

Timor-Leste became a party to UNCLOS in January 2013, and Australia has been one since 1994. However, in March 2002, Australia unilaterally withdrew from UNCLOS dispute resolution processes for resolving boundary disputes, two months before Timor-Leste restored its sovereignty. This shows Australia's dislike for mandatory legal processes to settle such questions, which Canberra prefers to do by negotiation.

Australia's interests

It's no secret that Australia went along with Indonesia's illegal invasion of Timor-Leste in order to share the proceeds of Timor Sea petroleum exploitation. This Australian political opportunism cost Timor-Leste dearly, taking the lives of 200,000 of our people. Canberra and Jakarta signed the Timor Gap Treaty in 1989 to enable the oil and gas to be extracted, establishing a Zone of Cooperation (ZOCA) which is today called the Joint Petroleum Development Area.

In 1995, Indonesia and Australia signed contracts with Woodside and Shell to develop the Greater Sunrise field, which lies 20% inside the JPDA and 80% in territory claimed by Australia. However, these contracts became invalid after Timor-Leste became independent. Therefore in 2003, The Australia-Timor-Leste Timor Sea Designated Authority (TSDA) signed new contracts for Sunrise with Woodside, Shell, ConocoPhillips and Osaka Gas.

Under the 2002 Timor Sea Treaty, Timor-Leste receives 90% of the extraction (upstream) revenues from petroleum fields inside the JPDA, and Australia gets 10%. But under the CMATS Treaty, revenues from the entire Greater Sunrise field (80% of which is outside the JPDA) will be shared equally between the two nations. Even though the upstream revenues are the same, Australia is likely to benefit more than Timor-Leste.

History shows that Australia has long prioritized expanding its access to oil and gas fields in the Timor Sea, getting a bigger share than its entitlement under international legal principles. Australia uses the same approach to its other maritime neighbors, using bilateral negotiations which reward the country with the greater political and economic power. There are many examples: the ZOCA, Greater Sunrise, Laminaria-Corallina, Buffalo, Ashmore Reef, its boundary with New Zealand, and several neighbors around Antarctica.

In the specific Timor-Leste case, although the Timor Sea Treaty was signed in 2002, it only came into force in 2003 after Australia pressured Timor-Leste to sign the Sunrise International Unitization Agreement (IUA) to facilitate Sunrise development.

Australia really wanted to develop Greater Sunrise, and they knew that Timor-Leste, as a new nation with a weak economy, needed Bayu-Undan quickly to finance state activities. Therefore, Australia delayed ratifying the Timor Sea Treaty until Timor-Leste signed the IUA in March 2003. At the time, Timor-Leste's government felt it had signed the IUA under duress, and declined to ratify it. Timor-Leste's Parliament finally ratified the IUA four years later, at the same time both nations ratified the CMATS Treaty in 2007.

Provisions in the CMATS Treaty

The CMATS Treaty between Timor-Leste and Australia is to facilitate oil and gas exploitation in the Timor Sea outside the JPDA. Some people call it the "Sunrise Agreement" because it divides Sunrise upstream revenues 50-50 between the two countries.

This treaty bans both Timor-Leste and Australia from talking about maritime boundaries or from raising the issue in any way or through any mechanism. It blocks the chance for Timor-Leste to realize its

maritime sovereignty rights until all the oil and gas fields are empty. It allows Australia to continue to steal oil and gas wealth from occupied Timor-Leste seabed territory, such as Laminaria-Corallina.

One provision of this treaty prohibits any action to discuss the maritime boundary issue for 50 years. However, the Treaty's term can be ended by either country if the Australian and Timor-Leste regulators have not approved a Sunrise Development Plan within six years of the treaty coming into force – that is, by 23 February 2013. At any time after that date, either Timor-Leste or Australia can give notice to terminate the Treaty, which would take effect three months later.

Although either nation can terminate the CMATS Treaty after 23 February, this does not terminate the contracts which were signed in 2003 with Woodside and its partners. The IUA will remain in effect, and Sunrise development could proceed. If production eventually starts from the Greater Sunrise field, the CMATS Treaty would automatically come back to life (unless subsequent negotiations have changed it), and the 50-50 share would still apply.

Consequences for Timor-Leste of terminating the CMATS Treaty

As described above, 23 February 2013 is the first date either nation can give notice to unilaterally terminate this treaty. Minister of Petroleum and Mineral Resources Alfredo Pires recently told journalists that Timor-Leste is weighing the advantages and disadvantages of termination.

La'o Hamutuk thinks that the advantage of Timor-Leste from exiting the CMATS Treaty is the possibility to negotiate maritime boundaries to reclaim our sovereign rights in the Timor Sea, including the Greater Sunrise field, the Joint Petroleum Development Area, and the Laminaria-Corallina fields.

However, we should remember that it is not automatic that Timor-Leste can achieve these rights, as they require Australia to negotiate in good faith and recognize Timor-Leste's maritime rights, which Australia has denied since 1975. In many cases, Australian culture, politics and greed have gotten in the way, and Australia is reluctant to give up billions of dollars of petroleum revenues, which creates a challenge for Timor-Leste in new negotiations. Although many Australian citizens respect Timor-Leste's sovereignty over the part of the Timor Sea that should be ours under international law, it is not clear that their government is listening to them.

Also, if Timor-Leste is not able to persuade Australia to recognize our sovereign rights in the Timor Sea, and the two nations have new negotiations about dividing the revenues from Sunrise, we cannot be certain that Timor-Leste will be able to get a larger share. Even without CMATS, both nations continue to abide by the International Unitization Agreement which, unhappily, would divide Sunrise upstream revenues 82% (80% outside the JPDA plus 10% of the 20% inside the JPDA) for Australia and only 18% (90% of the 20% of Sunrise that is inside the JPDA) for Timor-Leste.

If Australia and Timor-Leste both agreed to settle maritime boundaries or other issues relating to the Timor Sea, they would not have had to wait until 23 February 2013. Both parties to any treaty – including CMATS, the IUA and the Timor Sea Treaty – can decide at any time by mutual agreement to cancel, revise or replace it with a new treaty.

In 2006-2007, La'o Hamutuk urged Australia and Timor-Leste not to sign and ratify the CMATS Treaty, but to negotiate a fair maritime boundary agreement according to international legal principles. Much has changed since then, and it is unclear whether Timor-Leste could get a better deal today.

In the end, we think that the Government of Timor-Leste should give notice of termination only if it believes that Australia will enter into good-faith negotiations on maritime boundaries. If we don't give notice now, we can always do it later if Sunrise remains stalled.

Thank you, and the struggle continues.