



East Timor Fights for Fair Share of Timor Sea Rights From Australia

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On Monday, East Timor asked the United Nations (<http://www.scmp.com/news/asia/australasia/article/1935266/east-timor-launches-un-campaign-pressure-australia-agree>) to begin the process of establishing a permanent maritime boundary with Australia in the Timor Sea.

In an email interview, Clinton Fernandes (<https://www.unsw.adfa.edu.au/school-of-humanities-and-social-sciences/professor-clinton-fernandes#quickset-people2>), a professor at the University of New South Wales Canberra, discussed Australia's ties with East Timor and the border dispute.

WPR: What is the background to the current agreement on maritime boundaries between Australia and East Timor, and what changes is East Timor seeking to make to the agreement?

Clinton Fernandes: In 1972, Australia negotiated a maritime boundary with Indonesia that granted it the lion's share of oil and gas resources in the seabed, but which did not determine the boundary with East Timor, at the time a Portuguese colony. Indonesia subsequently invaded and annexed East Timor in 1975, and in 1989 signed a provisional regime with Australia to explore and exploit petroleum resources in the Timor Sea. Revenues were shared equally within a "zone of cooperation."

In 1999, Indonesian forces withdrew from East Timor under overwhelming international pressure after East Timor voted in favor of independence in a referendum. The new Democratic Republic of East Timor sought a maritime border halfway between the Australian and East Timorese coasts, as it was entitled to do under the United Nations Convention on the Law of the Sea (UNCLOS).

The Australian foreign minister, well aware that his country's legal position was weak, announced just before East Timor's formal independence in 2002 that Australia would withdraw from the compulsory jurisdiction of the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea, which governs disputes under UNCLOS. This meant that East Timor had the law on its side but could derive no benefit from it.

Australia then strong-armed the impoverished, newly independent state into signing a series of temporary resource-sharing arrangements, one of which was the Certain Maritime Arrangements in the Timor Sea (CMATS) Treaty in 2006. CMATS prevents discussion of maritime boundaries until 2056.

The government of East Timor insists on establishing the maritime border halfway between the Australian and



Protesters march towards the Australian Embassy building, Jakarta, Indonesia, March 24, 2016 (AP photo by Dita Alangkara).

East Timorese coasts, known as the median line.

WPR: What are the economic implications of the maritime boundary for both countries, but especially with regard to East Timor's economic development?

Fernandes: There are no borders in the Timor Sea because Australia has never agreed to define a maritime boundary. The only arrangements are those concerning revenues from the petroleum deposits. They include the Joint Petroleum Development Area (JPDA), an area of the Timor Sea that contains the Bayu-Undan and Elang-Kakatua oil and gas fields, and about 20 percent of the Greater Sunrise field. Australia and East Timor each receive half the upstream revenues of the Greater Sunrise field, although that field is twice as close to East Timor as it is to Australia. East Timor receives 90 percent of the upstream, or extraction, revenue from Bayu-Undan and Elang-Kakatua, and Australia gets 100 percent of the downstream revenue, which includes refining and liquefaction.

The late human rights activist Andrew McNaughtan argued that East Timor should enjoy much greater entitlements (http://www.aph.gov.au/parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/timor/subs/sub41.pdf) than those defined by the JPDA, whose lateral boundaries were “indefensible in modern international law.” Vaughan Lowe and Christopher Carleton have shown that most, and probably all, of Greater Sunrise field would fall within East Timor's exclusive economic zone (http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_committees?url=jsct/mayjune2003/subs/sub11.pdf) (EEZ) under UNCLOS.

Determining who should get what without a maritime boundary is like playing tennis without a net—there is no way to tell what counts as fair. There was about \$16 billion in East Timor's Petroleum Fund at the start of 2016. In the past 15 years, the Australian government has received about \$5 billion that should have gone to East Timor if the boundary were drawn according to UNCLOS.

WPR: Where does the border issue fit into the context of broader ties between Australia and East Timor, and how has it affected them?

Fernandes: Australia's use of its overseas spy agency (<http://www.abc.net.au/news/2015-11-25/east-timor-greater-sunrise-spy-scandal/6969830>) against the East Timorese government during treaty negotiations poisoned the bilateral relationship. It has also exposed a contradiction between Australia's defense and foreign policies. Australia's defense policymakers prefer to see a stable East Timor that is pro-Australian and not subject to third-party influence. They would also probably want East Timor to host an Australian submarine base on the south coast. However, Australian foreign policymakers have treated East Timor with cavalier disregard, and the implications of this treatment are being felt. In recent years, China has built East Timor's presidential palace, its Foreign Ministry buildings and its army barracks. East Timor now regards China as a reliable friend, and seeks even closer ties to it.