

Background

The treaty actions

- 1.1 On 20 May 2002, East Timor became the world's newest sovereign state. The signing of the *Exchange of Notes Constituting an Agreement between the Government of Australia and the Government of the Democratic Republic of East Timor Concerning Arrangements for Exploration and Exploitation of Petroleum in an Area of the Timor Sea Between Australia and East Timor* (the 2002 Exchange of Notes) and the *Timor Sea Treaty between the Government of Australia and the Government of East Timor* (the Treaty) also occurred on this day. Both treaty actions were tabled in Parliament on 25 June 2002.
- 1.2 The 2002 Exchange of Notes entered into force immediately on signing and applies until the entry into force of the Treaty. This action provided a legal framework for the continuation of current petroleum activities being undertaken in the designated area of the Timor Sea.
- 1.3 The Treaty enters into force when both parties have notified each other that their respective requirements are completed. It delimits and provides the legal basis for the exploration, exploitation and sharing of revenue from petroleum resources in the Joint Petroleum Development Area (JPDA).

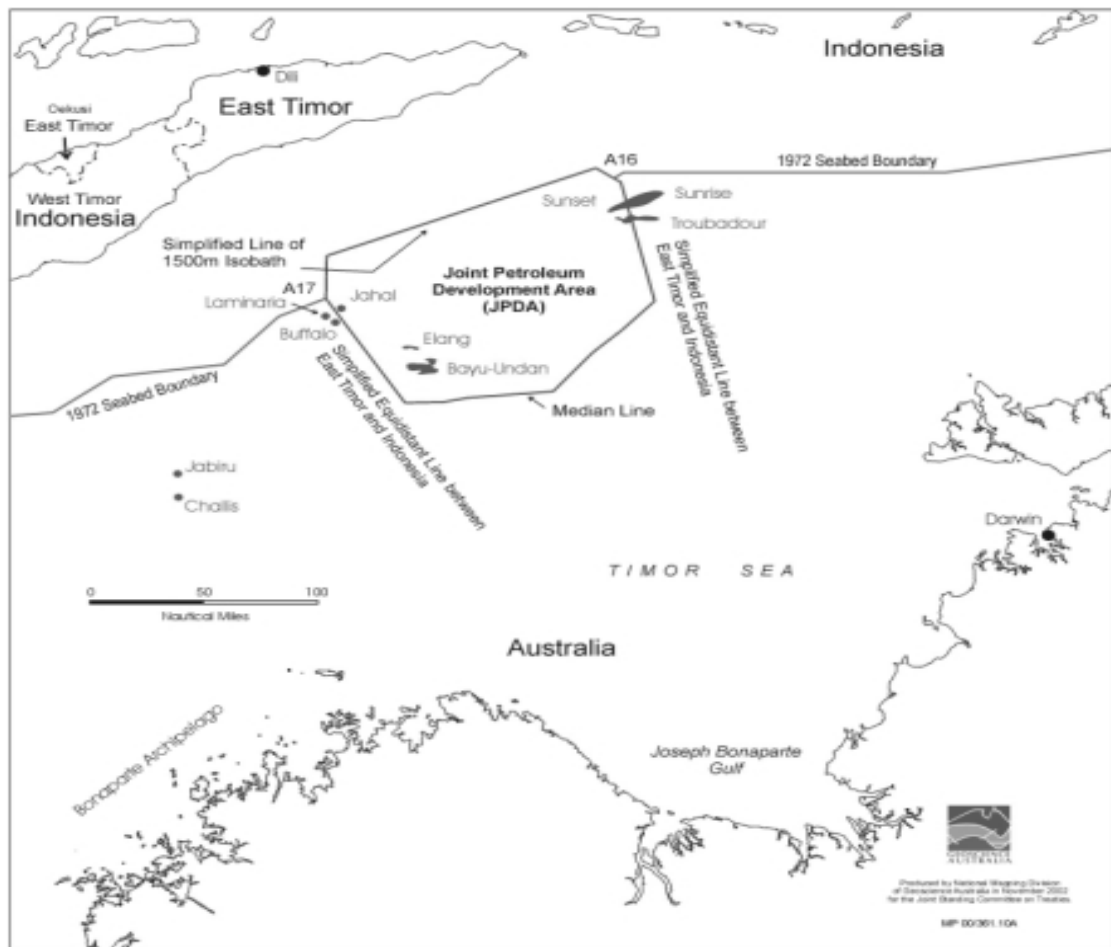


Figure 1 Location and dimensions of the JPDA

Source National Mapping Division, Geoscience Australia

A brief history

- 1.4 A brief history of negotiations between Australia and its northern neighbours over the delimitation of the seabed boundary of the Timor Sea is helpful in understanding the terms of the proposed Treaty and the debate surrounding them.
- 1.5 The original delimitation of the Timor Sea seabed occurred as a result of bilateral negotiations between Australia and Indonesia. On 18 May 1971 the countries signed an *Agreement establishing Certain Seabed Boundaries*. On 9 October 1972 they signed a supplementary *Agreement establishing Certain Seabed Boundaries in the area of the Timor and Arafura Seas* (the supplementary agreement). Both seabed agreements entered into force on 8 November 1973.

- 1.6 The supplementary agreement establishing the seabed boundary of the Timor Sea between Australia and Indonesia is based on the 1958 Geneva Convention on the Law of the Continental Shelf which asserts that ‘The coastal state exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources’ (Article 2). Australia was largely successful in gaining Indonesian acceptance of its claim that its maritime boundary was delimited by the Timor Trough, a depression:
- More than 550 NM long and on average 40 NM wide, and the seabed slopes on opposite sides to a depth of over 10,000 feet.¹
- 1.7 However, Portugal (the administrative power in East Timor until 1975) was not included in negotiations. Under the 1958 Convention, Portugal maintained that the boundary between East Timor and Australia should be based on a median distance between the two territories. Portugal’s position resulted in a gap in the boundary delimiting the seabed of the Timor Sea, which became known as the Timor Gap.
- 1.8 The 1958 Convention provided for cases in which:
- the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary ... shall be determined by them ... [or] unless another boundary line is justified by special circumstances, the boundary is the median line ... (Article 6(1)).
- 1.9 The difference between the Portuguese and Indonesian positions was based on the insistence of the former on a median distance, and the allowance by the latter of Australia’s continental shelf claim. Each country took a differing view of the Timor Trough. Portugal understood the Timor Trough as an incidental depression rather than the edge of the continental shelf and Indonesia understood the Timor Trough as constituting the edge.
- 1.10 The absence of Portugal from the maritime delimitation negotiations meant the points at which the Gap occurred (known as A16 and A17) were recognised by Australia and Indonesia as provisional in the 1972 supplementary agreement (Article 3).²
- 1.11 In 1976 Indonesia annexed East Timor. The recognition by Australia of Indonesian sovereignty over East Timor in 1979 made it possible to begin negotiations to delimit the boundaries of the Gap. Indonesia took up the

1 Robert J. King, *Submission No. 43*, pp. 2-3.

2 Robert J. King, *Submission No. 43*, p. 5.

Portuguese position on the Gap by maintaining that the Timor Trough did not delimit Australia's continental shelf but instead was an incidental depression within a shared shelf.

- 1.12 Australia maintained its territorial claims based on the limits of its continental shelf by maintaining that the Timor Trough constituted a special circumstance; that is, that the Timor Trough defined the edge of Australia's continental shelf.
 - 1.13 The potential resource wealth of the disputed area encouraged Australia and Indonesia to set in place arrangements delimiting a Zone of Cooperation (ZOC) and the terms upon which revenue from the exploitation of resources within the Zone would be shared. These arrangements were concluded with the signing of the Timor Gap Treaty between Australia and Indonesia on 11 December 1989. The Timor Gap Treaty entered into force on 9 February 1991. Production at the Elang-Kakatua oil fields within the ZOC began in 1998.³
 - 1.14 The Timor Gap Treaty provided for the ZOC to be divided into three areas. Australia and Indonesia would jointly administer Area A with Australia and Indonesia having title to a 50:50 share of revenue from petroleum exploration and exploitation activities. Australia would administer Area B and share ten percent of revenue with Indonesia, and Indonesia would administer Area C and share ten percent of revenue with Australia.
 - 1.15 On 25 October 1999, the United Nations Transitional Administration in East Timor (UNTAET) became the administering power in East Timor following a ballot in which the population voted for independence from Indonesia. UNTAET took over Indonesia's rights and obligations under the Timor Gap Treaty in order to preserve a stable framework that would allow for continued investment in the exploration and exploitation of petroleum resources in the ZOC.
 - 1.16 An Exchange of Notes between Australia and UNTAET was signed on 10 February 2000 to take effect from 25 October 1999 and to operate until East Timor's independence. The 2000 Exchange of Notes effectively continued the terms of the Timor Gap Treaty.
 - 1.17 On 5 July 2001 Australia and UNTAET concluded a Memorandum of Understanding (MOU) that put in place the Timor Sea Arrangement (the Arrangement). The Arrangement provides the basis for the Timor Sea Treaty in determining the administrative mechanisms for the JPDA and that:
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3 Robert J. King, *Submission No. 43*, p. 28.

Of the petroleum produced in the JPDA, 90 percent shall belong to East Timor and 10 percent shall belong to Australia (Article 4(a)).

- 1.18 The JPDA is delimited along the same boundaries as Area A of the ZOC (ZOCA) set out in the Timor Gap Treaty.
- 1.19 After East Timor's independence the Exchange of Notes done on 20 May 2002 acts as an interim agreement continuing the Arrangement until the Timor Sea Treaty enters into force. The 2002 Exchange of Notes specified that East Timor would not have access to the additional 40 percent of JPDA petroleum resources (above the 50 percent to which it was entitled under the 2000 Exchange of Notes) until the Timor Sea Treaty entered into force. The revenue from this 40 percent of JPDA petroleum resources was to 'be placed in a US dollar denominated interest bearing escrow account' (Article 4(d)). On the entry into force of the Timor Sea Treaty all monies and interest in the account will be paid to East Timor.
- 1.20 On 20 May 2002, Australia and East Timor signed the Timor Sea Treaty that allows for the continued exploration and exploitation of the resources of the JPDA under the terms set out in the Arrangement.
- 1.21 Article 2(b) of the Treaty states that:

Nothing contained in this Treaty and no acts taking place while this Treaty is in force shall be interpreted as prejudicing or affecting Australia's or East Timor's position on or rights relating to a seabed delimitation or their respective seabed entitlements.

Costs and future protocols

- 1.22 Once ratified, the Treaty will remain in force until there is a permanent delimitation of the Timor Sea seabed or for 30 years from the date of its entry into force, whichever is sooner. The Treaty also provides for renewal by agreement between the parties (Article 22). The Treaty may be amended at any time by written agreement between the parties (Article 24).
- 1.23 The National Interest Analysis (NIA) states that Australia will incur no major costs through the proposed treaty action. Any additional costs that are incurred will be of a minor administrative type.
- 1.24 The Treaty requires Australia and East Timor to work expeditiously and in good faith to reach an International Unitisation Agreement (IUA) in relation to any deposit that straddles the boundary of the JPDA (Article 9). An MOU to this effect was also signed on 20 May 2002. The IUA will be a

separate treaty action and will thus require tabling in Parliament and be subject to scrutiny by this Committee.

- 1.25 The Treaty provides for the negotiation of a Petroleum Mining Code which will govern the exploration, development and exploitation of petroleum within the JPDA as well as the export of petroleum from the JPDA. If the treaty parties cannot agree to a Code, the Joint Commission will adopt an interim Code (Article 7).

Consultation

- 1.26 The NIA indicates that the Commonwealth Government consulted with representatives from state and territory governments, industry representatives, including Phillips Petroleum and the Sunrise Joint Venture Partners, over Timor Sea arrangements.
- 1.27 The Committee advertised for submissions on 3 July 2002 in *The Australian*, *The West Australian* and *The Northern Territory News*. In addition it invited submissions directly from state and territory governments, industry stakeholders and unions with an interest in the exploration and exploitation of petroleum resources in the Timor Sea as well as non-government organisations with interests in or concerns about East Timor.

Conduct of the Inquiry

- 1.28 On 19 May 2002, the Minister for Foreign Affairs sent a letter to the Committee informing it that the Exchange of Notes would be signed and enter into force on 20 May 2002.
- 1.29 The texts of and NIAs for the Exchange of Notes and the Treaty were tabled in both Houses of Parliament on 25 June 2002. As a result of a typographical error in the NIAs, amended versions of the NIAs were re-tabled on 27 August 2002.
- 1.30 On 26 June 2002 the Committee informed the Minister for Foreign Affairs that it would require longer than the usual 15 sitting day period to consider the proposal to ratify the Timor Sea Treaty. The longer period for the Committee's consideration of the Treaty was required because of the anticipated high level of interest in the proposed treaty action among the Australian public.

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- 1.31 An initial public hearing was held in Canberra on Friday 12 July 2002 in which the Exchange of Notes and the Treaty were considered with nine other treaty actions tabled on 18 and 25 June 2002. A follow up public hearing specifically on the Treaty was held in Canberra on 26 August.
 - 1.32 The Committee took evidence in Perth on 2 October, in Darwin on 3 October and in Melbourne on 4 October and returned to Canberra for two further hearings on 8 and 14 October.
 - 1.33 Submissions received are listed at Appendix A. Those individuals and organisations who gave evidence at the public hearings into the Exchange of Notes and the Treaty are listed in Appendix B. Exhibits are listed at Appendix C.