

Our self-interest is still holding East Timor back

OPINION

By Tom Clarke

Updated Wed 20 May 2015, 1:27am

As East Timor celebrates its independence day, Australia's self-interest and greed for gas and oil reserves is still preventing the nation from enjoying full sovereignty, writes Tom Clarke.

As the Timorese celebrate their 14th "Restoration of Independence Day" this week, it is once again Australia's self-interest that prevents their long struggle for sovereignty from being complete.

For a Government that talks a lot about sovereign borders, you would think Australia would be willing to establish some between it and East Timor, but no, it is seemingly happy to continue short-changing one of the poorest countries in Asia out of billions of dollars in gas and oil revenue.

The news earlier this month that Attorney-General George Brandis will hand back the documents that ASIO dramatically seized from East Timor's lawyers 16 months ago, is just the latest of many sordid chapters in Australia's decades-long pursuit of East Timor's oil and gas resources.

The documents were seized in late 2013 just before arbitration in The Hague was to commence over allegations that Australia had spied on the tiny nation for financial gain by bugging the Timorese government's cabinet room during negotiations in 2004 and 2005 over an oil and gas treaty.

The negotiations over the Greater Sunrise gas field, estimated to be worth \$40 billion in government revenues, were taking place because then, just like now, Australia refused to even entertain the idea of establishing permanent maritime boundaries with East Timor. It prefers to jostle the fledgling nation into a series of treaties that cover particular fields or areas, picking them off one by one.

As a sovereign nation East Timor has a right to permanent maritime boundaries. It has consistently asked for them, but successive Australian foreign ministers have simply dug in their heels. Julie Bishop seems to be following suit and Australia is back to its old tricks in the Timor Sea.

Timor has few legal avenues to challenge Australia's approach because two months before East Timor became independent in 2002, Australia withdrew its recognition of the maritime boundary jurisdiction of the International Court of Justice. In other words, it told the independent umpire to bugger off.

It's hard to take seriously Bishop's claims that Australia's position is "entirely consistent with international law" when Australia is not confident enough in its own legal arguments to have them tested in an independent court.

Since the 1982 United Nations Convention on the Law of the Sea, in circumstances such as these international law has overwhelmingly favoured "median line solutions". Spurious arguments about "continental shelves" may have had traction in the 1960s and '70s, but they are no longer relevant. Today, you draw a line half way between the two coastlines.

A median line approach would mean if an oil field is located closer to East Timor then it belongs to East Timor; closer to Australia then it's Australian. Simple, common sense and exactly what international law proscribes. It also happens to be what Australia agreed to with New Zealand when it resolved overlapping claims off Norfolk Island in 2004. Abiding by current international law is seemingly easier when billions of dollars in government revenue is not at stake.

When an Australian whistleblower came forward with details of how the Government had used an AusAid project as a cover to bug key Timorese buildings, East Timor saw an opening and argued the most recent treaty (the Certain Maritime Arrangements in the Timor Sea Treaty) should be nullified as Australia clearly wasn't acting in good faith when it was signed.

In a provisional ruling in March 2014 the International Court of Justice ordered the Australian Government not to access the documents it had seized (Brandis had promised they had been kept in sealed envelopes) and delivered an unprecedented slap-down, telling Australia to immediately stop interfering with East Timor's communications and not to use national security as an alibi for commercial espionage.

The case was put on hold in October 2014 to allow time to see if Australia and East Timor could reach an amicable settlement. The hope was that the squabble about spying and documents could be put aside and the two neighbours could get down to the real issue of setting boundaries.

However, it's increasingly becoming clear that the Australian Government had no such intentions. The return of the documents some 16 months later is a good-will gesture that merely masks the fact that any hope for genuine negotiations has been scuttled.

After a few rounds of legal and diplomatic snakes and ladders, here we are, back at square one; East Timor with no permanent maritime boundaries and Australia refusing to even discuss the possibility of establishing them. Old habits die hard.

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Topics: government-and-politics, maritime, oil-and-gas

First posted Wed 20 May 2015, 1:25am