

INTERNATIONAL

1240 words

BRIDGING THE TIMOR GAP

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4 SEPTEMBER 2017

A surprise agreement in the Timor Sea boundary dispute vindicates Timor-Leste's strategy

Right:

The long road to an agreement included March 2014 hearings before the International Court of Justice in The Hague, where Australia was banned from making use of documents it seized from a lawyer working for Timor-Leste. Picture shows East Timorese delegation members (from left): Michael Wood, Stephen Webb and Joachim de Fonseca. Jiri Buller/AP Photo



In a major joint announcement on Saturday, Timor-Leste and Australia declared they had reached an [agreement](#) on “central aspects” of an agreement on their controversial shared maritime boundary. Since April last year, the two countries have been involved in a Compulsory Conciliation Process under the UN Convention on the Law of the Sea, or UNCLOS, initiated by Timor-Leste.

While full details remain confidential until a further announcement next month, the agreement will create permanent maritime boundaries and revised resource sharing arrangements in the yet-to-be-developed Greater Sunrise oil and gas field. This is a major step forward for the resolution of the long-running dispute between two neighbours.

Most importantly, it seems highly probable that Timor-Leste has secured a median-line boundary in the Timor Gap, creating a permanent maritime boundary for the first time. While many in Australian foreign policy circles have assumed that Australia would limit its negotiations to revenue sharing, and wouldn't countenance permanent maritime boundaries or depart from its older claim for the “[natural prolongation](#)” continental shelf boundary, the ground appears to have shifted.

If this proves to be the case, it will represent a major victory for the small nation and a clear endorsement of the UNCLOS Compulsory Conciliation process. A median-line boundary will place 100

per cent of the present Joint Petroleum Development Area in Timor-Leste's sovereign waters, where current treaties divide the revenue from existing fields, such as Bayu-Undan, 90–10 in its favour. This is an important outcome for Timor-Leste's sovereignty, and will be hailed as a major victory in Dili, but it's important to remember that these fields are nearing the end of their lifespan.

Far more financially significant is the as-yet-untapped Greater Sunrise field, worth in excess of \$40 billion. While Timor-Leste has respectable legal opinion suggesting that the entire Greater Sunrise could be in its maritime waters under UNCLOS, this was always a trickier proposition, as the field straddles the eastern lateral (or side) boundary of the Joint Petroleum Development Area. Unlike the relatively straightforward and media-friendly median-line principles governing the east–west boundary, the north–south laterals involve far more complex technical considerations, with competing options for baselines and offsets. While Timor-Leste was clearly entitled to more of Greater Sunrise than current treaties allowed for, the lateral boundaries question could have opened up a minefield of differing interpretations.

Importantly, shifting the laterals might also involve renegotiating aspects of the previously settled 1972 Australian–Indonesian boundary, an outcome Australia has sought to avoid at all costs. Despite Timor-Leste's opening bargaining position, therefore, compromise in this area was always a strong possibility, in favour of a bigger win represented by a median line boundary, and increased upstream revenues. Such revenues from Greater Sunrise will be especially critical to Timor-Leste's future.

Earlier treaties placed 20 per cent of Greater Sunrise in the Joint Petroleum Development Area, giving Timor-Leste just 18 per cent of future revenues under the 90–10 split. The subsequent and now defunct Treaty on Certain Maritime Arrangements in the Timor Sea, or CMATS, increased Timor-Leste's share to 50 per cent, but delayed permanent maritime boundary negotiations for fifty years. Though Timor-Leste acceded to CMATS, it had no option for an adjudicated settlement as Australia had withdrawn from international dispute resolution jurisdictions, putting the issue firmly in the realm of power politics.

With the 2006 treaty process marred by damaging spying allegations against Australia, Timor-Leste opted for the final avenue open to it: a compulsory (but non-binding) conciliation process, which has never previously been employed under the UNCLOS treaty. In January this year, the country announced it would [terminate](#) CMATS, and Australia agreed not to challenge the termination

The termination of CMATS was a win for Timor-Leste. But it was also a high-stakes gamble, reverting the young state's guaranteed share of Greater Sunrise revenues to 20 per cent pending a new negotiation. The gamble appears to have paid off. It is highly likely that the renegotiated agreement will see a substantial increase in Timor-Leste's share of the future Greater Sunrise revenues from the 50–50 offered under CMATS, while allowing for joint development of the field under a special regime for Greater Sunrise. The final agreement will also determine the contested issue of where the pipeline from Greater Sunrise will land for downstream processing — in Australia or Timor-Leste — or whether it will be a floating platform, as preferred by the commercial partners Woodside.

From Australia's perspective, the fact the agreement appears to retain the current "trilateral" endpoint markers of the Timor Gap will also be considered a win, as it means the 1972 boundary with Indonesia will not need to be revisited. This was Australia's baseline position. While some critics might see the outcome as a retreat from Timor-Leste's opening gambit, no one should doubt the strength of Australia's earlier resolve to delay maritime negotiations indefinitely or, failing that, to stick to its longstanding continental shelf claims. Australia was defending the existing arrangements as recently as last year, and even now many in the Department of Foreign Affairs and Trade remain convinced of the merits of that position. The agreement therefore represents a major shift for Australia. Labor's change of policy in early 2016 clearly had an impact behind the scenes, shifting a previously bipartisan consensus. Recent pressure from the United States for a resolution of the maritime boundary dispute, with the South China Sea controversy in the background, provided further incentive for Canberra to reach an agreement.

The resolution of this long-running dispute opens the way for a major improvement in relations between the two neighbours, which have been at a low point in recent years. As Kim McGrath's timely new book, *Crossing the Line: Australia's Secret History in the Timor Sea*, shows, Australia's role in the Timor Gap has been a sorry one since the 1960s, when Australian authorities issued exploration permits north of the median line in the 1960s with no clear legal basis — an act that was challenged by the colonial power, Portugal, but later accepted by Indonesia in return for concessions on East Timorese self-determination and support for Indonesia's controversial "archipelagic principle." As McGrath makes clear, our foreign policy was unduly determined by the desire to close the Timor Gap along the same favourable lines determined in 1972 with Indonesia.

Saturday's outcome is a major achievement for the East Timorese negotiating team, led by former PM Xanana Gusmão and minister of state Agio Pereira, backed by the Maritime Boundary Office and its legal team. While Fretilin narrowly won the 22 July election, and will lead a new cross-party government, it is understood that there has been no interference from the incoming government, which has been at pains to respect Gusmão's stewardship of the well-advanced process.

The maritime frontiers strategy was firmly in place before the election, with September's session in Copenhagen always likely to be the make or break. In the end, the breakthrough became evident when Gusmão finally revealed the sort of outcomes acceptable to Timor-Leste. The Conciliation Commission itself is to be congratulated on producing a workable compromise from potentially heated negotiations.

While many following the issue will reserve judgement until the final parameters of the deal are known, the East Timorese maritime boundary team returns to Dili today, no doubt to a substantial popular welcome. A new government is expected to be announced early this week and formed later in the month, with a few major surprises likely. •