

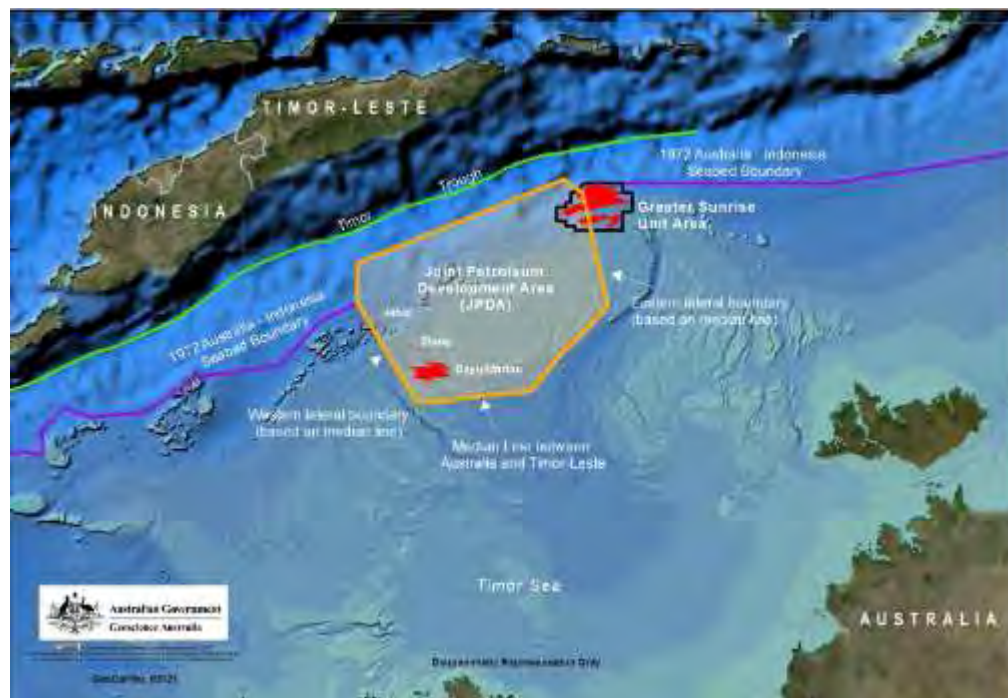
East Timor border: Be careful what you wish for

Stephen Grenville
Previous Posts



11 February 2016 4:28PM

Labor shadow foreign minister Tanya Plibersek has committed a future Labor government to negotiations with the Timor Leste government to reach a permanent maritime border between our two countries, and undertaken to hand the issue over to UNCLOS arbitration if an agreement cannot be reached.



This might seem a sensible way to go. The East Timorese have certainly been victims of some awful history. They are poor and we are rich. An equidistant border seems intuitively fair. Our bumbling Inspector Cousteau spying efforts are an ongoing national disgrace.

But there is a fair bit of misunderstanding about the relevant geography.

Popular commentary sees the central issue as an equidistant border. Typical is Tom Allard, who writes about this often in the Sydney Morning Herald:

If the boundary was drawn midway between East Timor and Australia – as is standard under international law – most of the oil and gas reserves would lie within Timor's territory.

As a geographical fact about known petroleum resources, this is wrong. Look at the map showing the location of the main oil resource – Greater Sunrise – with estimated revenues of \$40 billion. Some 80% of this undeveloped field is to the east of the Joint Petroleum Development Area (JPDA). Shifting the boundary to equidistant still leaves 80% of Sunrise in Australian territory. True, Timor would then have 100% of the JPDA revenue from resources that lie north of an equidistant border, but at the moment they receive 90% of the revenue from resources currently being exploited, and under the existing agreement would receive 50% of the overall Sunrise revenue (not just the part of Sunrise which lies in the JPDA).

For Timor to get a larger share of Sunrise, the border on the east side of the JPDA would have to be shifted eastward. Of course that would have to involve Indonesia: the eastern edge of the JPDA is based on equidistance between Timor and the Indonesian islands to the east of Timor. But why would Indonesia agree to such a shift? Sunrise is closer to Indonesia than it is to Timor.

If this issue goes to UNCLOS and the East Timor/Australia border is shifted to equidistant, Indonesia will probably demand that its border be shifted to equidistant. The same arguments apply in this case: that border was decided at a time when Indonesia was weak and Australia was strong. At that time, a border based on the continental shelf was normal, but now the fashion has changed so the UNCLOS arbitrators, unable to decide in the more common case where the continental shelf is not well defined, take the easy way out and settle for equidistant. That would put 80% of Sunrise in Indonesian territory and it seems unlikely that Indonesia would give Timor any share of the revenue.

Is this such a bad outcome? After all, Indonesia has many more poor people than Timor has. But it may not be what the Labor Party has in mind.

4 Comments Lowy Interpreter

Jeffrey Feynman • 2 days ago

Mr. Grenville has written an interesting article about this baffling issue.

I invite those interested to read a September 2015 article about the same issue: "The uncharted hazards of the Timor Sea dispute" at <http://www.onlineopinion.com.a...>

Also of interest is a letter to the Editor of The Saturday Paper published on February 6, 2016: "Where to draw the line?" at <https://www.thesaturdaypaper.c...>

In addition, I recommend the very thorough study of the maritime boundary issue: "Maritime boundaries of East Timor: a graphical presentation of some historical and current issues" at www.hydrographer.org

bernard collaery • 3 days ago

Once again a response empathetic to the DFAT line. I guess Stephen's reference to the great undersea explorer Jacques Cousteau reminds us that Cousteau might have viewed the unbroken Shelf all the way to the Timor Island coast, where encountering his French colleague Inspector Clouseau they both may have clambered aboard a floating hotel ship after seeing the welcome signs to a Dick Smith Electronics Display.

I cannot comment on any bilateral TL/Indonesia issues but from a pure legal perspective Stephen misses entirely once again well developed international law perspectives on the lateral TL/Indonesia boundaries. The Timor Island comprising East and West Timor and adjoining islands form a concave outlook facing Australia. Lateral lines drawn perpendicular from baselines, will, like the rays from a concave mirror converge. In maritime boundary law this is known as the 'pinch-in effect'. Consistent with established legal authority Timor Leste may seek an allowance for the disadvantage it may suffer from the application of orthodox perpendicular prima facie median line apportionment. Stephen's former colleagues at DFAT certainly know this and perhaps the fact that even a modest adjustment outwards of the lateral on the Greater Sunrise side places the bulk of that Field into TL sovereign territory is another reason why on 22 March 2002 Australia withdrew completely from all of the international adjudication processes it had worked so hard over the years to establish.

Indonesia, an archipelagic State, has a strong tradition of scholarship in international maritime law and a pragmatic need to be consistent in support for concepts it has adhered to in settling boundaries such as allowance for 'pinch-in'. Last time Stephen spoke on this topic from the Lowy Institute, the Australian Embassy at Dili put his article up on the Embassy web-site but not my response. The Embassy action runs close to further interference in the domestic affairs of our gallant neighbours, who without the opening of further Fields, may have to tighten their belts and live on capital after 2026. Is it really in our foreign policy interests to continue the squeeze?

Dan Nicholson • 3 days ago

This article is factually wrong on the two key points. Indonesia has no say over where the Eastern lateral boundary sits around Greater Sunrise - it gave up any territorial claim to that area under its 1972 maritime boundary treaty with Australia. Similarly, Indonesia cannot "demand that its border be shifted" anywhere - its maritime boundary with Australia was permanently set through the 1972 treaty. By contrast, Australia and Timor have no boundary set.

Charles Scheiner • 4 days ago

Unfortunately, the author continues to spin/misrepresent the situation. Firstly, how is Greater Sunrise still worth \$40 billion when the market price of natural gas has plummeted since that number was first used several years ago?

More important is Article 4 of the 1972 Australia-Indonesia treaty which divides the seabed between those two countries in the areas outside the Timor Gap, including where 80% of Greater Sunrise lies (available at <http://www.laohamutuk.org/Oil/...> "The Government of the Commonwealth of Australia and the Government of the Republic of Indonesia mutually acknowledge the sovereign rights of the respective Governments in and over the seabed areas within the limits established by this Agreement and that they will **cease to claim or to exercise sovereign rights with respect to the exploration of the seabed and the exploitation of its natural resources beyond the boundaries so established.**"

Indonesia already gave up its claim to this area. They may have been screwed, and they may be unhappy about it, but they don't have a legal leg to stand on.

For more accurate, diverse and comprehensive information about the maritime boundary dispute between Timor-Leste and Australia, see <http://www.laohamutuk.org/Oil/...>