

# The Historical Context of Australia's Political and Legal Strategy in the Timor Sea

Posted on [March 8, 2014](#)

In 1974, with the prospect of an Indonesian annexation of Timor on the horizon, Australia faced an important question: would Australia receive more favorable access to the gas and oil fields in the Timor Sea if Timor had an (a) Portuguese government, (b) Indonesian government, or (c) independent government?

At the time, Australia believed the answer was (b): an Indonesian Timor would give Australia the best outcome when it came to negotiating a seabed boundary in the Timor Sea. In a 1974 Policy Planning Paper, the Australian government reasoned that, since Indonesia had already given Australia such a favorable result in a similar seabed boundary negotiation, Indonesia would likely give Australia a similarly favorable deal for the seabed territory offshore from Timor. As a result, Australia was cautious about entering into any final seabed boundary delineations with Portugal. The political situation was likely to change, and there would be advantages in waiting for a more favorable government to gain control of the island territory:

*We should press ahead with negotiations with Portugal on the Portuguese Timor seabed boundary, but bear in mind that the Indonesians would probably be prepared to accept the same compromise as they did in the negotiations already completed on the seabed boundary between our two countries. Such a compromise would be more acceptable to us than the present Portuguese position. For precisely this reason however, we should be careful not to be seen as pushing for self-government or independence for Portuguese Timor or for it to become part of Indonesia, as this would probably be interpreted as evidence of our self-interest in the seabed boundary dispute rather than a genuine concern for the future of Portuguese Timor. We should continue to keep a careful check on the activities of Australian commercial firms in Portuguese Timor.*

(Policy Planning Paper, Canberra, May 3, 1974).

In other words, Australia should continue to engage in negotiations with Portugal to avoid the appearance of any impropriety, but it should take care that the negotiations did not actually culminate in an agreement.

Although Australia's economic and foreign interests were best served by an Indonesian Timor, it was for precisely that reason that Australia wanted to avoid any appearance that it had any stake in Timor's outcome. If seen to support Indonesia's annexation of Timor, it would likely be viewed as doing so for self-serving commercial reasons. At the same time, neither did Australia wish to be seen as supporting a Portuguese Timor or an independent Timor, because doing so might have the effect of promoting either of

those outcomes. Taking such a position (or appearing to take such a position) would also pose a risk of complicating its relationship with Indonesia.

There was also the risk that, at some future date, Timor would eventually achieve independence. Such an event would undermine the durability of any seabed boundary agreement that Australia had entered into, whether it was with Portugal or Indonesia. If Australia succeeded in negotiating a favorable seabed boundary in the Timor Sea, only to have Timor later gain independence after all, Australia would face significant pushback from the world community for having plundered a tiny nation's "only major asset" before that nation had the ability to protect itself:

*if Portuguese Timor achieved independence and believed such a prior [seabed boundary] agreement was not in its interests, there might be strong criticism of Australia for making an agreement with Portugal over Timor's head to deprive Timor of what may be its only major asset—oil. If Australia thus became a focus of antagonism, we would almost certainly lose much of our capability to influence or assist newly independent government. On the other hand, if a boundary line negotiated now gained wide acceptance this would in turn allow petroleum exploration to proceed with more confidence than at present. Moreover, a newly independent government in Timor might not wish to upset relations with Australia by seeking to renegotiate an established boundary line albeit one negotiated by its former colonial rulers. (However, it could be unwise to rest too heavily on this assumption.)*

(Cablegram, September 26, 1974).

Australia was well aware that an Indonesian annexation of Timor would create the potential for future upheaval and revolution in East Timor. If and when that eventuality finally came to pass, Australia would have a much stronger position if it did not have any culpability for the original Indonesian take-over. So, although Australia "favoured association of Portuguese Timor with Indonesia," Australia had a significant long-term interest in avoiding any perception that it was "hand[ing] over" Timor to Indonesia. Instead, Australia wanted to maintain a public perception of being committed to "self-determination," and to avoid any appearance that Australia was assigning Timor to Indonesia without the consent of Timor and against Timor's own self-interest:

*The second part of our policy flows from our commitment to self-determination. This stems from the Government's general philosophy—in the United Nations and elsewhere—but also from an assessment that to decide the future of Portuguese Timor against the will of its inhabitants might well lead to instability and trouble later on. Moreover, some Australians, with the example of Irian Jaya in mind, would be very sensitive to any appearance that decisions on Portuguese Timor's future were being taken without proper consultations with the people there.*

(Draft Submission, December 5, 1975).

Aside from more general (although still very significant) concerns about how Timor would affect Australia's relationship with Indonesia, the delineation of the seabed boundary — and consequently the division of control over the Timor Sea's petroleum — was Australia's sole policy interest in Timor itself. An example of

this is shown in a 1974 memo concerning how to word a policy statement on the Timor situation. Australian officials wanted to minimize any perceived interest in Timor, but felt that they could not credibly deny having any interest in Timor. The following proposal was suggested:

*Australia naturally has important particular interests in Portuguese Timor (for example, ~~in oil exploration~~ in the delineation of the continental shelf) but we have no ambition to achieve a special position there.*

The euphemistic amendment of the “in oil exploration” to “in the delineation of the continental shelf” was accompanied by a note making it clear that the Timor Sea gas and oil fields — which Australia’s access to would be determined by any seabed delineation — was in fact Australia’s predominant concern in the island:

*Timor was of little intrinsic interest to Australia. Our commercial and trade interests are minor. Our only substantial interest in bilateral relations is in delineation of the continental shelf. Our special interests stem from the problem of P[ortuguese] Timor as a factor in our relations with Indonesia.*

(Minute, September 20, 1974).

The May 3, 1974 planning paper, *supra*, further discussed Australia’s interests in the Timor Sea oil resources, but that portion has been redacted and is not available for public review. The note concerning the redaction acknowledges, however, that Australia’s concern was with the sovereignty over gas and oil fields in the Timor Sea, and how Australia’s commercial activities in Timor were in conflict with UN resolutions on self-determination by Portuguese colonies:

*Sections omitted [with the May 3, 1974 Paper] deal with Australia’s limited commercial and aviation interests in Portuguese Timor and possible oil concessions in as yet undelineated areas of the Timor Sea. In 1973 UN resolutions called on governments to discourage participation in commercial enterprises contributing to Portugal’s domination of its colonial territories or detrimental to the interests of their inhabitants. While it could be argued that Australian commercial activities were incompatible with support for those resolutions, the lack of ‘significant political agitation’ or Indonesian interest in the territory meant that its status was unlikely to become an issue at the UN in the short term.*

In the end, Australia tacitly acquiesced to the Indonesian annexation, believing that the Timor Sea could be delineated in a way most favorable to Australia if Timor were under Indonesian control:

*We are all aware of the Australian defence interest in the Portuguese Timor situation but I wonder whether the Department has ascertained the interest of the Minister or the Department of Minerals and Energy in the Timor situation. It would seem to me that this Department might well have an interest in closing the present gap in the agreed sea border and that this could be much more readily negotiated with Indonesia by closing the present gap than with Portugal or independent Portuguese Timor.*

*I know I am recommending a pragmatic rather than a principled stand but this is what national interest and foreign policy is all about, as even those countries with ideological bases for their foreign policies, like China and the Soviet Union, have acknowledged.*

([Letter from Richard Woolcott, Australian ambassador to Indonesia, August 17, 1975](#)).

It's not that Australia was unmoved by the humanitarian concerns caused by Indonesia's invasion; Australian officials acknowledged that the Timorese people had been deprived of their right to self-determination, and expressed concern about that result. Ultimately, however, Australia decided on a path of acquiescence to the Indonesian annexation, and in January 1976, shortly after Indonesia had moved into Timor, Australia's Indonesian ambassador acknowledged that Australia's long-term national interest was best served by a "Kissingerian" approach to the Timor situation:

*On the Timor issue...we face one of those broad foreign-policy decisions which face most countries at one time or another. The Government is confronted by a choice between a moral stance, based on condemnation of Indonesia for the invasion of East Timor and on the assertion of the inalienable right of the people of East Timor to the right of self-determination, on the one hand, and a pragmatic and realistic acceptance of the longer-term inevitabilities of the situation on the other hand.*

*It is a choice between what might be described as Wilsonian idealism or Kissingerian realism. The former is more proper and principled but the longer-term national interest may well be served by the latter. We do not think we can have it both ways.*

([Letter from Woolcott, January 5, 1976](#)).

Although Australia chose to take what it saw as the path of realism, rather than idealism, it is unclear if Australia's long-term national interests were ultimately served by that decision. It's possible that Woolcott got it backwards; the 'realist' response may have instead served Australia's short-term interests, at the expense of longer-term advantages. With the benefit of hindsight, it is abundantly clear, at least, that an Indonesian Timor did not result in political stability. While it saved Australia from bearing the expenses and entanglements of supporting a newly independent neighbor in 1975, that outcome was only delayed, not avoided.

And the choices Australia made prior to the Indonesian annexation have resulted in significant prejudice to Australia's current position in the Timor Sea. Over the next 22 years, between 1976 and 2002, there would be three very important developments that would radically change the legal and political landscape (seascape...?) of Timorese maritime boundary delineation:

- First, international law of the sea would go through a period of extensive development and codification. One very significant change in this body of law would be the entry into force of the UN Convention on the Law of the Sea, in 1994. In general, these legal developments were not favorable to Australia's claims to sovereignty over much of the Timor Sea. Although the precise boundary between Australia and Timor-Leste remains undelineated to this day, if determined according to the provisions of UNCLOS and modern international practices of apportionment along median lines,

Australia's jurisdiction would not include much of the petroleum in the Timor Sea that Australia had intended to develop.

- Second, Timor-Leste would eventually obtain independence after all, following a 1999 referendum. Because Timor-Leste did not consider itself bound by the unfavorable territorial treaties that had been negotiated by Indonesia on its behalf, Australia and the newly formed nation of Timor-Leste would need to re-negotiate how governmental control over the Timor Sea would be divided between them.
- And, third, Australian companies would go on to invest approximately \$250 million in the Greater Sunrise gas fields, in anticipation of being able to exploit the natural gas reserves found there, the total amount of which is valued in the billions. As a result of this significant outlay, the corporations that made up the Greater Sunrise joint venture agreement would have an intense interest in preserving Australia's bureaucratic control over the gas fields, as well as in preserving favorable tax rates and ensuring the existence of a stable legal regime that would create a more favorable climate for further investment.

From Australia's perspective, these developments have not been in harmony with one another. Australia now faces significant (and well-funded) internal pressures from domestic corporations who have a strong interest in Australia maintaining control over the Timor Sea, and yet Australia's claims to sovereignty over this territory have grown increasingly inapposite to international law.

And, once again, Australia's response to this conflict has been to pursue a strategy that, while nominally "realist," runs a real risk of coming at the expense of its longer-term political, economic, and legal interests.

-Susan

This entry was posted in **Uncategorized** and tagged **Australia, greater sunrise, international law, timor-leste** by **Susan Simpson**. Bookmark the **permalink** [<http://viewfrom12.com/2014/03/08/the-historical-context-of-australias-political-and-legal-strategy-in-the-timor-sea/>] .