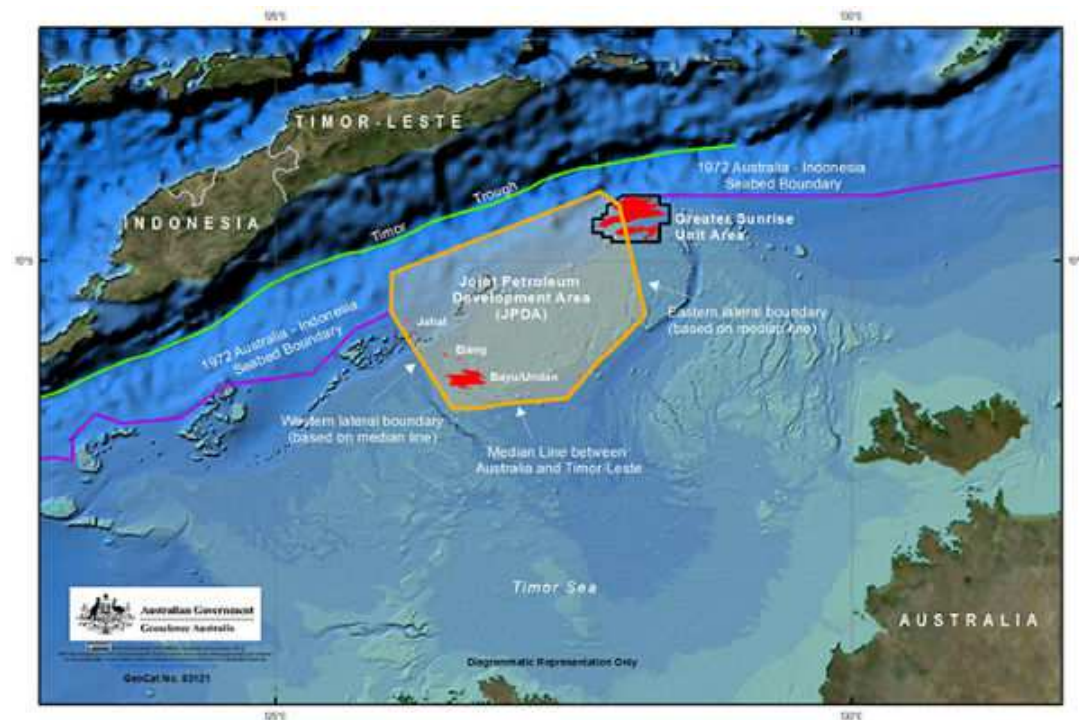


Edging closer to a just regime in the Timor Sea

Frank Brennan, Eureka Street, 4 March 2018

On Tuesday the governments of Timor Leste and Australia will sign a maritime boundary treaty in New York in the presence of Antonio Guterres, the Secretary General of the United Nations. This day has been a long time coming.



It will be a day of great celebration for the Timorese, especially their leaders Xanana Gusmao and Agio Pereira. They've taken a big gamble and it seems to have paid off. They have not come away with all they wanted, but they have secured a legal framework for the development of the oil and gas reserves in the Timor Sea more favourable than any previous framework on offer.

Having fought hard to maintain the previous framework, the Australian negotiators have acted honourably, and their political masters have been sensible agreeing to the new framework. The Timorese and Australian negotiators have taken boundary delimitation as far as possible without having the Indonesians at the table to help finalise the maritime boundaries at those points in the Timor Sea where all three countries have an interest.

Basically the Timorese and Australian negotiators and their political masters have taken the boundary agreement as far as they can without infringing on Indonesian concerns. Some of the agreed boundary lines will need to be provisional, awaiting Indonesian agreement at the edges where all three countries have an interest.

Not everyone will be happy with the deal. Some of the Timorese, as well as some of their more strident Australian supporters, will continue to be upset that the agreed maritime

boundary does not place the whole of the Greater Sunrise deposits of oil and gas within Timor's exclusive jurisdiction. The critics will think that Gusmao has traded sovereignty for revenue.

The deal is complex. The details of the border will be known this week but the details of the Special Regime for Greater Sunrise and the pathway for the development of the resources will not be known for some time to come. There's still plenty of room for mistrust and misunderstanding. We Australians must avoid a repetition of the mistakes of the past and we need to maximise the prospects for prompt development of Greater Sunrise.

Once signed, the treaty will need to be ratified. Before it can be ratified at the Australian end, the treaty needs to be considered by JSCOT, the Australian Parliament's Joint Standing Committee on Treaties.

"This new treaty does not provide all the answers. But it's a better basis for good neighbourly behaviour in the Timor Sea than what went before."

When the previous CMATS Treaty was signed in 2006, Foreign Minister Alexander Downer claimed there was no need for full JSCOT scrutiny because the treaty was urgent and sensitive, involving significant commercial interests. Even the JSCOT members from the government side took exception to Downer's high-handed actions joining with their fellow committee members saying:

'The CMATS Treaty contains new and important obligations and raises different issues which should have been subject to the usual process of scrutiny and review. In this instance the national interest exemption should not have been invoked before the committee was given a reasonable opportunity to consider and report on the treaty within the government's timeframe.'

It would be a very serious mistake for Julie Bishop to try and shortcut the JSCOT processes this time around. Back in 2006, the CMATS Treaty (on Certain Maritime Arrangements in the Timor Sea) enjoyed strong support from the Timorese leaders. But the disaffection of community groups finally carried the day, with the Timorese leaders ultimately disowning the deal and seeking a new one. As was the case back in 2006, Timor Leste is presently in a time of some political uncertainty with the president having called

fresh elections trying to resolve parliamentary deadlocks and breakdowns. The election in Timor will be hard fought and is not due until May.

Once JSCOT gives everyone a chance to have their say on the new treaty at the Australian end, and presuming that JSCOT recommends ratification of the treaty, the Australian government should then act promptly to ratify.

For years, the simple message of the Timorese campaigners in Australia has been that Australia should agree to a median line between Australia and Timor Leste. The median line running east-west has not been the major problem. It's been agreed for some time. The sticking point has been the eastern lateral line running north-south which cuts through Greater Sunrise. The Timorese have long claimed that this lateral line should be drawn to the east of Greater Sunrise, thereby placing the whole of Greater Sunrise within Timor's jurisdiction and beyond Australia's reach. The full length and the ultimate direction of this lateral line has to be drawn with Indonesia at the table because this line will divide the Indonesian and Timorese territorial waters 12 miles offshore and the contiguous zone 24 miles offshore.

Until now, the Indonesians have not been in any hurry to finalise their maritime boundaries with Timor south of the island of Timor. They would like first to finalise the boundaries on the north side of the island. Despite Timor Leste now being independent for 16 years, Timor Leste and Indonesia are yet to finalise their land boundaries, and that is a far simpler geographic exercise with minimal financial ramifications when compared with the negotiation of maritime boundaries in the Timor Sea. So, a final set of maritime boundaries in the Timor Sea is still a long way off.

When it comes to the proposed development of Greater Sunrise, the joint venturers seem to have gone cold on their insistence that FLNG (processing the gas on a floating platform out at sea) is the best option. So now, there will be a need to pipe the gas either to Timor or to Darwin. If piped to Darwin, the Timorese are to receive 80 per cent of the upstream revenue, and if piped to Timor, 70 per cent. That is a marked improvement on the 50 per cent proposed by CMATS and on the 20 per cent proposed in the earlier treaty arrangements. On this, the Timorese gamble has paid off big time.

The building of a pipeline across the Timor Trough and the development of the resource on the Timor mainland remains a cherished dream of Xanana Gusmao and many of those contesting the May election in Timor. No one knows whether this will ever happen, nor what the financial benefits would be. What's important is for the Australian government to get out of the way as soon as possible, allowing the Timorese to investigate all options with the present joint venturers and other prospective developers. Australians should be on hand to provide advice when asked. But gone are the days of using boundary negotiations or their delay as a means of pressuring a new developing nation to adopt one economic option rather than another for the development of a petro carbon resource. The

Australian negotiators will need to be on standby for some years to come when the Timorese and Indonesian officials are ready to turn their gaze south of the island of Timor.

Mind you, if I were Timorese, I would need a lot of convincing that the jobs and training from onshore development of the Sunrise gas would be assured, offsetting the guaranteed 80 per cent upstream revenue flow which would come from piping and processing the oil and gas in Darwin. But I'm not Timorese. This new treaty does not provide all the answers. But it's a better basis for good neighbourly behaviour in the Timor Sea than what went before. Tuesday will be a day for all Australians and Timorese of good will to toast David who stared down Goliath in the Timor Sea.



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