

The Timor Sea Treaty: Are the Issues Resolved?

Introduction

One of the most significant actions undertaken by Prime Minister Howard at the celebrations of East Timor's independence on 20 May 2002 was the signing of the Timor Sea Treaty between Australia and the new state of East Timor. The Treaty provides for the two parties to share revenue from petroleum production in an agreed area of the Timor Sea, the Joint Petroleum Development Area (JPDA), jointly administered by both countries.

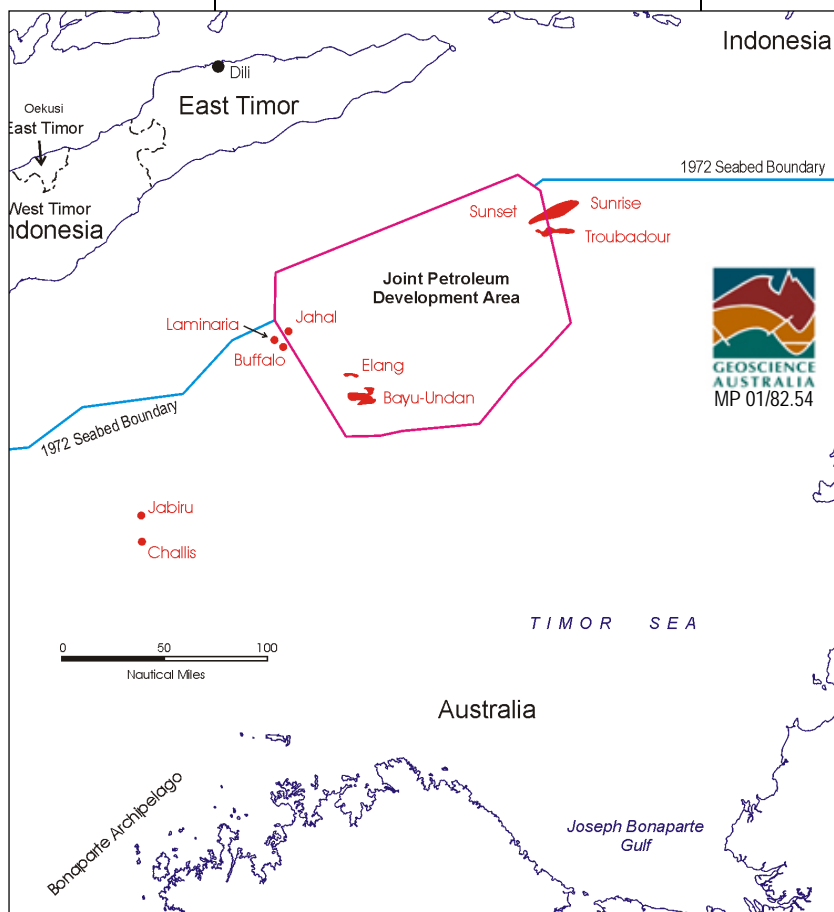
East Timor will receive 90 per cent of the revenue from production in the JPDA and Australia will receive 10 per cent. There are two main oil and gas fields involved: one known as Bayu-Undan, which is entirely in the JPDA and a larger reserve called Greater Sunrise, 20 per cent of which is in the JPDA. Thus in the latter case East Timor will receive 90 per cent of 20 per cent of revenues, i.e. 18 per cent, and Australia will receive the rest.

Current estimates are that the East Timor Government will receive up to \$8 billion over 20 years.¹ The resources outside the JPDA in the area of Australian control are much larger, although many of these

reserves will not be in production for some time. Australia will also benefit if gas reserves from the Greater Sunrise field are processed in an on-shore facility in Darwin.

Background to the Treaty

The agreements and compromises in the Timor Sea Treaty have their origin in a 1972 Seabed Agreement which delimited a seabed boundary between Australia and Indonesia. This was based on the 1958 Convention on the Continental Shelf which said that states should control the sea to the limits of their continental shelf, the place where the sea floor drops away to the deep ocean. The arrangement creates a boundary much closer to Indonesia than Australia, giving Australia control over the major part of the Timor Sea. Portugal (the colonial power in East Timor), argued that the boundary between Australia and East Timor should be based on the principle of a median (mid-way) line. Thus there was a gap in the line drawn between Indonesia and Australia in 1972—the so-called Timor Gap.



Despite the signing of the Treaty, many prominent East Timorese have expressed their dissatisfaction with the arrangement and Mr Howard was met by demonstrators in Dili who claimed that Australia had cheated East Timor.

This Note explains the origins of the Timor Sea Treaty in earlier agreements with Indonesia. It discusses the issues that remain over sea boundaries between Australia, Indonesia and East Timor.

Indonesia annexed East Timor in 1976.² When Australia recognised Indonesian sovereignty in 1979, the issue of filling the 'gap' was raised. But by this stage international law had moved on and there was growing acceptance of the principle of equidistance, a principle which became part of the 1982 Convention on the Law of the Sea. While Australia continued to hold to the continental shelf argument,

Indonesia pressed unsuccessfully for a median boundary.

1989 Timor Gap Treaty

With potentially large amounts of petroleum revenue involved in the areas in dispute, the Indonesia-Australia negotiations lasted until 1989, when a compromise agreement was finally achieved in the Timor Gap Treaty. This allowed for joint exploitation of oil and gas resources in the area of overlapping claims. The Treaty set aside the issue of the maritime boundary, based on Article 83 of the 1982 Law of the Sea Convention which allows countries to establish practical provisional arrangements without prejudice to negotiations on a final agreement. Indonesia and Australia were able to reach agreement on the petroleum issue, without having to resolve the more difficult question on the seabed boundary.

Many observers saw the Timor Gap Treaty as a model for the amicable settlement of border disputes based on practical solutions. But the Treaty remained controversial for those who saw it as giving legitimacy to Indonesia's occupation of East Timor and depriving the East Timorese of their own resource wealth.

East Timor becomes independent

Following the end of Indonesian occupation in 1999, the UN administration in East Timor (UNTAET) took over Indonesia's rights and obligations from the Timor Gap Treaty so as to allow exploration and production to continue without risk to investors. But UNTAET refused to inherit the Treaty itself because it considered it a product of illegal occupation by Indonesia. A new Treaty therefore had to be negotiated.

During talks between Australia and UNTAET in 2000 and 2001, UNTAET argued that a seabed boundary should first be delimited

on the basis of current international practice. This would potentially place greater petroleum resources within East Timor control than was the case with the Timor Gap Treaty. UNTAET also argued that the angle of the lines drawn laterally between the Australian and East Timor coasts maximised the area of Australian control and disadvantaged East Timor. UNTAET also became embroiled in a dispute with the corporation developing the Bayu-Undan oil and gas field, Phillips Petroleum, over future taxation arrangements.

Ultimately, however, East Timor agreed to put aside the seabed boundary issue because it did not want to jeopardise the flow of revenue that is to come on stream within the next two to three years. Australia had refused to agree to a new seabed boundary and new talks on a final agreement might have brought both immediate and future investment in exploration and production to a halt. With the East Timor Government having no other major source of revenue (except foreign aid), it was in no position to stand on a point of principle.

Thus UNTAET negotiated a Timor Sea Treaty which is essentially the same as the old Timor Gap Treaty, with the important concession that East Timor is to receive 90 per cent rather than 50 per cent of revenue from the Joint Area. The details of how the division of revenue will be administered are still to be finalised.

The Future

The Timor Sea Treaty has provided certainty for investors and has ensured that the Government of East Timor will receive the income it urgently needs to establish a viable state. But the Treaty states that nothing within it affects the position of either party regarding a final seabed delimitation. This unresolved issue has the potential to

cause problems for relations between the two countries in the future. Resentment may develop as other fields in the Timor Sea come into production and if further exploration uncovers larger petroleum resources.

East Timor is in a weak position to pursue its case further because recourse to the International Court of Justice has been cut off by Australia's recent withdrawal of acceptance of the Court's jurisdiction on maritime boundary issues.³ East Timor's only other avenue for internationalising the issue would be to make common cause with Indonesia and pressure Australia to recommence negotiations on a boundary based on equidistance. At present, there is no sign of such moves occurring, but since the issue potentially involves major economic assets, the success of future trilateral relations between East Timor, Indonesia and Australia may depend on a final resolution.

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1. Oxford Analytica Daily Brief, 10 December 2001.
2. Stephen Sherlock, 'A Pebble in Indonesia's Shoe: Recent Developments in East Timor', *Research Paper*, no. 8, Department of the Parliamentary Library, Canberra, 26 September 1995. Adam Cobb, 'East Timor and Australia's

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3. Hon. Daryl Williams, Attorney-General, *News Release*, 25 March 2002.