

# How far is fair enough? New moves in Timor Gap's 40-plus years of boundary battles

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Tanya Plibersek's announcement committing a future Labor government to good faith negotiations over a maritime boundary with Timor-Leste, with international dispute settlement in reserve, represents a significant shift in the status quo. The position was foreshadowed by a motion passed at last year's ALP Conference, sponsored by former MP and long-time advocate Janelle Saffin.



Many Australians remain unaware that Australia and Timor-Leste have no settled maritime boundary. Instead, a complex series of revenue-sharing agreements has allowed some oil and gas developments to proceed in the Timor Gap.

The original gap was created in 1972, when Portugal — then the colonial power — refused to sign on the 'continental shelf' border principles negotiated between Australia and Indonesia, preferring to await the international process which resulted in the UN Convention on the Law of the Sea, or UNCLOS, in 1982. Since UNCLOS, the standard international practice has been for maritime boundaries to be established at the median point between nations.

In 1989, Gareth Evans famously sealed a deal with Indonesia for joint exploitation of oil and gas in the Timor Gap and for 50-50 revenue-sharing in the 'Zone of Cooperation.' Portugal challenged that treaty in the International Court of Justice, but the action lapsed in the face of Indonesia's refusal to recognise the court's jurisdiction.

With the restoration of East Timorese independence in May 2002, these arrangements had to be renegotiated. In the meantime, Australia had acceded to UNCLOS in 1994. With the exception of Timor-Leste, Australia has since settled maritime boundaries on median line principles with its other neighbours, including New Zealand in 2004. These have been concluded by negotiation. Leaving aside a few mutually agreed tweaks for outlying islands and reefs, the principle of equidistance has prevailed in each.

Timor-Leste stands as the sole exception. In March 2002, two months before East Timorese independence, Australia withdrew from the maritime boundary dispute resolution procedures of UNCLOS, and the equivalent jurisdiction of the International Court of Justice. These unilateral actions left Timor-Leste without the option of international arbitration.

As well as apportioning revenues between the two states, the most recent of the treaties between Timor-Leste in Australia delay maritime border negotiations for 50 years, or five years after any future exploitation of the Greater Sunrise gas fields ceases. In 2014, relations between the two states deteriorated, following allegations from a former ASIS operative that Australian intelligence spied on the East Timorese negotiating team in 2004, to secure a commercial advantage in revenue-sharing talks. Especially damaging was the allegation that the exercise involved planting listening devices under the guise of an aid project to renovate government offices. Timor-Leste now seeks to have the CMATS treaty nullified under the wider principle, codified under the Vienna Convention on the Law of Treaties, that negotiations should take place in good faith.

As others have noted, though a median line resolution would clearly increase Timor-Leste's share of revenues in the Joint Petroleum Development Area (JPDA), the situation with Greater Sunrise is more complicated, owing to questions over the placement of the lateral (or side) boundaries; questions which would then involve Indonesia. An improved share of revenues, as DFAT maintains, is not guaranteed. But such questions may soon become less hypothetical. Indonesia and Timor-Leste recently agreed upon a schedule of talks for 2016, to determine some small remaining sections of their land border, and the much larger issue of sea boundaries. This negotiation will start with the less controversial northern seas, but will eventually discuss the southern sea boundaries. A lateral boundary for their existing territorial waters is a potential outcome.

Though the oil and gas revenue is critical to the Timor-Leste economy, it is far from the sole question for Dili, where Labor's new policy position will be welcome. In the wake of a 24-year fight for its independence, the unresolved maritime border issue has become totemic issue of national sovereignty, a position which unites their major political parties, and appears to have strong support in the wider Timorese society. Declining gas prices, depleting revenues in the JPDA, and separate technical disputes stalling the Greater Sunrise project only tilt considerations further toward those of national sovereignty.

The shift in Labor's stance casts a spotlight on the Australian government position, which no longer represents a bipartisan consensus. There is little question that a negotiated settlement of maritime boundaries, if it reflected median line principles, would remove the major irritant in the relationship for good. It's worth noting that in 1998, a dramatic shift in Labor's position on East Timorese independence from opposition, led by Laurie Brereton, proved to be significant, ending bipartisan support for Indonesia's forced integration of the territory.

Today, the Turnbull government will also be mindful of the court of public opinion. Beyond the damaging spying controversy, the status quo presents a difficult sales job, given the simplicity of median line principles, and the complexity of revenue arguments, which are in any case hypothetical.

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