

QUESTIONS & ANSWERS

In the matter of
the *Treaty between the Government of Australia
and the Government of the Democratic Republic of Timor-Leste
on Certain Maritime Arrangements in the Timor Sea*
January 12, 2006
(the “CMATS Treaty”)

Question: What is the CMATS Treaty about?

Answer: The Treaty concerns itself with the division of oil and gas (*i.e.* petroleum) resources in the seabed or “continental shelf” between Timor-Leste (East Timor) and Australia. It also establishes areas in which each State will have a “water column jurisdiction”, that is, the exclusive right to a fishery.

Question: Was there an earlier treaty between the two States for petroleum development?

Answer: There was, but that treaty, done in May 2002, was for the establishment and operation of the “Joint Petroleum Development Area” (the “JPDA”), itself previously “Area A” of the “Zone of Cooperation” created by the 1989 Australia-Indonesia *Timor Gap Treaty*. The 2002 treaty, known as the *Timor Sea Treaty*, continues but it has been modified slightly by the present CMATS Treaty.

Question: How does the CMATS Treaty modify the 2002 *Timor Sea Treaty*?

Answer: The CMATS Treaty does two things: (1) it extends the duration of the *Timor Sea Treaty* to the same period as the CMATS Treaty and (2) it stipulates that the seabed exploration and development licenses granted under the *Timor Sea Treaty* are to carry on even if that treaty is rescinded. This has been done to better ensure commercial certainty for exploration and development in the JPDA.

Question: Is the CMATS Treaty a maritime boundary treaty? Does Timor-Leste now have sea boundaries as a result of the Treaty?

Answer: No. The Treaty is expressly not a maritime boundary treaty. It is a joint or shared area development treaty. The Treaty prohibits both States from making any effort to establish maritime boundaries over either a continental shelf division or an exclusive economic zone at any time during its term. (See Articles 2 and 4 of the Treaty.)

Question: Does Indonesia need to be a party to the CMATS Treaty?

Answer: No. The Treaty does not engage or touch on any interest or right Indonesia could have in the areas provided for in the Treaty. It relinquished claims to seabed petroleum in such areas of the Timor Sea under a 1972 treaty with Australia.

Question: To what area of the Timor Sea does the CMATS Treaty apply?

Answer: It applies to all areas outside the JPDA. It applies particularly to the Greater Sunrise oil and gas fields east of the present JPDA, that is, southeast of Timor's Jaco Islet. (These fields are known formally as the Sunrise and Troubadour fields.) The Treaty does not apply to the narrow area between the JPDA and the coast of Timor. That area is exclusively for Timor-Leste to develop.

Question: What is the duration of the CMATS Treaty?

Answer: The Treaty has a term of 50 years, or until 5 years after all petroleum has been extracted from the Greater Sunrise "Unit Area", whichever occurs later. (See Article 12.)

Question: What does a 50-year term mean for the issue of a permanent maritime boundary between Australia and Timor-Leste?

Answer: It means that neither State will be able to assert or move forward by any means any claim or negotiation to establish a maritime boundary of any kind (fisheries, continental shelf, EEZ) in the Timor Sea.

Question: 50 years is a long period of time. How was it determined?

Answer: There are at least three reasons for a 50-year term. The first is to ensure commercial certainty for the industry operators who will explore and develop Greater Sunrise in particular. The second is that most petroleum fields in the Timor Sea can be expected to be fully spent through development over the next 50 years. The third is that the 1989 *Timor Gap Treaty* provided for a 40-year moratorium on boundary settlements and to the CMATS Treaty provides consistency, being something of a successor arrangement to the 1989 treaty.

Question: Why the CMATS Treaty? Why not a boundary to divide the resources of the continental shelf, as is the case with many other States?

Answer: Australia and Timor-Leste could not agree on a process to demarcate boundaries in the Timor Sea. The two States have widely differing views about the areas to which each is entitled under the modern law of the sea. There was also a concern that new maritime boundaries would involve Indonesia, which settled its seabed boundary arrangements with Australia in 1972.

Question: Does Indonesia have maritime boundaries with Timor-Leste?

Answer: No. Timor-Leste and Indonesia have yet to agree on a process to consider maritime boundaries between them. Some observers suggest the issues of human security and ocean resource conservation between the two, which share the island of Timor, are more pressing.

Question: You mention "exclusive economic zone", above. Does the CMATS Treaty take that into account?

Answer: Yes, but not quite in the usual manner under international law. Timor-Leste and Australia will be free after 50 years to negotiate treaties defining either a seabed or an "EEZ" boundary. (An EEZ boundary would include both the seabed and the water above.) However, during the next 50 years both States must not "assert, pursue or further by any means" their sovereign rights and jurisdiction in the Timor Sea. However, the CMATS Treaty creates what is essentially a fisheries boundary. In 1997, Indonesia and Australia concluded just such a boundary along a median line through Timor Sea. That boundary did not come into effect because Timor-Leste became independent in the following years. The CMATS prescribes more or less the same type of "dividing line", which will be a fisheries boundary for most practical purposes. This

“boundary” will be along a line halfway between Timor-Leste and Australia. It will follow the southern “closing line” of the JPDA.

Question: Should the CMATS Treaty have been concerned primarily with petroleum development?

Answer: It might have, however to leave unresolved other resources might have lead to each State making jurisdictional claims that may have had an adverse impact on the certainty of the jurisdiction of each for petroleum and gas development.

Question: What does the CMATS Treaty mean for Australia’s petroleum development outside the JPDA and Greater Sunrise?

Answer: That development will carry on as before, including in such areas as the Buffalo and Laminaria-Corallina oil fields west of the JPDA. Importantly, Timor-Leste will give up the right to issue any competing seabed development licenses and all claims (past, present, future) for any revenue from the petroleum development of such areas. (See Article 4.)

Question: If Timor-Leste has given up claims to seabed (and other EEZ) resources outside the JPDA and Greater Sunrise, what did it receive in return?

Answer: Under the Treaty, Timor-Leste will receive 50% of all government revenues from the Greater Sunrise “Unit Area”. (See Article 5.) That is much higher than a 2003 agreement under which Timor-Leste would have received less than 20% of the revenue from Greater Sunrise.

Question: Is the CMATS Treaty now binding on both Australia and Timor-Leste, that is, has it “entered into force”?

Answer: No. The national legislatures of both Australia and Timor-Leste have yet to ratify the Treaty. However, all States have a general duty not to act contrary to a treaty which they have signed, but which remains to be ratified by their legislatures.

Question: Is the CMATS Treaty a “good deal” for Timor-Leste?

Answer: There is no correct answer to such a question. The answer lies in financial and political considerations, that is, the question of international relations between Timor-Leste and Australia. If one takes the view that Australia had no entitlement to petroleum resources of the seabed north of a median line in the Timor Sea (north of the southern closing line of the JPDA), then the CMAT Treaty is not favourable to Timor-Leste. However, if one accepts that Timor-Leste could not “force” a maritime boundary on Australia, then the commercial certainty for industry to develop the Timor Sea, and especially the Greater Sunrise fields, begins to make the Treaty attractive to Timor-Leste.

Question: What is the role of legislators and civil society in Australia and Timor-Leste as the CMATS Treaty is considered by each government?

Answer: A clear demand for explanation of the Treaty must be made. This should include an explanation of projected revenues and underlying financial assumptions made clear. For the people of Timor-Leste, understanding the secondary benefits of industrial development from petroleum development in the Timor Sea and securing their country’s energy supply, together with fisheries development issues, will also be important tasks.

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Vancouver, Canada: January 15, 2006