prejudice" clause is common to all joint development agreements, and cannot be taken as anything other than a "motherhood statement" inserted for the sake of protocol.

The 1989 *Timor Gap Treaty* contained the same standard "without prejudice" clause, yet the Indonesians understood that "under the [Timor Gap] treaty the countries have set aside for 40 years their overlapping border claims in the Timor Sea south of the island of Timor".

Likewise, Australia understands and will argue that the inherent purpose of the joint development concept behind the *Timor Sea Treaty* is to set aside overlapping claims for a period of 30 years.

The stated position of the East Timorese government that, soon after signing and

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<sup>73</sup> "Oil Under Troubled Waters" by Eric Ellis, Fortune, June 10, 2002 "East Timor will press for the correct maritime boundaries," [Prime Minister Alkatiri] told Fortune. As to what those boundaries should be, he has said he believes international law would "give East Timor all or the majority of the Greater Sunrise field."

put reference here to Alkatiri's statement that ET claims 100% of GS and 100% of Laminaria/Corallina

<sup>74</sup> Refer <http://www.industry.gov.au/AcreageReleases/goldbook/NT02-1/NT02-1.html> Release Area NT02-1, Sahul Platform, Bonaparte Basin, Northern Territory (Bids close 24 October 2002). Adjacent to Sunrise-Troubadour gas/condensate field.

<sup>75</sup> Submission to the Joint Standing Committee on Treaties, Timor Sea Treaty, Dean Bialek, Lecturer, Faculty of Law, University of Melbourne. The author has expertise in international law and environmental law, and is currently doing research towards a PhD on the joint development of offshore oil and gas, with a particular focus on Australia's current practice. He is the co-author (with Prof. Gillian Triggs) of two refereed journal articles on the new Timor Sea Treaty in the *International Journal of Marine and Coastal Law* and the *Melbourne Journal of International Law*, both forthcoming (September 2002).

ratifying the Timor Sea Treaty, they will act to terminate it (by seeking a permanent delimitation) appears at odds with normal practice for treaties which are seen to be major long-term agreements between nation states.

As opined above, it appears to be a public relations move to pacify long-time East Timor NGO's and supporters in Australia and elsewhere who are now agitating for the Timor Sea Treaty NOT to be ratified (a position diametrically opposed to that of East Timor's Prime Minister).

## 5.5 Unitisation of Greater Sunrise

### 5.5.1 Conflicting requirements of the commercial operators

The Deputy Chair Mr. Wilkie summarized the apparent choices for the Committee as "We either recommend ratification now or we recommend ratification alongside unitisation".<sup>76</sup>

Woodside and Shell have recommended the simultaneous ratification of the *Timor Sea Treaty* and the *International Unitisation Agreement*.<sup>77 78</sup>

Phillips Petroleum recommend the contrary position, that the *Timor Sea Treaty* be ratified as quickly as possible and that this ratification not be linked to the *International Unitisation Agreement*<sup>79</sup>. Santos take the view that delaying ratification of the *Timor Sea Treaty* pending agreement on the *International Unitisation Agreement* is contrary to the 20 May 2002 exchange of notes and MoU.<sup>80</sup>

### 5.5.2 Unrealistic levels of accuracy in current apportionment

If the *International Unitisation Agreement* must survive any change in borders then it may be very difficult for a final agreement to be reached any time soon.

Even Dr. Vivian Forbes – an academic political geographer who feels Australia has been too generous to East Timor - believes that East Timor is entitled to an eastern lateral boundary that would give the nation "another 10 to 15 percent of the Greater Sunrise field".<sup>81</sup>

The Lowe et al opinion would indicate that East Timor would be entitled to jurisdiction over 80% or 100% of the Greater Sunrise field if the matter went to international arbitration.

The 5 July 2001 *Timor Sea Arrangement* specified a 20% apportionment to the JPDA and 80% to the neighboring permits under Australian jurisdiction. This was changed to a 20.1%-79.9% apportionment in the 20 May 2002 *Timor Sea Treaty*. It appears that apart from this minor adjustment, the prior agreement was adopted in full.

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<sup>76</sup> Wilkie 8 October 2002 JSCOT Hansard, TR222

<sup>77</sup> Woodside Energy Limited, Submission to Joint Standing Committee on Treaties, July 2002. Submission no.21

<sup>78</sup> Shell Development (Australia) Pty Ltd, Submission to the Joint Standing Committee on Treaties, August 2002. Submission no. 51.

<sup>79</sup> Mr. Mike Nazroo, Vice-President, Commercial, Phillips Petroleum Co. Australia Pty, Hansard for JSCOT public hearings in Perth, Wednesday 2 October, 2002, page TR45

<sup>80</sup> Mr. Jon Glanville, Manager Legal, Santos Ltd, at October 8, 2002 JSCOT public hearing in Canberra. Hansard page TR213.

<sup>81</sup> See Hansard for JSCOT public hearings in Perth, Wednesday 2 October, 2002, page TR45

Why was this seemingly insignificant change made?

It is common knowledge among petroleum engineers that reservoirs cannot be confidently delineated to the accuracy implied by the 20.1%-79.9% apportionment. At best geologists and reservoir engineers estimate hydrocarbon accumulations from drilling data and using probabilistic methods.

Investigations have revealed that East Timor's negotiators requested the change from 20% to 20.1% based on their knowledge of the existence of a report by the operator, Woodside Petroleum.<sup>82</sup>

Woodside Petroleum have confirmed that the 20.1%-79.9% apportionment is based on volumetric models as they were understood at the time and that they do not infer accuracy. The split is based on a proven + probable P(50) view of gas in place.<sup>83</sup>

If the unitisation agreement is based on these inherently inaccurate volumetric models there will need to be review and adjustment of the apportionment at regular intervals as the field is further delineated. It is quite possible that with further reservoir engineering work the recommended apportionment could be, for example, 10% in the JPDA and 90% in current Australian territory. Will East Timor then agree to a reduction in its production share? That is doubtful and could lead to intractable dispute.

East Timor's request to tie Sunrise unitisation to inaccurate volumetric models appears to be ill advised. It could lead to serious repercussions for East Timor in the future. Perhaps the East Timorese negotiators figured that the additional 0.1% was a psychological victory since it would amount to approximately US\$2 million additional revenue to East Timor over the life of a potential Sunrise FLNG project. But it is argued below that a more sensible arrangement, and one that would lead a reduction of dispute or litigation risk in the future, would be for Australia and East Timor to agree to a fixed and permanent apportionment. This would not be based on variable reservoir engineering and geological estimates and the location of the JPDA eastern line of demarcation, but on *negotiated equity* taking into account all factors including East Timor's lateral boundary EEZ claim.

### 5.5.3 A negotiated deferral of permanent delimitation of the eastern lateral boundary

Most commentators agree that a permanent delimitation of East Timor's eastern lateral boundary will be difficult due to Australia's attachment to her continental shelf doctrines. These were formulated in the late 1960's and prevailed in seabed negotiations with Indonesia in the early 1970's.

The finally agreed *International Unitisation Agreement* should be based on two principles.

Firstly, it must ensure that total "government take" is not increased throughout the life of the potential Sunrise project, to ensure viable project economics and a degree of certainty for investors.

Secondly it must be equitable and not force East Timor to surrender her sovereign

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<sup>82</sup> Personal communication. E-mail from "Jonathan MORROW" <morrow@un.org> Date: Mon, 9 Sep 2002 14:37:26

<sup>83</sup> Personal communication. E-mail from: "Grazia, Niegel N." <Niegel.Grazia@woodside.com.au> Sent: Thursday, September 26, 2002 Subject: RE: Greater Sunrise unitisation

claims by accepting *de-facto* narrower seabed boundaries than those that it could expect to obtain through international law EEZ rights.

Dr. Andrew McNaughtan wrote an interesting analysis that I would like to highlight to the Committee in this regard, cited in Professor Gillian Triggs' and Dean Bialek's most recent paper, and entitled *A 'Middle Road' in Timor's Oil and Gas Options*.<sup>84</sup> It is based on the belief that there may be no inherent *legal* obstacle in relation to an agreement between East Timor and Australia for an Annex E apportionment that is not dependent on the exact location of the Sunrise reservoir relative to the existing JPDA eastern line of demarcation. This appears to be a similar concept put forward by Mr. Dean Bialek where he referred to "a simple readjustment of the Annex E unitisation formula, without making any geographical adjustment to the current JPDA"<sup>85</sup>.

Put simply, the current 20.1%-79.9% numbers can be changed to whatever is agreeable between the parties, independent of the location of the current coordinates of the eastern JPDA line of demarcation.

In the words of McNaughtan:

“Timor could work within the framework of the current proposed TSA to demand a more equitable share of its own resources. For instance 20% of the resources of Greater Sunrise field are currently 'deemed' to lie within 'Zone A' (from which East Timor would receive 90% of the revenues). This percentage of Greater Sunrise field that is 'deemed' to lie within Zone A is simply a legal tool - an agreement between the parties that is somewhat arbitrary and is not rigidly based on the underlying geomorphology. As the figure is arbitrary it could just as easily be replaced with another figure - for instance 80%. 80% happens to be the minimum percentage of Greater Sunrise that East Timor is estimated to be entitled to in reality, were it to pursue its actual entitlements in the International Court (in fact East Timor may be entitled to 100% of this field).”

The above approach for finalizing the *International Unitisation Agreement* in a way that may be equitable for East Timor corresponds to 'Option 2' in the attached analysis by McNaughtan.<sup>86</sup> An alternative approach to the problem would be to eliminate the need for the *International Unitisation Agreement* by making an alteration to the co-ordinates listed in Annex A of the *Timor Sea Treaty*. This is consistent with 'Option 3' in the attachment.<sup>87</sup> Article 24 in the treaty states that amendments may be made at any time by written agreement between East Timor and Australia.

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<sup>84</sup> “A Middle Road on East Timor's Oil and Gas Options”, Dr. Andrew McNaughtan, see <http://www.etan.org/et2002b/may/05-11/10middle.htm>. This commentary is also found in Digest for east-timor@igc.topica.com, issue 732 Date: Mon, 06 May 2002

<sup>85</sup> Dean Bialek's Joint Standing Committee on Treaties, Timor Sea Treaty, submission no. 38.

<sup>86</sup> McNaughtan's analysis is presented here to illustrate some of the broad concepts involved. The writer has slightly different views on some of the conclusions, especially relating to infrastructure benefits. Never the less, it is believed this type on analysis shows 'lateral thinking' of the type that may be required to resolve a difficult impasse.

# **ATTACHMENT 1**

Options Analysis by Dr. Andrew McNaughtan,  
Convenor of the Australia East Timor Association, Sydney, NSW, Australia.

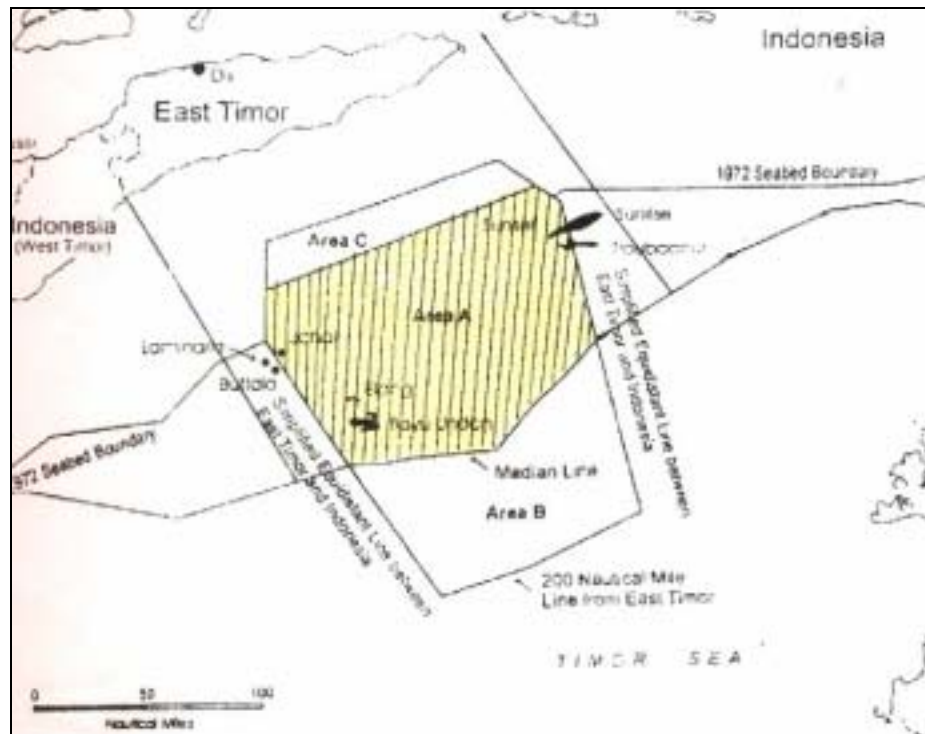
(with permission)

## OPTION 1

**EAST TIMOR ACCEPTS THE CURRENT TIMOR SEA TREATY 'AS IS' WITHOUT ALTERATION**

## OPTION 2

**THE BORDERS OF THE CURRENT 'JPDA' OF THE TIMOR SEA TREATY REMAIN UNCHANGED, BUT AN ALTERATION IS MADE TO THE PROPORTION OF GREATER SUNRISE 'DEEMED' TO LIE WITHIN THE JPDA**





**OPTION 1 – EAST TIMOR ACCEPTS THE CURRENT TIMOR SEA TREATY ‘AS IS’ WITHOUT ALTERATION****‘PROS’ OF OPTION 1 :**

- There is no controversy and thus relations with the Australian Federal Government, the oil companies and NT government remain stable
- Australia may be prevailed upon to give some concessions in return – such as continuing help with defense and training – (Timor’s leverage in this case depends partly on making the point that it is East Timor that is being ‘generous’ – not the other way round)
- East Timor might be recognised for its ‘generosity’ in forgoing its own interests and may be able to gain some advantage for this – (however if that is not made clear East Timor may gain little for its generosity)

**‘CONS’ OF OPTION 1 :**

- East Timor will receive only about 40% of its resource entitlements and will have foregone over 60% of its major financial interests
- This will have significant longer term financial ramifications for ET
- There may be internal discontent, instability and political effects from the public perception that the country has given up its own interests with insufficient ‘return’
- East Timor may not even receive any credit for foregoing its own interests because this could be mis-represented or misunderstood in Australia – the Australian government’s line that East Timor got a “good deal” (receiving 90% of the revenues) may prevail

**OPTION 2 - THE BORDERS OF THE CURRENT 'JPDA' OF THE TIMOR SEA TREATY REMAIN UNCHANGED, BUT AN ALTERATION IS MADE TO THE PROPORTION OF GREATER SUNRISE 'DEEMED' TO LIE WITHIN THE JPDA – INCREASED (FOR EXAMPLE) TO 80%, RATHER THAN THE CURRENT 20%**

**'PROS' OF OPTION 2 :**

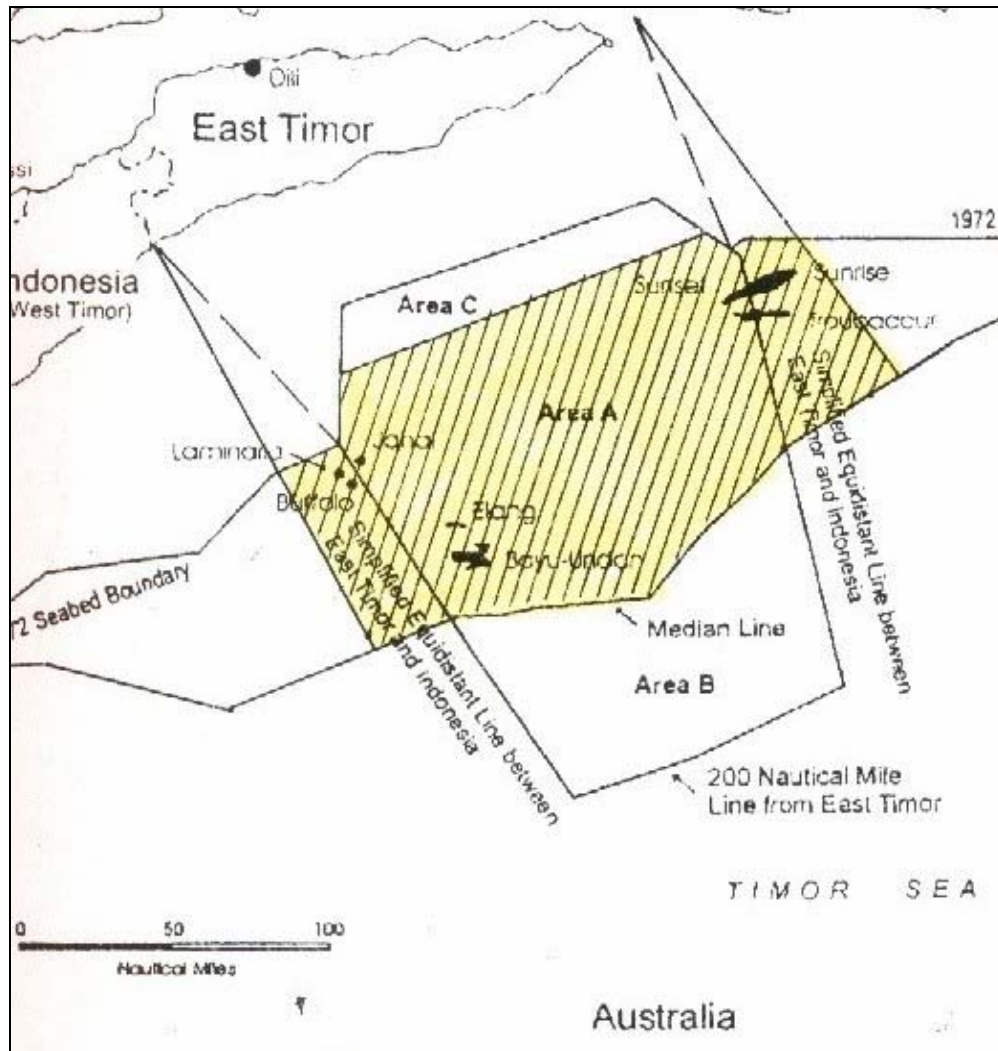
- East Timor will obtain a much greater share of its potential entitlements – more like 70% (if 80% of Greater Sunrise is “deemed” to lie within the JPDA) rather than the 40% under the current version of the Timor Sea Treaty (in which only 20% of Greater Sunrise is deemed to lie within the JPDA).
- This alteration can be made within the parameters of the existing (signed) Timor Sea Treaty and will involve no disruption of the process underway – as both sides have already agreed to further negotiations on the issue of ‘Unitisation’ of Greater Sunrise
- The oil companies should accept such an arrangement without much bother
- The Northern Territory Government’s interests would not be affected as this change should not have any great effect on ‘downstream’ developments
- Security and defense responsibilities within the JPDA can still be shared with Australia
- Australia’s concern about involving Indonesia in discussions over maritime boundaries is avoided

**'CONS' OF OPTION 2 :**

- East Timor will not obtain exclusive sea-bed boundaries with its own EEZ
- East Timor will not receive its full resource entitlements (but it will receive much more than under the current version of the Timor Sea Treaty)
- East Timor will forego entitlements to any resources that might yet be found between the boundaries of the JPDA and the potential boundaries of the EEZ (this is a relative advantage of the ‘Option 3’ outlined below – that new resource finds in this area would pay revenues to East Timor)

**OPTION 3**

**EAST TIMOR NEGOTIATES AN 'EXTENDED JPDA' WITH LATERAL BORDERS CONSISTENT WITH ITS FULL MARITIME ENTITLEMENTS. THIS COULD BE AN EXTENSION OF THE CURRENT CONCEPT OF THE SHARED ECONOMIC ZONE INVOLVING SHARED INTERESTS AND RESPONSIBILITIES WITH AUSTRALIA**



### **OPTION 3 - EAST TIMOR NEGOTIATES AN 'EXTENDED JPDA' WITH LATERAL BORDERS CONSISTENT WITH ITS FULL MARITIME ENTITLEMENTS**

#### **'PROS' OF OPTION 3:**

- Australia remains engaged in the region,
- Australia can thus be responsible for security and defense of resources
- Australia's involvement could be extended to training and other cooperation
- Oil companies concerns (about their resources not being defended) are allayed
- East Timorese could expect jobs and training in Darwin etc as part of 'quid pro quo'
- This arrangement would further strengthen links and cooperation between East Timor and Australia – something that would be in the interests of both nations
- Within the 'extended Zone of Cooperation' or 'extended JPDA', the overall respective shares of resources could simply be agreed through negotiation: 50/50, 60/40, 70/30, or whatever – any of these arrangements would result in East Timor receiving more than the 40% on offer under the current TST
- This outcome should be acceptable to the oil companies involved
- This outcome would not be adverse to the interest of the NT Government - if it is agreed 'downstream' developments will be located in Darwin
- This arrangement would have some advantages for ET over Options 1 and 2 – that ET would receive a share of any future resources located outside the existing JPDA but within the borders of the 'extended JPDA'
- East Timor can legitimately claim to have given Australia a generous deal and offered a significant percentage of its own resources to Australia - as a token of gratitude for INTERFET and as a sign of goodwill for future relations

#### **'CONS' OF OPTION 3 :**

- East Timor would forsake full sovereignty to the area
- East Timor would thus forsake a significant percentage of its potential revenues (compared with Option 4)
- East Timor would almost certainly forego the major potential benefits of locating the 'downstream' developments in its own territory – money and jobs for East Timor, rather than Darwin

## OPTION 4

**EAST TIMOR FIGHTS TO OBTAIN ITS FULL MARITIME BOUNDARY ENTITLEMENTS (WITH FULL EEZ) AND THUS FULL ENTITLEMENTS TO ALL ITS RESOURCES IN THE 'GAP'**



#### **OPTION 4 – EAST TIMOR FIGHTS TO OBTAIN ITS FULL MARITIME BOUNDARY ENTITLEMENTS (WITH FULL EEZ) AND THUS FULL ENTITLEMENTS TO ALL ITS RESOURCES IN THE ‘GAP’**

##### **‘PROS’ OF OPTION 4 :**

- East Timor would receive 100% of its potential royalties if it could achieve this outcome – meaning a lot more money (tens of billions of dollars more over the next decades)
- ET would have full sovereignty over the resources within its maritime boundaries / EEZ. This would benefit other resources such as fish as well as oil and gas
- ‘Downstream’ development of resources could be located (without opposition) in East Timor – meaning financial and employment benefits of these ‘downstream’ developments would accrue to East Timor (expert opinion is that the resources can be piped to East Timor across the Timor Trough)
- East Timor can also then easily use these resources to power its own internal energy needs – such as electrical generation etc, saving large expenditures on these costs

##### **‘CONS’ OF OPTION 4 :**

- It would be very difficult to achieve such an outcome in this situation - where East Timor has little or no leverage and Australia has withdrawn from the jurisdiction of the International Court
- The whole issue would probably take a long time to be resolved, leaving resource revenues in ‘limbo’ in the interim – jeopardizing the funding of Timorese government programmes
- Australia would be excluded from any interests on the Timorese side of the ‘Gap’ and would be unhappy about this
- Australian public opinion could be turned somewhat against East Timor (by pro-government commentators spreading negative messages)
- Australia might disengage from East Timor, rationalizing that it has ‘helped’ Timor all it can, that relations between Canberra and Jakarta need mending and that Australia no longer has economic or strategic interests at stake in East Timor
- Australia might then withdraw or minimise commitments to peacekeeping forces etc, making East Timor much more vulnerable to those within the TNI who still have malicious intentions towards Timor
- Australia might minimise training and ongoing capacity building assistance
- Australia would preferentially develop other gas fields that compete with East Timor’s markets and undermine them, rather than work cooperatively with Timorese interests
- East Timor would have full defense and security obligations within its sovereign territory and would either be unable to fulfill these necessities, or might be obliged to spend very heavily on air and sea defense
- Oil companies might be unhappy about the vulnerability of their investments with no effective East Timorese air-force and navy, and a large hostile neighbour
- This could cause the investments to be considered ‘higher risk’ and therefore impede development