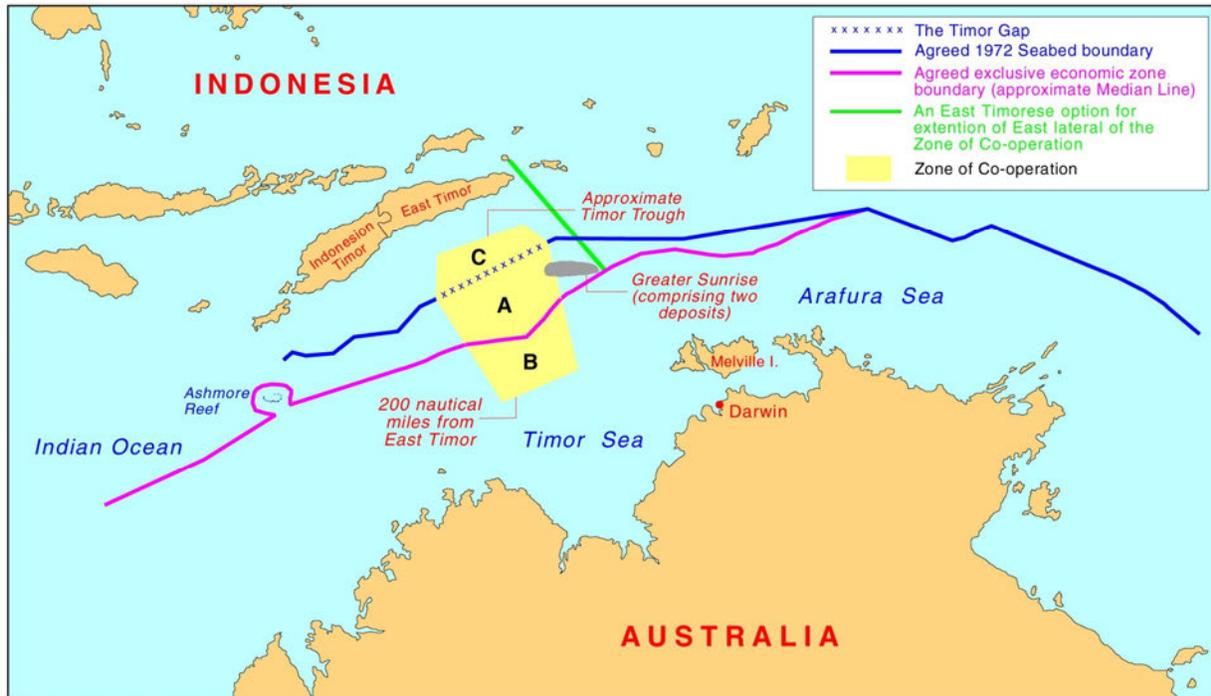


TIMOR SEA JUSTICE FORUM NSW

The opportunity to make a submission to the Foreign Policy White Paper is valued. This submission concerns the matter of the Timor Sea maritime boundary issue only, but is presented in acknowledgement of the fundamental importance to Australian integrity and good standing of the relationship with Timor-Leste.



Source: <http://www.atns.net.au/objects/Timor.JPG>

1. AUSTRALIA'S FOREIGN POLICY NEEDS TO BE GROUNDED IN A CLEAR-EYED ASSESSMENT OF OUR NATIONAL INTERESTS.

How should we define Australia's national interests in a changing world? How should our values underpin Australia's foreign policy? What should we do differently? How can we do better? Australia's "national interests" should be defined widely.

The interests of a nation which will contribute to the good of its citizens cannot be thought of as existing solely within the narrow limits of finance, profit and security. Strong regional and international people-to-people and government-to-government relationships, based on the ethics emanating from cultural and religious foundations, including those of Aboriginal Australia, should be foremost. Such relationships would require Australia to consider the good of the other, as well as its own good, in political and economic actions. A case in point is the current impasse between Australia and Timor-Leste over the non-existent border between our two nations. This situation directly impinges on Australian "values".

The behaviour of successive Australian governments towards the people of Timor-Leste since World War II has been mercenary, devious and venal,¹ with the exception of the few months in 1999 when the whole nation, government and people, worked together magnificently against the forces intent on the destruction of East Timor.

The claimed Australian values of courage, independence and "battling for the underdog" have not existed in relation to Timor-Leste for the most part of the shared history of our two nations. The absence of these qualities in the relationship is a source of shame for many Australians, who, despite the efforts of governments and some media to suppress the story, remember the loyal service of the Timorese in 1942. At least 40,000 Timorese people were lost in the last four years of the War as a direct result of their befriending of Australia soldiers.² No other nation has lost that many civilians in wartime on our behalf, and yet it is a fact which is easily forgotten. For example, the 75th anniversary of the bombing of Darwin was celebrated recently, as so it should be, yet no official or media mention of the bombing of Dili on the very same day, 19 February 1942, was made.³ There was no mention that the Japanese invasion of Timor, which began that day, came as a direct result of the presence of Australian troops, who had arrived in Portuguese Timor two months earlier.⁴ Japan had not invaded other colonies of neutral Portugal, and it is likely that they would not have invaded Timor had the Australians not gone there, uninvited, first. The outcome was the deaths of tens of thousands of Timorese during the Japanese invasion, a point of life-long pain and shame for returned Australian soldiers. Our InterFET soldiers and others who know and understand the history, have assumed the "debt of honour".

No wartime recompense has been paid to Timor-Leste, yet Papua New Guinea, (admittedly a protectorate of Australia at the time) received nearly seven million pounds in recognition of their much smaller yet significant losses when helping Australians.⁵ On top of that, Australians well remember the murders of the Balibó Five by Indonesian troops on their way to invade Portuguese Timor, followed not long after by the murder of journalist Roger East on Dili Wharf. The fact that no person has yet been held accountable for the deaths of these Australian citizens and residents, despite a NSW Coronial Inquiry into the death of Brian Peters finding that he and his four colleagues were murdered,⁶ remains a source of frustrated Australian anger.⁷ It was Australian designs on the resources of the Timor Sea which figured greatly in the decision not to oppose the Indonesian invasion of Portuguese Timor in 1975. In fact, the prospect of easier

¹ Examples of Australian actions are in the text.

² James Dunn, *East Timor: A Rough Passage to Independence* 3rd ed. (Double Bay, NSW: Longueville Books, 2003), 22.

³ For example, <http://www.smh.com.au/national/bombing-of-darwin-75th-anniversary-bring-new-recognition-of-attacks-20170217-gufmhd.html>

⁴ Christopher C.H. Wray, *Timor 1942: Australian commandos at war with the Japanese*, (Port Melbourne: Mandarin, 1990), 42; Clinton Fernandes, 'Two Tales of Timor' in *Zombie Myths of Australian Military History: The Ten Myths That Will Not Die*, (Sydney: University of NSW Press, 2010), 222.

⁵ Hiromitsu Iwamoto, 'Patrol Reports: sources for assessing war damage in Papua New Guinea,' in *The Pacific War in Papua New Guinea: Memories and Realities*, ed. Yukio Toyoda and H. Nelson, (Tokyo: Rikkyo University Centre for Asian Area Studies, 2006), 350.

⁶ D. Pinch, *Inquest into the death of Brian Raymond Peters: Coroner's Report 2007*: 106, accessed 10 June 2014. <http://www.etan.org/etanpdf/2007/Peterssinquest1.pdf>

⁷ Australian Federal Police (AFP), *Balibó Five* Disclosure Log Reference 20/2015, AFP Disclosure Log FOI - CRM No 2015/198: 284.

negotiations with Indonesia over the resources of the Timor Sea were significant.⁸ Again, it was Australia which urged the United Nations to take the then East Timor off its decolonisation agenda,⁹ it was Australia which was swift to recognise Indonesian sovereignty after the invasion,¹⁰ and it was Australia which continually excused, concealed information and exonerated Indonesia concerning measures with which the Indonesians were trying to subdue the people.¹¹

These few brief facts signal a very sorry history of the relationship between Australia and the new nation of Timor-Leste. To be fair, we did come in at the end of the 1990s, and Australia is indeed Timor's largest donor. However, while over one billion dollars has been spent in aid to Timor since 1999,¹² that has to be seen alongside the two billion dollars we have received in tax revenue from the now defunct Laminaria-Corallina field which is totally in a disputed area of the Timor Sea. Timor itself received nil from those resources.¹³ Australia is therefore one billion dollars ahead.

None of this is evidence of any of the claimed Australian values of loyalty to friends, sticking up for the underdog, independence and courage; in fact, the relationship with Timor-Leste gives evidence of the opposite. The oft-proclaimed Australian value of fairness is not demonstrated in Australia's foreign policy by its treatment of Timor-Leste. Abiding by the rule of law and holding international laws and institutions in high regard are not apparent in Australian dealings over the Timor Sea. It is a history that has not done Australia proud.¹⁴

Australia's national interests and values require the establishment and nurturing of strong relationships of respect, goodwill and fairness, certainly in the first place regarding a nation like Timor-Leste, because of the unique shared history, if for no other reason.

⁸ Wendy Way, ed., *Australia and the Indonesian Incorporation of Portuguese Timor, 1974-1976*, (Canberra: Department of Foreign Affairs and Trade, 2000), <http://dfat.gov.au/geo/timor-leste/pages/timor-leste.aspx> N.3, Policy Planning Paper, Canberra, 3 May 1974, 50; N.169, Canberra from Jakarta, 17 August 1975, 314.

⁹ UN Press Release, Department of Public Information Press Section, GA/D/2334, 9 November 1982, quoted in Commission for Reception, Truth and Reconciliation Timor-Leste (CAVR), *Chega! The Report of the Commission for Reception, Truth and Reconciliation Timor-Leste (CAVR)* (Dili, TL: CAVR, 2005), 7.1.380.

¹⁰ Joseph Nevins, *A Not-So-Distant Horror: Mass Violence in East Timor* (Ithaca: Cornell University Press, 2005), 63.

¹¹ Brian Toohey and M. Wilkinson, "The Timor Papers 1987", in *Tell Me No Lies: investigative journalism and its triumphs*, ed. John Pilger, (London: Jonathan Cape, 2004), 174-190; Lance Collins and W. Reed, *Plunging Point: Intelligence failures, cover-ups and consequences*, (Pymble, NSW: HarperCollins, 2005), 324-346.

¹² Joint Standing Committee on Foreign Affairs, Defence and Trade Foreign Affairs Sub-Committee, *Inquiry into Australia's Relations with Timor-Leste Submission No 22*, 2013: 4, accessed 17 September 2016, http://www.aph.gov.au/parliamentary_Business/Committees/House_of_Representatives_Committees?url=jfadt/timor_leste_2013/subs.htm

¹³ La'o Hamutuk, "How much oil money has Australia already stolen from Timor-Leste?: A look at Laminaria-Corallina: Updated 4 May 2016, accessed 17 September 2016. http://www.laohamutuk.org/Oil/Boundary/laminaria_revenues.htm

¹⁴ Paul Cleary, *Shakedown: Australia's Grab for Timor Oil* (Crows Nest, NSW: Allen & Unwin, 2007); Frank Brennan, *Time to Draw the Line: Finding a Just Settlement between Australia and Timor-Leste*. (Alexandria, NSW: Australian Catholic Social Justice Council, 2013).

2. AUSTRALIA HAS DIVERSE INTERESTS THAT SPAN THE GLOBE.

Which countries will matter most to Australia over the next 10 years? Why and in what ways? How should we deepen and diversify key relationships?

The Democratic Republic of Timor-Leste is one of the countries which will matter most to Australia over the next ten years, for these reasons:

1. Its geographical proximity gives it strategic importance to Australia militarily, politically and economically, in regard to its use as a possible terrorism platform, and in the instability of its state structures.
2. The tendency for Australian governments to ignore the use of Timor by China to enhance its own influence, reputation and standing among our neighbours seems to be one of the most short-sighted aspects of Australian policy. Even now China is in Timor, building structures and roads at an extraordinary pace, providing the infrastructure which was decimated not all that long ago, and in so doing, helping to ensure a better standard of living for the people.¹⁵ Australia was well placed to have provided that assistance over the last fifteen years, but is currently missing the opportunity.
3. There are huge numbers of Australians, who individually and in their volunteer groups, are doing their best to partner the Timorese in a variety of political and social developments. They are doing far more than any government, Labor or Liberal has yet done. There is wide scope for government to build mutually advantageous links with the Timorese people.
4. How can our regional relationships be deepened or even maintain credibility when we argue that China should abide by the international umpire regarding the South China Sea but fail to do so ourselves regarding the Timor Sea?¹⁶

3. AUSTRALIA IS AN INFLUENTIAL PLAYER IN REGIONAL AND INTERNATIONAL ORGANISATIONS.

Which regional and global organisations matter most to us? How should we support and shape them? How can we maximise our influence?

The shaping of any organisations and maximising Australian influence of them should be undertaken in ways that are obviously fair, transparent and respectful. A difficulty is presented however, when regional and international organisations witness Australian behaviour in matters

¹⁵ Lord Horta, Macauhub, 14 February, 2014, <http://www.macauhub.com.mo/en/2014/02/08/the-dragon-and-the-sleeping-crocodile-china-and-timor-leste/>

¹⁶ Julie Bishop, Doorstop interview, Washington DC, United States, February 21, 2017
<http://www.juliebishop.com.au/doorstop-interview-washington-dc-united-states/>

such as the Timor Sea. The evidence of Australia's favouring of the relationship with Indonesia at the price of decades of Timorese suffering is grounds for distrust. Australian promises, declarations and policies could well be interpreted in the light of Australian treatment of its small neighbour, Timor-Leste. If a wartime ally could be abandoned as it was after WWII and in 1975, and its claim on maritime resources be ignored, discussion refused, and spying alleged as is the current situation, who is to say that similar behaviour would not be meted out in other relationships?

Values are best judged when applied to those who are smaller, weaker and with little redress. It is easy to be magnanimous to rich and powerful protectors.

We can enhance our reputation in international organisations including the United Nations by reversing our withdrawal from parts of UNCLOS and by accelerating the conclusion of international conciliation process we have been forced reluctantly to enter.

Questions have been voiced about whether the settling of a border based on median line principles would disadvantage Indonesia, which agreed to a border in 1972 based on Continental Shelf principles, and which resulted in a border far more generous to Australia than to Indonesia. This question needs to be addressed in a forum other than the Australia-Timor dispute, and should not be used to obfuscate the border issue under discussion. If Indonesia thinks it has a case against Australia, then it is within Indonesia's capability to set in motion the processes which would amend the situation. Indonesia, however, has given no indication of any such plans. Australia should not again use the Timorese people as pawns in stabilising the relationship with Indonesia, for example, by bringing Indonesia's possible claims into the current impasse. This would further erode Australia's position in the region, as well as claims on the values we have traditionally professed.

4. AUSTRALIA NEEDS TO BE AMBITIOUS IN GRASPING ECONOMIC OPPORTUNITIES.

What steps should be taken to maximise our trade and investment and expand commercial opportunities for Australian business? How can we ensure Australia is positioned to take advantage of opportunities in the global economy? What are the key risks to Australia's future prosperity and how should we respond?

The mention of "grasping" in this section is apposite. There is evidence of Australian greed concerning the resources of the Timor Sea. Australia willingly halved the Timor Gap with Indonesia in 1989, when Indonesia was the illegal occupier of Portuguese Timor. A decade or so later, just two months before the declaration of Timorese independence in 2002, Australia withdrew from the maritime boundary jurisdiction of the International Court of Justice and the International Tribunal on the Law of the Sea for the express purpose of delimiting maritime boundaries, thus forcing Timor to deal with Australia without international recourse to a judicial

umpire, and to evade recognised measures for deciding where boundaries should lie.¹⁷ These are examples of quite cynical "grasping".

Moreover, it has been alleged that Australia actually spied on the Timorese negotiators over the CMATS (Certain Maritime Arrangement in the Timor Sea) Treaty in 2004-2006. The alleged spying occurred within an AusAid project which was restoring the Prime Minister's office in Dili.¹⁸ Upon discovery of the alleged spying in 2013, Timor-Leste initiated an arbitration against Australia utilising Timor Sea Treaty dispute provisions. While neither confirming nor denying the allegations, it was reported that the government withdrew the passport of the whistleblower, a measure that did not strengthen the trust of many Australians concerning government rectitude in the matter. In the wake of this debacle, Timor-Leste signalled its intention to terminate CMATS, an action properly prepared for in the treaty itself if development approval had not taken place six years after the signing of the instrument.¹⁹ During this time Timor-Leste had perfectly observed the CMATS requirement of not even mentioning the border until 2057.

To our huge embarrassment, Timor-Leste then took Australia to Compulsory Conciliation under UNCLOS over our refusal to accede to the requests the Timorese government had made for formal discussions on the border.²⁰ The Conciliation process is still underway in a confidential manner, and Timor-Leste has indicated that it will withdraw the espionage case. Australia has agreed to negotiate on the border issues. However, "negotiate" is a very loose term, particularly since the Foreign Minister indicated that the outcome of the Conciliation is "not binding".²¹ Thus Timor-Leste's desire to finalise its maritime borders with Australia have been thwarted on numerous occasions. Interim arrangements, instead of a fair and permanent internationally recognised border have been the preferred Australian position. These attempts to grasp economic opportunities are certainly ambitious, even though badly handled, but they are highly unlikely to fill our neighbours or anyone else in the international community with a sense that Australia is either trustworthy or dependable. One wonders how any of this could strengthen Australia's "national interests".

When considering the relative wealth of both Australia and Timor-Leste, the mercenary nature of Australian "grasping" is thrown into further relief. Timor-Leste is proud of its advancement on the Human Development Index (HDI) to number 133,²² while Australia is at Number 2. The GDP of Timor-Leste in 2016 was \$4.975 billion dollars while Australia's was \$1,188.764 trillion dollars.²³ And yet Australia is willing to obstruct the reasonable aspirations of Timor-Leste to the settlement of a border, which in all probability, would see that the Timorese would gain at least

¹⁷ Kim McGrath, "Oil, gas and spy games in the Timor Sea" *The Monthly*, (April 2014), accessed 10 July, 2014. <http://www.themonthly.com.au/issue/2014/april/1396270800/kim-mcgrath/oil-gas-and-spy-games-timor-sea>

¹⁸ <http://www.theage.com.au/comment/the-age-editorial/what-really-happened-in-the-timor-deal-20131204-2yqxn.html>

¹⁹ Joint Statement by the Governments of Timor-Leste and Australia and the Conciliation Commission Constituted Pursuant to Annex V of the United Nations Convention on the Law of the Sea. http://foreignminister.gov.au/releases/Pages/2017/jb_mr_170109.aspx

²⁰ Steve Cannane, "East Timor-Australia maritime border dispute set to be negotiated at The Hague", <http://www.abc.net.au/news/2016-08-28/east-timor-australia-maritime-border-to-be-negotiated-the-hague/7791778>

²¹ http://foreignminister.gov.au/releases/Pages/2016/jb_mr_160926.aspx

²² <http://hdr.undp.org/en/countries/profiles/TLS>

²³ <http://statisticstimes.com/economy/countries-by-projected-gdp.php>

the bulk of the resources of the Greater Sunrise fields, valued in the range of \$40 billion. While there is nothing in this matter which should be considered from the point of view of “charity”, the extreme disparity between Australia’s and Timor-Leste’s prospects throws Australia’s intransigence regarding internationally recognised justice into stark relief.

Business and trade opportunities for Australia and Australian businesses in Timor-Leste (as well as in other countries in our neighbourhood) are not enhanced by the widely held perception that we do not play by the rules. Australia is regarded by many Timorese people as having engaged in espionage, exploitation and bullying against them.

There are people in Australia who have expressed the opinion that they are concerned that the Timorese government and people might not use the financial benefits of the Timor Sea appropriately. They might waste the money, or it might fall prey to corrupt practices. Not only is such an attitude colonialist and patronising, it conveniently ignores the instances of corruption and mismanagement which afflict Australia from time to time, despite our strong judicial and governmental structures inherited with little cost to us from the British. Such comments also show ignorance of the progress being made by the Timorese government in excelling in international processes designed to assist nations to manage resources well, for example, the Extraction Industries Transparency Index.²⁴

5. AUSTRALIA CONFRONTS A RANGE OF STRATEGIC, SECURITY AND TRANSNATIONAL CHALLENGES.

How can Australia best deal with instability beyond our borders? How can our foreign policy, including our overseas development assistance program, support a more prosperous, peaceful and stable region? How should our international engagement work to protect Australia against transnational security threats, such as terrorism?

All of the above worthy aims would be achieved by Australia abiding by all clauses of UNCLOS, accepting current standards of international law and applying the median line principles regarding the Timor Sea. This would show we are a fair, law abiding neighbour with respect for fairness, equity and the rule of law.

Furthermore, if stability "beyond our borders" is an aim of Australia, we should first ensure that we actually have a complete border. At the moment, there is 1.8% of it missing, and that is the part directly opposite the coast of Timor-Leste. What is there at present is a temporary resource sharing agreement, covered by the 2002 Timor Sea Treaty which replaced the old 1989 Timor Gap Treaty. The resources in that area, notably in the Bayu-Undan site, are shared 90% to Timor-Leste and 10% to Australia.²⁵ This fact has been the subject of claims concerning Australian "generosity". It is claimed we "gave" Timor-Leste 90% while only keeping 10% for ourselves. When it is realised that the resources are all on Timor-Leste's side of half-way the glow of

²⁴ <http://www.eiti.tl/medias/press-releases/111-eiti-board-decision-on-second-validation-of-timor-leste>

²⁵ Frank Brennan, “Time to Draw the Line in the Timor Sea”, <https://www.eurekastreet.com.au/article.aspx?aeid=36275#.WLQPGRAwgfI>

largesse dims somewhat. Furthermore, this much trumpeted “generosity” concerning Timor’s 90% of the share of the Bayu-Undan field needs to be tempered with the realisation that all the jobs and infrastructure went to Australia, not to Timor-Leste.

The internationally accepted methods of determining the ownership of resources in seas which are less than 400 nautical miles between two nations is the principle of equidistance, or the median line. Mathematical and geographical calculations will take time to determine the exact positioning of equidistance in relation to Australia and Timor-Leste, as variables such as the great disparity between the lengths of the coastlines and the existence of small islands will influence the outcome. Nevertheless, that is not the problem. The problem has been that Australia has refused to negotiate up until now.

However, the signal that negotiation will take place at this late stage does not go far enough. Australia should commit to *finalising* the whole business *as soon as possible*. The terms of the Conciliation provide for both nations to do just that, without waiting for the end of the Conciliation, said to be September 2017.²⁶ This would hasten good relationships and end this seemingly interminable impasse.

6. AUSTRALIA USES A RANGE OF ASSETS AND CAPABILITIES TO PURSUE OUR INTERNATIONAL INTERESTS.

What assets will we need to advance our foreign policy interests in future years? How can we best use our people and our assets to advance Australia’s economic, security and other interests and respond to external events?

How can Government work more effectively with non-government sectors, including business, universities and NGOs, to advance Australia’s interests?

The strong personal links and goodwill built between the people of Timor-Leste and Australia through the efforts of so many Australians in NGO initiatives do not result in optimal benefits while the people of Timor-Leste see the Australian government as duplicitous and greedy. Australia is a rich nation yet its foreign aid has been reduced, and this in a time of extreme need in many parts of the world. Australian aid appears to be going to fall "to 0.22% of Gross National Income (a global measure of donor generosity) in 2017-18, the lowest level in Australia’s history".²⁷

While the aim of aiding others should be for their good, not for ours, the offshoot of generosity is the very security we want, and strong relationships which in themselves support our overall national interests. The aid expended on the Timorese people has assisted in the re-building of their country. It is pleasing that Australia continues a high level of aid, seeing that levels of Australian complicity operated at the Indonesian invasion and during the 24 year occupation.

²⁶ Articles 5 and 6 in http://www.un.org/depts/los/convention_agreements/texts/unclos/annex5.htm

²⁷ <https://www.lowyinstitute.org/issues/australian-foreign-aid>

CONCLUSION

As has been indicated, a great deal of good is being done, and there are close ties of friendship between our two peoples as a result of our unique history. There are, however, serious irregularities flowing from the unaddressed past. To compound these historical matters by prolonging the finalisation of the border between the two nations would not only be a waste of time, money and effort, but would present future generations with yet more evidence of Australian overbearing selfishness at the expense of a smaller neighbour.

To summarise, Australia's values, national interests, and standing in the international community would be best served by an immediate Australian decision to finalise the border dispute with Timor-Leste based on median line principles and in accordance with current international law, as soon as possible.

Timor Sea Justice Forum NSW
28 February 2017

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