

# Timor Gap: A response to Senator Xenophon

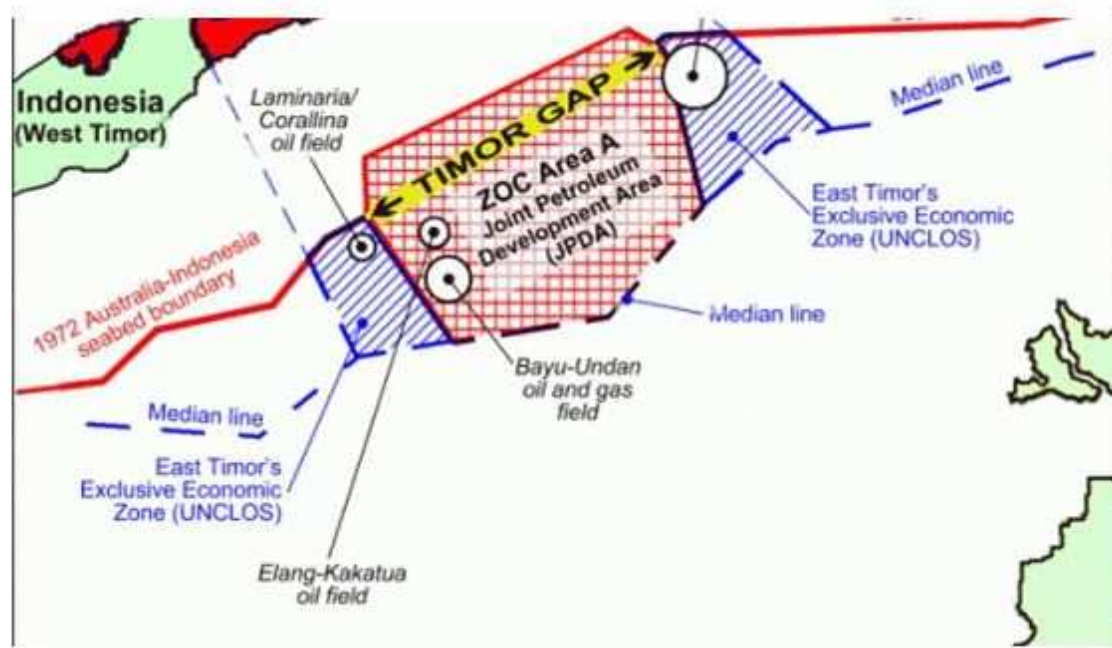
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Given the tragic history of East Timor, it is understandable that Senator Nick Xenophon should argue for an early and generous settlement of the Timor Gap border issues with East Timor. We are rich and they are poor. Current agreements do not draw the division between Australia and Timor equidistant between the two countries, as might seem equitable.

But, as I argued in an earlier post, it's not so simple.



First, this poor country has already accumulated a fund of almost \$US17 billion from oil revenues from the existing petroleum agreements between our two countries. They can't effectively spend this money as fast as it is coming in. They receive 90% of the revenues from the Joint Petroleum Development Area (JPDA). If development of Greater Sunrise were to go ahead (with prospective returns often estimated at \$40 billion), Timor would receive half the revenue under the existing agreement.

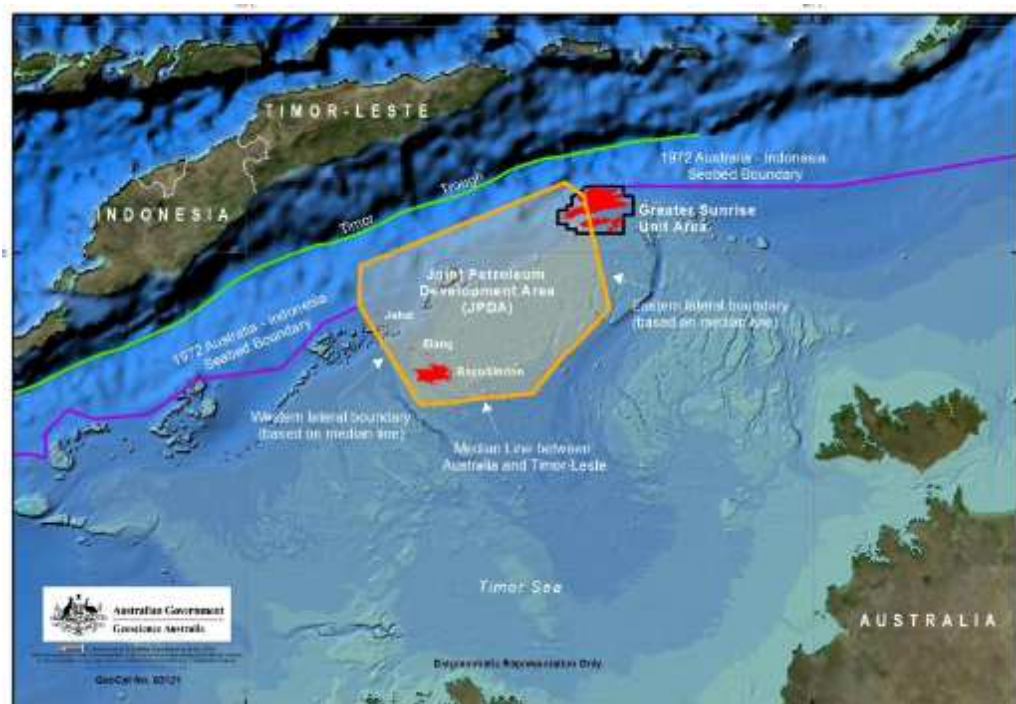
Is Timor entitled to more? If it is about geography, then you have to go to the charts. Drawing the southern edge of the border (running roughly east-west) so that it is equidistant between the two countries would not put Sunrise in Timor's territory, as 80% of Sunrise lies to the east to the JPDA. To get Sunrise into Timor territory, you would have to shift the eastern edge of the JPDA.

This edge of the JPDA is usually described as a 'simplified equidistant line between East Timor and Indonesia', and so there would seem to be no reason for shifting it. In the fraught history, however, there have been claims that it should be redrawn. The most extreme of these came from the Lowe opinion, provided in 2002 by lawyers retained by one of the firms which had been given exploration rights for this area by the Portuguese before they abandoned Timor in 1975. This legal opinion was an ambit opening bid, never taken seriously.

The map which accompanies Senator Xenophon's article (shown above) also shifts this eastern border. It may be based on this 2006 article, which seems to be a biased source with arbitrary specification of boundaries – judge the article for yourself!

More recently, an American lawyer (sympathetic to the Timor position) has produced some beautiful Google Earth maps analysing possible borders, one of which puts 70% of Sunrise in Timor territory. But it depends on just where you start your eastern border. The critical point where this hypothetical border meets the Sunrise field is actually closer to Indonesia than to Timor, while the existing JPDA edge is about equidistant, as you would expect it to be.

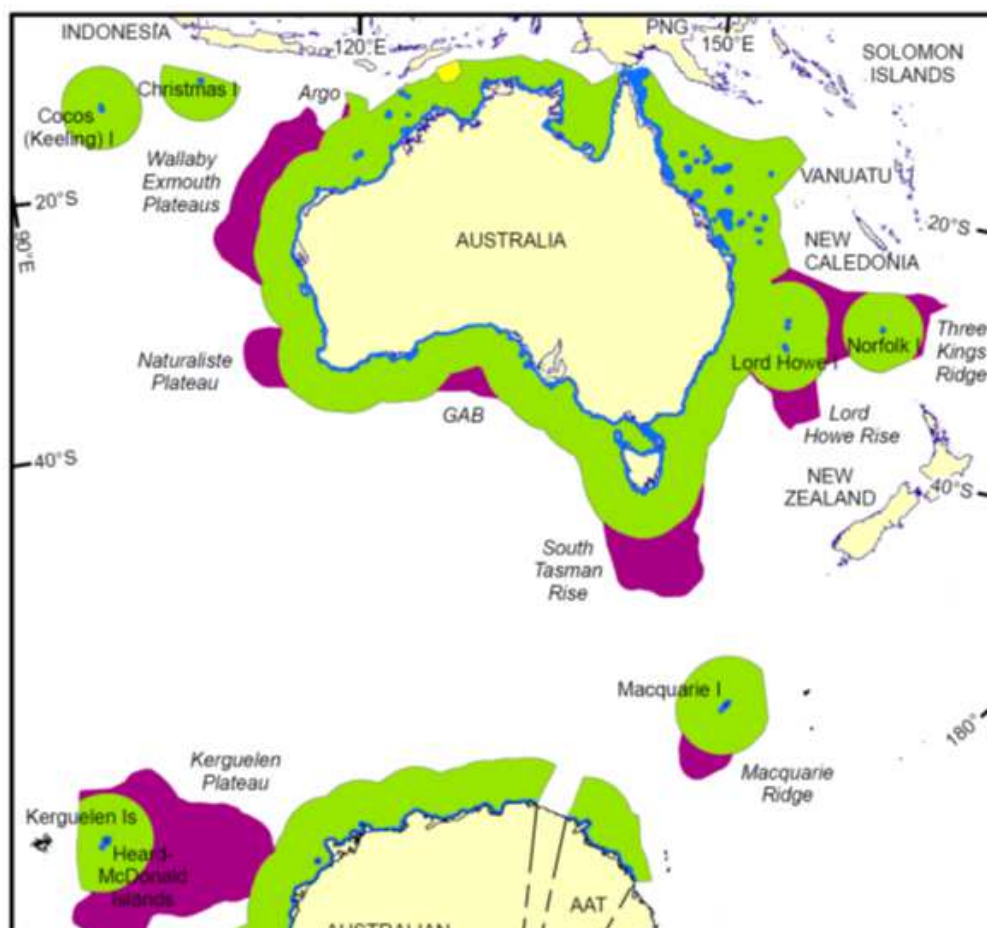
Here is the dilemma: this border depends on East Timorese and Indonesian territory, not Australian. If you want to draw this border with a view to getting Sunrise into Timor's territory, you will surely open up the issue of Indonesia's border. It is certainly true that Sunrise is closer to Timor than it is to Australia, but it is closer to Indonesia than it is to Timor. Indonesia could well claim that the 1972 border was drawn under duress, at a time when Australia was strong and Indonesia was weak, and that it should be redrawn to reflect current UNCLOS norms. If that were to happen, it seems unlikely Indonesia would be ready to give 50% of Sunrise revenue to Timor.



Then there is the vexed issue of the continental shelf. A glance at any chart showing sea-depth (such as the DFAT map immediately above) reveals why the 1972 borders were drawn where they were: Australia has a well-defined continental shelf delimited in this region by a deep trench (the 'Timor Trough').

The continental shelf is still the basis of many international maritime borders, but where countries are less than 400 nautical miles apart, UNCLOS arbitrators have had such trouble with arguments about just where a continental shelf ends that they have taken the easy way out, routinely ignoring the continental shelf and settling on an equidistant border. This is presumably why Australia is reluctant to put this issue to international arbitration. And of course we are not the only country that sees UNCLOS arbitration as unsatisfactory. The US, for example, has not even ratified the agreement.

The continental shelf is not a trivial issue for Australia. This map (reproduced below) shows our sea-borders are largely based on the geography of our well-defined continental shelf, with special provisions for various off-shore 'rises' such as in the Antarctic. This approach has been blessed by the relevant UNCLOS Commission on the Limits of the Continental Shelf. Note, however, the yellow section relating to the JPDA. Drawing the border equidistant with Timor would be giving away an area which we have long regarded as part of our continental shelf.





What would be the result of accepting Senator Xenophon's argument? Replacing the southern edge of the JPDA with an equidistant border would make little difference to Timor's petroleum revenue, as they already get 90% of JPDA revenue. But it would give away a chunk of our continental shelf and might set precedents. Shifting the eastern boundary of the JPDA with the objective of giving Timor all of the potential Sunrise revenue (rather than the 50% in the existing agreement) would open up the border negotiations with Indonesia, with a good chance that Sunrise would end up in Indonesian territory, and Timor would get nothing.

Thus, Australia's core negotiating position seems sensible and easily defensible: we are ready to give Timor the greater part of the petroleum revenues from the disputed area (which would give Timor very substantial revenue for decades to come), but we are not ready to give away the continental shelf or open up the 1972 border agreement with Indonesia.

Unfortunately these negotiations have been seriously tainted by the ham-fisted actions of our intelligence operators, to our enormous disadvantage and shame. As former Foreign Minister Downer said: 'you didn't have to spy on the East Timorese to find out what their position was'. Senator Xenophon might usefully turn his prodigious energies to providing some proper oversight of the Inspector Clouseaus in our intelligence service.

*Ed. note: This article was originally published without the last section (beginning 'The continental shelf is not a trivial issue for Australia...'). We apologise for the error.*