

Now you CMATS, now you don't

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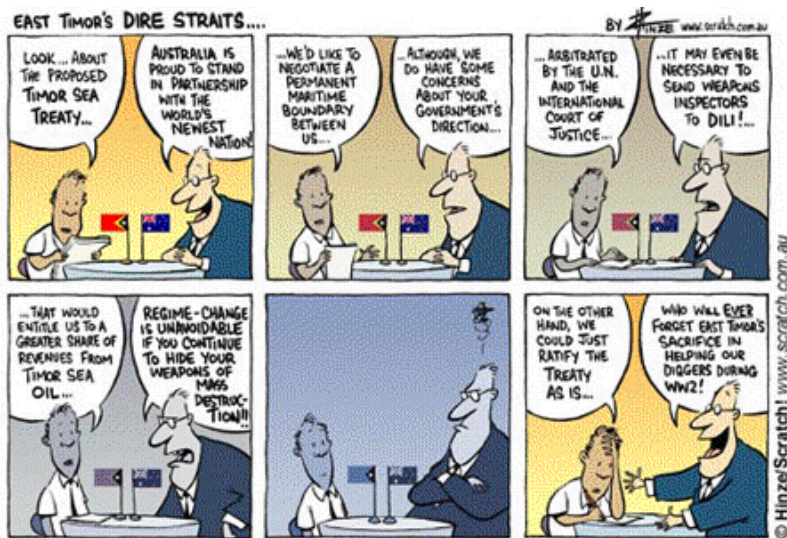
On Friday, February 23, the Certain Maritime Arrangements in the Timor Sea (CMATS) treaty between Australia and East Timor came into force.

There are two dubious aspects to this treaty. The first is the substance. It requires Timor- [IslandAd] Leste to suspend the resolution of its maritime boundary with Australia for 50 years in order to receive a 50:50 split of revenue from the Greater Sunrise field.

The United Nations Convention on the Law of the Sea (UNCLOS) and subsequent jurisprudence before the International Court of Justice (ICJ) has established that the median line principle is to be applied in the resolution of maritime boundary disputes. Even were the continental shelf principle to be applied, as the Australian Government has argued, there is doubt as to whether the Timor Trough actually constitutes the edge of the Australian continental shelf, or whether it extends to the north of the island of Timor.

Under the median line principle Timor-Leste would be entitled to about 90 per cent of the royalties from the Greater Sunrise field. The Australian Government withdrew from the jurisdiction of the ICJ in relation to maritime boundary disputes in 2002 in order to prevent the new nation of Timor-Leste from taking Australia to the ICJ to resolve this issue.

This amounts to a windfall to Australia of between four and ten billion dollars at current estimates of the field's value over its lifespan. As others have pointed out, this effectively makes Timor-Leste, one of the poorest nations in the world, the largest donor of foreign aid to Australia, one of the wealthiest nations.



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Then there is the ratification process. The current Federal Government reformed the treaty-making process in 1996 in order to correct what Mr Downer called at the time “a democratic deficit.” The Joint Standing Committee on Treaties (JSCT), which was created as a result of those reforms, was in the process of reviewing the CMATS treaty. Submissions were to be accepted until March 16 and there had already been one day of public hearings.

The review process was derailed when the government invoked the national interest exemption last week. This exemption has only been invoked in the past when there has been an urgent need to, say, put Australian Federal Police into South Pacific nations in a hurry. Even when that has happened, the government has announced in advance that it intends to seek an exemption. There was no such need or prior announcement in this case.

Also, the reforms committed the government to table treaties at least fifteen joint sitting days prior to taking action to bring them into force. In the case of the CMATS treaty, that would have meant waiting until mid June instead of jumping the gun last week. Why bother going through the motions of a parliamentary review if you don't care about the process or the outcome?

The fact that the timing suited the East Timorese Government and that the Parliament of East Timor passed the treaty last week are no excuses. It has aroused considerable opposition in civil society there. Opponents argue that it represents a poor deal financially and that the people of Timor-Leste are entitled to negotiate their territorial boundaries without the threat of economic blackmail from their rich and powerful neighbour.

Independent of East Timorese politics, it is important that Australia maintains and enhances democratic input into the treaty-making process, which is weak enough already by international standards. In the United States, for instance, the Senate has the power to approve or reject treaties negotiated by the executive branch. The need for a two-thirds majority ensures bipartisan support. This is in contrast to JSCT reviews in Australia, where the government dominates a committee which has no power to amend or reject treaties, and no major treaty has ever been rejected or even amended substantially after review.

The treaty was discussed on February 28 in passing as the related Offshore Petroleum Amendment (Greater Sunrise) Bill 2007 was being debated in parliament. While other members were more interested in the economic benefits to Australia generally, and the Northern Territory economy in particular, only the tireless Peter Andren, independent member for Calare (NSW), spoke up for the East Timorese people:

'With this treaty and this bill, we have pushed a poor developing nation... into giving up half of its rightful claim to revenue from the natural resources that will ensure its future development for decades to come. Indeed, it is not too long a bow to draw to say that the deal that has been struck is instrumental in fomenting the current situation in Timor-Leste—the feeling of mistrust and of having been let down, and the feeling that they are being overlorded by a new colonial master in this whole process.'

The CMATS treaty is morally indefensible, and the government's cavalier treatment of the ratification process represents one more small nail in the now very leaden coffin of Australian democracy.

About the author

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