

JustComment

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Wrestling over the Timor Gap

As a newly formed, developing nation East Timor will need tremendous resources to build national institutions and develop its economy. East Timor is currently free of debt, and counts on oil and gas revenues from its seabed to help fund the nation-building process.

An interim agreement on the division of these revenues between Australia and East Timor was negotiated a year ago, however it has left many in both countries concerned that Australia is using its influence in the region to gain an unfair share of resources.

The Timor Sea Arrangement

reached... with the Government of Australia is an extremely important agreement for East Timor. Revenues from the Timor Sea will help ensure that the gains made in social and economic recovery since the violence of 1999 are maintained and increased, and will allow East Timor to escape dependence on external aid to finance its budget after mid-decade. – *World Bank: East Timor Country Brief, www.worldbank.org*

The interim agreement replaces the previous 'Timor Gap' agreement signed with Indonesia, the former occupier of East Timor. The new agreement has increased the East Timorese share in the Joint Petroleum Development Area (JPDA) from 50% to 90%. However, the JPDA only includes part of the oil and gas reserves. Some of the largest deposits remain under exclusive Australian control, despite being geographically closer to East Timor.

The Timor Gap (Zone of Co-operation) Treaty

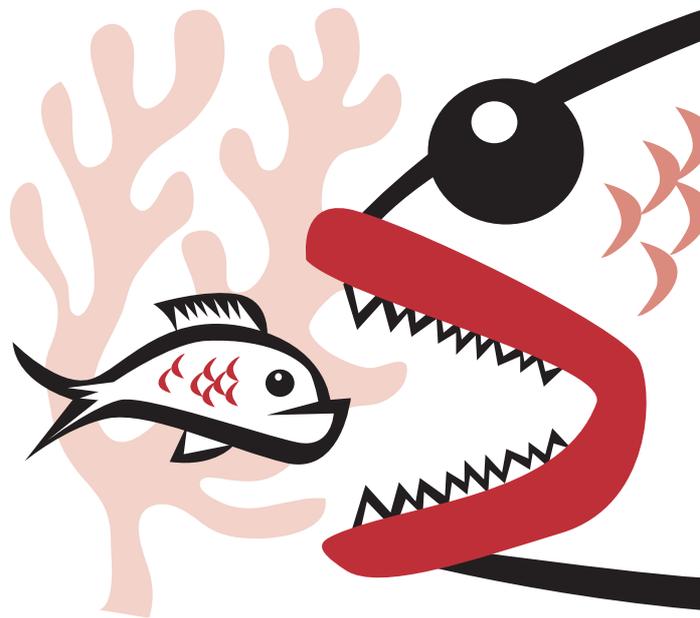
The initial agreement with Indonesia, signed in 1988, was a controversial one. It followed a long process of negotiations starting in the 1960s, when East Timor was a non-self governing territory under Portuguese trusteeship and involved Australia and both Indonesia and Portugal.

For most of the region Australia agreed to the line of equidistance (or mid point). This is the standard (although not prescribed) solution under international law of the sea and is also the line agreed to by Australia to govern fishing and navigation rights.

However, in the Timor Sea area, Australia pointed at a deep cleft known as the Timor Trough, considerably closer to Timor than to Australia, to argue that the continental shelf was therefore broken in two and that the Australian seabed extended all the way to the trough. Morphologically, it seems the Timor Trough does not break Australia's continental shelf, which in fact extends North of Timor. None-the-less, Australia granted petroleum exploration permits all the way to the Timor Trough.

By 1972 Australia and Indonesia signed a Seabed Agreement. The agreed boundary followed a slightly revised trough, although a gap was left along East Timor, in the zone that Indonesia and Australia decided would come under Portuguese jurisdiction (hence the "Timor Gap").

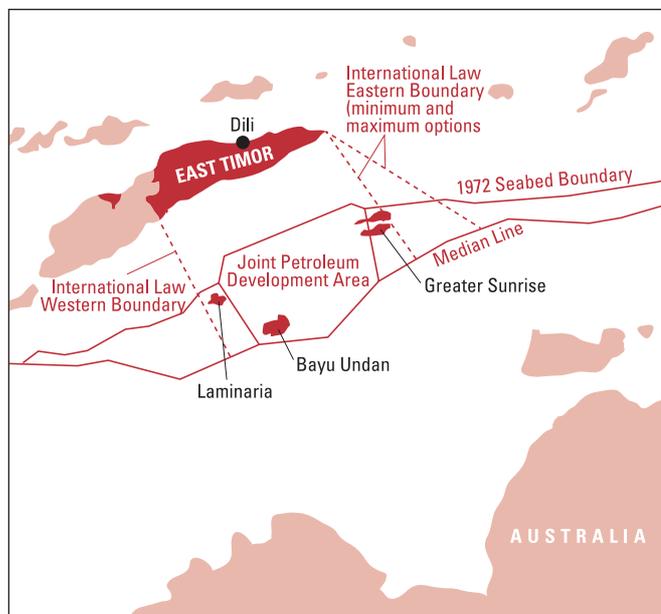
Having agreed on these boundaries, Australia presented Portugal with *a fait accompli*. Portugal firmly contested this situation, and directly challenged the Australian position



by granting exploration permits to a consortium known as Petrotimor, in an area where Australia had already granted such permits, and where promising mineral resources had been found. After 1972, the Portuguese government decided to delay negotiations with Australia pending the outcome of the United Nations Conference on the Law of the Sea, due to open in June 1974.

However, the Portuguese junta was overthrown in the "Carnation Revolution," in 1974 and in December 1975 Indonesia invaded East Timor.

After December 1975, Indonesia was eager to gain some form of international recognition for its occupation of East Timor and was therefore prepared to negotiate a deal over the Timor Gap, granting Australia the same favourable terms as it had already done in the 1972 Agreement. For Australia, it now appeared easier to negotiate the seabed boundaries with Indonesia than with Portugal.



Australia remained cautious, however, in light of international condemnation of the Indonesian military occupation. In October 1976, Australian Foreign Minister Andrew Peacock stated to Parliament that the Government had not recognised Indonesia's incorporation of East Timor, but had to accept "certain realities"¹. Negotiations on a permanent seabed boundary south of East Timor finally started in 1978, despite opposition from Portugal.

The 1988 agreement created a "Zone of Co-operation" in the Timor Gap, to share potential petroleum resources until a permanent seabed boundary was created. Portugal described the agreement as "a blatant and serious breach of international law," and called for an act of self-determination for the people of East Timor. In 1989, Australia and Indonesia nevertheless signed the Timor Gap (Zone of Cooperation) Treaty, which would enter into force in 1991. Xanana Gusmão condemned the Treaty as a "total betrayal" by Australia of the Timorese people².

1. *House of Representatives Hansard*, 20 October 1976, pp. 2015-6
 2. "Oil treaty to bring 'era of cooperation'", *The Canberra Times*, 10 October 1991; *House of Representatives Hansard*, 10 October 1991, pp. 1748
 3. "East Timor Considers Court Action Against Australia", *Asia Pulse*, 20 May 2002
 4. Karen Polglaze, "Maritime boundary talks will press Australia", *AAP*, 17 June 2002

Negotiations between Australia and Indonesia then proceeded to the delimitation of a permanent seabed boundary. In 1997, the two countries signed a Delimitation Treaty that was also opposed by Portugal. Ratification of the Treaty had not yet occurred when in 1999, East Timor finally secured its independence from Indonesia.

Negotiations with East Timor

East Timor rejected the previous treaty and instead demanded both a 90:10

split of revenues in the Zone of Co-operation and the renegotiation of the maritime boundary along the line of equidistance, in accordance with the principles of international law.

The Timor Sea Arrangement reached in July 2001 respected East Timor's terms for the split of revenues, but did not modify the maritime boundaries previously agreed to by Indonesia. It has yet to be ratified.

Two of the most significant deposits, the Laminaria oilfield to the West, and the Greater Sunrise gasfield to the East, largely lie outside the Zone of Co-operation and in Australian territory. Both deposits are closer to East Timor than Australia, creating a claim in international law that they should be under East Timorese control. East Timor therefore insists that any treaty on the Timor Gap merely represents an "administrative contract," not a maritime border.

Timorese civil groups and members of parliament have expressed concerns over the 2001 agreement being ratified fearing that the interim arrangement would jeopardise any fair agreement on maritime boundaries.

Petrotimor, still holding concessions granted by Portugal, announced its willingness to finance any international chal-

lenge to East Timor's seabed boundaries. The consortium lodged an action in August 2001 in the Australian Federal Court, seeking a 2.85 billion dollar compensation for their expropriated property rights and a declaration that the Timor Gap Treaty is void.

In March 2002, a seminar was held in Dili under Petrotimor auspices, during which experts advised that East Timor should own most of the region's natural gas fields, including the Greater Sunrise resource.

Faced with the possibility of arbitration by an international court or tribunal, Australia announced it would henceforth exclude maritime boundaries from the compulsory dispute settlements of both the International Court of Justice and the International Tribunal for the Law of the Sea. Prime Minister John Howard called the move "a legitimate protection of a national interest"³.

Indeed, East Timor acknowledged that it was Australia's sovereign right to limit the competence of both tribunals, and added that it had never been East Timor's intention to use an international court as a first measure. But in June 2002, East Timor's Prime Minister Mari Alkatiri said his country would demand Australia's share of Greater Sunrise⁴.

Just Action

- Write to members of Parliament asking that Australia reconsider its withdrawal from the dispute settlement mechanisms of the ICJ and UNCLOS, two bodies able to deliver a fair arbitration between two friendly neighbours.
- Write to the Joint Standing Committee on Treaties, urging them to ensure that ratification of the Timor Sea Arrangement will not preclude fair negotiations over the maritime boundaries between Australia and East Timor (The Hon. Julie Bishop MP, Chair Joint Standing Committee on Treaties, julie.bishop.mp@aph.gov.au or the Hon. Kim Wilkie MP, Deputy Chair Joint Standing Committee on Treaties, kim.wilkie.mp@aph.gov.au)



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