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New York, 11 February 2005

The Permanent Mission of the Democratic Republic of Timor-Leste to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to refer to his communication dated 15 November 2004 (Continental Shelf Notification CLCS.03.2004.LOS), concerning the receipt of the submission made by Australia to the Commission on the Limits of the Continental Shelf (CLCS).

The Permanent Mission of the Democratic Republic of Timor-Leste to the United Nations has the further honour to submit the position and the observations of the Government of Timor-Leste with respect to the aforementioned submission.

The Permanent Mission of the Democratic Republic of Timor-Leste to the United Nations wishes to note that the Australian submission to the CLCS on the limits of its continental shelf beyond 200 nautical miles, and any recommendations issued by the CLCS in response to the said submission, are, as set down in the relevant provisions of the United Nations Convention on the Law of the Sea (1982) and the relevant documents issued thereunder, without prejudice to the question of delimitation of any maritime boundaries between Timor-Leste and Australia. Timor-Leste requests that this point be made clear by the CLCS in the course of its examination of the Australian submission.

The Permanent Mission of the Democratic Republic of Timor-Leste to the United Nations requests that this present note verbale and the Position Paper attached thereto be circulated and publicised, and informs that the Government of Timor-Leste has communicated its position and observations to the Government of Australia.

The Permanent Mission of Timor-Leste to the United Nations avails itself of the opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

Secretary-General of the United Nations
New York

February 2005

TIMOR-LESTE POSITION PAPER

ON THE AUSTRALIAN SUBMISSION TO THE CLCS, CONCERNING THE EXTENSION OF ITS CONTINENTAL SHELF BEYOND 200 NAUTICAL MILES

Having reviewed the documents concerning the Australian submission made available in the website of the United Nations (i.e. the executive summary, the annexes thereto and the 21 maps), Timor-Leste wishes to express its position on, and make certain observations to, the submission made by Australia to the Commission on the Limits of the Continental Shelf (CLCS) pertaining the extension of its continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, lodged pursuant to Article 76, paragraph 8, of the United Nations Convention on the Law of the Sea – 1982 (UNCLOS).

1. The Australian submission to the CLCS is, as set down in the relevant provisions of UNCLOS and the relevant documents issued thereunder, without prejudice to the question of delimitation of any maritime boundaries between Timor-Leste and Australia.

2. The question of the delimitation between Timor-Leste and Australia is not directly referred to in the text of the submission. Notwithstanding this, there are a number of points the impact of which gives rise to concern as far as the maritime jurisdiction and rights of Timor-Leste are concerned, should the question not be dealt with, and to which Timor-Leste would like to draw the attention of the CLCS.

3. The first point concerns Map 1 of the Australian submission, a zoomed-in extract of which in the Timor Sea region is presented as attachment to this Annex. With this map, Australia has presented its perspective of the situation of the Timor Sea as far as the attribution of maritime jurisdiction and rights is concerned. This perspective is not shared by Timor-Leste.

4. Map 1 "describes" the situation of the Timor Sea as one which has been resolved and settled by the Timor Sea Treaty between Timor-Leste and Australia, and by delimitation treaties between Australia and Indonesia. This is not, in Timor-Leste's view, for various reasons, a correct characterisation of the situation in the Timor Sea region. No boundaries are delimited in the Timor Sea region between Australia and Timor-Leste, and some areas portrayed by Australia as belonging thereto are in fact areas disputed between Australia and Timor-Leste.

5. The limit-lines of the Joint Petroleum Development Area (JPDA) established by the Timor Sea Treaty between Timor-Leste and Australia do not in any way bound, or represent the limits of, Timor-Leste's maritime jurisdiction and rights. In effect, Timor-Leste's boundary claims vis-à-vis Australia extend beyond such lines, specifically in respect of the "lateral lines" of the JPDA (which run approximately along the true bearing 167°-347° on the eastern side, and true bearing 149°-329° on the western side). The idea, apparently depicted in Map 1 (with regard to the Timor Sea region), that all areas outside the JPDA and south of the 1972 Australia/Indonesia Seabed Boundary Treaty are areas under Australian jurisdiction is a misrepresentation of the situation as far as attribution of maritime jurisdiction and rights is concerned.

6. The existence of a misrepresentation of the legal situation in the Timor Sea region, in respect of the attribution of maritime jurisdiction and rights, is reinforced by statements made in the Executive Summary of the Australian submission. At page 41, it is stated: "There are two maritime boundary treaties between Australia and Indonesia within the Argo region – the 1997 Treaty [...] that

establishes a seabed boundary and an EEZ boundary in the central part of that region and a 1972 treaty that establishes a seabed boundary in the eastern part of the region. The seabed boundaries and the EEZ boundary defined by the treaties diverge in a number of areas. In the area between the divergent boundaries, Australia exercises seabed and subsoil jurisdiction and Indonesia exercised jurisdiction over the water column." This is a clear assertion of jurisdiction by Australia in relation to areas that include maritime areas which are in fact disputed between Timor-Leste and Australia.

7. In conclusion, Map 1 in the Australian submission, concatenated with statements made in the Executive Summary, does indeed express an idea that may prejudice Timor-Leste's rights, should it be, by action or omission, directly or indirectly, endorsed or in any way upheld by the CLCS in the course of its examination of the Australian submission.

8. The second point to be made concerns Australia's reliance, throughout the submission, on the 1997 Boundary Treaty between Australia and Indonesia. As it ties in with the previous point, to the extent that the boundary lines depicted thereon are those described in this treaty, the observations made above are equally valid here.

9. There is, in addition, another issue to be raised. This 1997 Treaty (yet to enter into force) extends through areas over which Timor-Leste has not only an entitlement, but also a maritime boundary claim. As a bilateral treaty between Australia and Indonesia, it is a matter with which Timor-Leste does not wish to interfere. To the extent, however, that it purports to delimit maritime boundaries in areas which belong to the territory of Timor-Leste, or to restrict the maritime areas which may be claimed by Timor-Leste as being under its jurisdiction, this 1997 Treaty should be deemed to be of no effect. Unqualified reliance by the CLCS on references made to the 1997 Treaty may prejudice Timor-Leste's legal position.

10. In particular, and most importantly, unqualified reliance on the submission's references to the 1997 Treaty (or the 1972 Australia/Indonesia Seabed Boundary Treaty) must in no way result in a limitation on the maritime boundary claims of Timor-Leste under international law. The so-called "Timor Gap" does not constitute a legal limitation to Timor-Leste's claims, as it is *res inter alios acta*. Further, the areas outside the JPDA, immediately adjacent thereto (to east and west thereof), are not as a matter of law, unlike suggested by Map 1, areas under Australian jurisdiction.

11. A third point to be raised concerns Australia's continental shelf entitlement in the Timor Sea region. The seabed boundary claim advanced by Australia in this region is based on a natural prolongation argument, an argument underlying which is a claim to a continental shelf entitlement beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. In other words, the boundary-line claimed by Australia vis-à-vis Timor-Leste lies to a large extent in an area that is beyond the 200-mile limit computed from the Australian baseline.

12. In the Australian submission, it is not clear why Australian has chosen not to refer to its claimed entitlement beyond 200 nautical miles in the Timor Sea. It is equally unclear why Australia has not referred to the dispute that involves the delimitation of its maritime boundary with Timor-Leste, in relation to which the Australian claim relies on an argument of natural prolongation beyond 200 nautical miles. Irrespective of the explanation, it is Timor-Leste's view that the CLCS should make clear in its recommendations that there is no question of endorsement of the Australian continental shelf entitlement beyond 200 nautical miles in the Timor Sea region.

13. The views expressed and observations made previously do not prejudice Timor-Leste's right to further elaborate thereon, in particular if other information on the Australian submission is made available. And Timor-Leste reserves the right to take in the future any appropriate measures in that respect.

14. In light of the aforementioned observations, Timor-Leste respectfully requests that the CLCS:

a) Ensure that Timor-Leste's rights are not prejudice by the procedures involving the Australian submission;

b) Expressly deny any endorsement of the idea that Australia has an entitlement beyond 200 nautical miles in the Timor Sea;

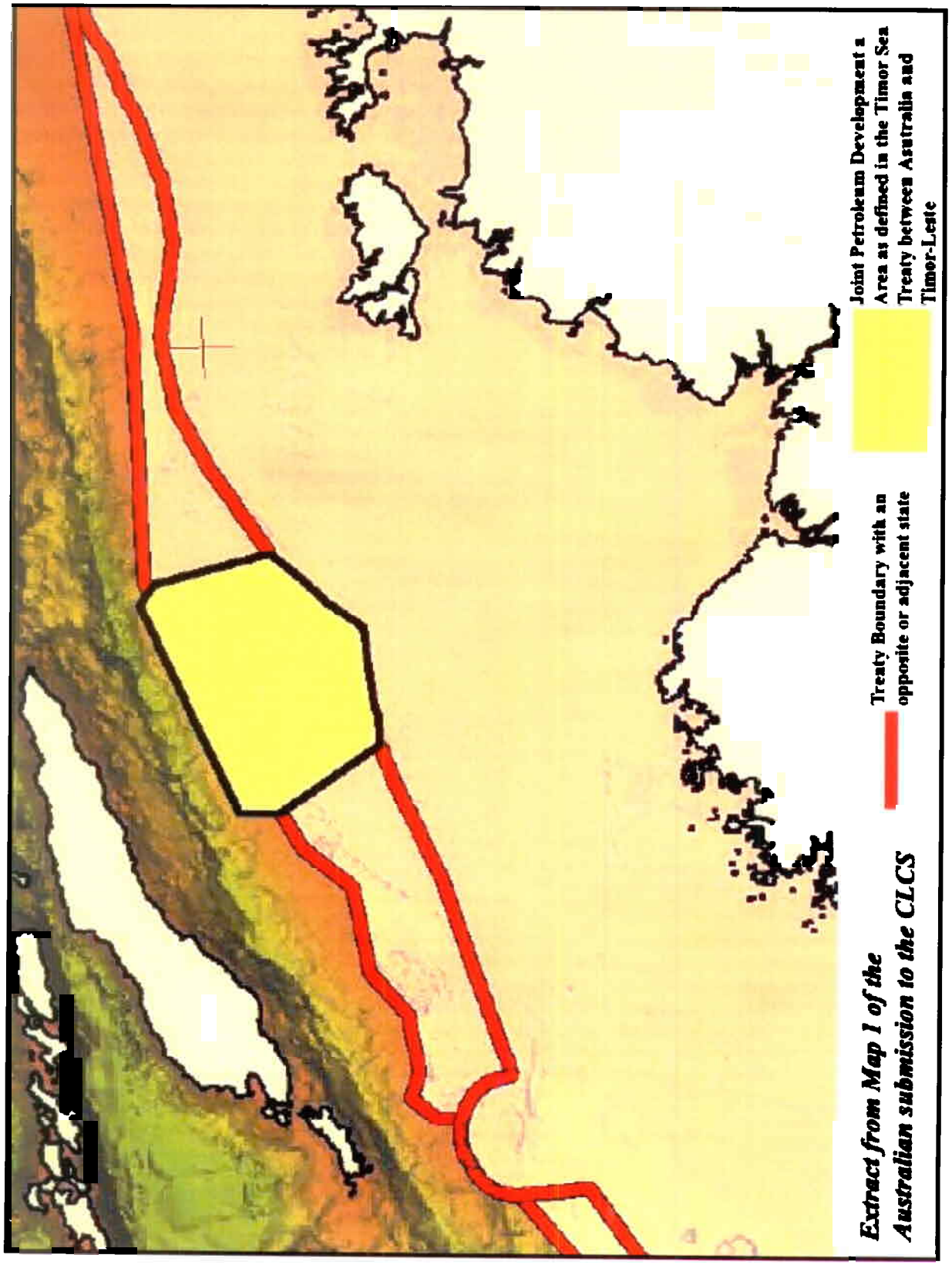
c) Expressly affirm that, as far as the Timor Sea is concerned, any reliance on Map 1 by the CLCS will have no legal effect with respect to the delimitation of maritime boundaries between Timor-Leste and Australia, and that no inferences may be derived therefrom in this regard;

d) While limiting the recommendations to those areas beyond 200 nautical miles which are the subject of the Australian submission, assert expressly that any other Australian claims beyond 200 nautical miles that may be implicit in the submission and the annexed Maps are neither sanctioned nor endorsed by the CLCS;

e) Expressly assert that there is no unqualified endorsement of the 1997 Treaty, and that, in relation to those areas which are not the immediate object of the recommendations of the CLCS, the CLCS' reliance on the 1997 Treaty does not have an impact or implication on disputes concerning the Timor Sea; and

f) Make clear that the contents of Map 1, whatever use is given thereto, or reliance is placed thereon, have no impact on the maritime boundary claims of Timor-Leste and Australia in the Timor Sea, and that Timor-Leste's boundary claims are in no way be limited, directly or indirectly, by the Australian submission or the recommendations issued by the CLCS in respect thereof.

ATTACHMENT


Joint Petroleum Development a
Area as defined in the Timor Sea
Treaty between Australia and
Timor-Leste
Treaty Boundary with an
opposite or adjacent state
Extract from Map 1 of the
Australian submission to the CLCS