



Australian Government
Department of Foreign Affairs and Trade

TRANSCRIPT

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Background media briefing by DFAT senior officials on Timor Sea issues.

DFAT: Thanks, and let me welcome you all to this background briefing.

The next round of the negotiations will be held in Canberra in early-March. We've now settled on dates; it'll be from 7-9 March.

As was said, this will be the third round of negotiations; that's the third round in a period of 11 months. The first round was in April last year in Dili; the second round was over a period of a month or so in September-October last year with sessions in Canberra, in Darwin and in Dili. So, I think, from that point of view, the talks are moving, you know, at a fairly steady pace, quite a reasonable pace.

Our approach to this next round of talks will depend very much on the East Timorese and the approach that they wish to take in the talks.

You'll recall that in the second round of talks in September-October last year, we were focusing very much on trying to find a creative solution to the maritime boundary issue. If East Timor come along this time, continuing to want to pursue a creative solution, then we'd be very happy to talk about that. If not, then we're happy to go into what I would describe as the formal maritime boundary negotiations, to continue with where we got to in April last year, which was quite a preliminary start to trying to establish permanent boundaries.

We do have some indications from the East Timorese that they will want to continue to pursue a creative solution. And if that is the case, then, as I said, we'd be very happy with that and very pleased to talk with them on a creative solution.

I think, just as a little bit of, I guess, further background on both the creative solution and permanent boundaries, I think it's fair to say that, you know, trying to settle permanent boundaries between Australia and East Timor will take some time. They are reasonably complex legal and technical issues that need to be sorted out. And historically, you know, establishing permanent boundaries is a very time consuming process. These things are not settled in a month or two or in a year or two; they usually take many, many years.

And it was for that reason that Australia and East Timor entered into an interim solution some two or three years ago, and that was the creation of the JPDA, the Joint Petroleum Development Area, which as an interim solution allowed development in the JPDA to proceed and for revenues to flow. And as most of you will be aware, the revenues are split ninety-ten in East Timor's favour. And on current oil-gas prices, that means that East Timor will receive around eight billion dollars worth of royalties out of the

development of the Bayu-Undan field in the JPDA, and Australia will receive something less than a billion dollars over the period of the development of Bayu-Undan.

Also, as part of the interim arrangement, there was an agreement reached to allow the Greater Sunrise field to proceed. This is the International Unitisation Agreement which Australia ratified, but the East Timorese parliament has not yet ratified and indications are that East Timor is not prepared at this stage to ratify the unitisation agreement which would allow the Sunrise project to proceed.

As a result of that, both sides talked early in the second half of last year about the possibility of a creative solution which I guess was in recognition that permanent boundaries would take some time. There was some time pressure on both countries if we wanted Sunrise to proceed, and so there were discussions over that September-October period on whether it was possible to come up with a so-called creative solution which would provide the, I guess, the legal certainty that the Sunrise partners needed to proceed with the exploitation of the Sunrise field.

Obviously, I don't want to go into the detail of those negotiations, but in a general sense, what a creative solution was looking at was, A, providing that legal certainty for the Sunrise partners and, B, coming up with an outcome which didn't impact adversely on either country's legal claims in the area. We didn't want an agreement that would prejudice Australia's position or, you know, East Timor didn't want an agreement that would prejudice their legal position. And the second element of creative solution was to put aside the permanent boundary negotiations for quite some considerable time, a period that would at least allow the exploitation of the resources in the Timor Sea area, in the JPDA, before we went back to the table to negotiate for permanent boundaries; and an agreement that didn't put onerous conditions on the commercial operations of the Sunrise partners. So something that allowed them to make you know the right commercial decisions on how they exploited the resources and effectively where they built pipelines, to those kinds of issues.

Our view is they're not issues that governments should direct companies to follow one course or the other. As I said earlier, unfortunately we weren't able to conclude a creative solution last October. But as I also said, there are now indications that we will seek to explore further the elements of a creative solution when we re-engage in early- March.

And the final thing I'd like to do is just briefly explain the respective legal positions or negotiating positions in relation to permanent boundaries. And I think the reason I want to do that is that there is quite a deal of confusion in some elements of the press; obviously not those elements that are here today but in other elements of the press and in the general community about what the claims are of both sides as far as permanent maritime boundaries are concerned.

From Australia's point of view we see this as a reasonably simple argument, although there are obviously complex technical issues involved. And we believe the issue that has to be sorted out, or the only issue that needs to be sorted out is whereabouts in the joint petroleum area, and that's that little box that's up on the screen, whereabouts a line needs to be drawn across that box, where a permanent boundary needs to be drawn across that box.

Now, our position is that the line should be at the top; East Timor's position is that the line should be at the bottom; and quite obviously the answer is somewhere in between. In our claim a line at the top is based on the fact that we believe significant weight should be given to Australia's Continental Shelf and that line ... and we can see from this diagram that we strongly believe that East Timor and Australia are on different continental shelves.

The Timor trough there drops about three thousand metres and we believe the line should be at that point. East Timor on the other hand believe that the line – the permanent boundary – should be a line of equidistance, a median line between Australia and East Timor and that's the bottom part of the JPDA.

Now, that's essentially how the matter is portrayed to the broader, you know, the broader public. That's the television campaign that runs every now and again. It focuses on this issue but it is really much more complicated than that and East Timor has put forward a, what is nothing more than an ambit claim to areas well outside the JPDA. And they've drawn lines on the map that quite by coincidence pick up all the known oil reserves outside the JPDA .

This is the East Timorese claim that doesn't get reported that much, and you'll see from the map that it picks up the entire Sunrise fields; Buffalo, Laminaria, Corallina fields on the west. Now as I said our view is that these are nothing more than ambit claims to help support their negotiations. The sidelines of the JPDA's so the east and west lines of the JPDA are median lines between East Timor and Indonesia. They are drawn ... so that's those yellow lines, they are the median lines; they're the lines of equidistance between East Timor and Indonesia.

Their ambit claim is such that it, in a sense, discounts the existence of Indonesia. They're lines that encompass some ten and a half thousand square kilometres of Indonesian territory, and as far as we're concerned these are issues that need to be sorted out between East Timor and Indonesia, not between East Timor and Australia.

And as I said, they are nothing more than ambit claims; they are lines that are drawn that diminish the existence of Indonesia. They're lines that are drawn as if, to some extent, particularly on the east, lines that are drawn that indicate that Indonesia doesn't exist as an ... Archipelagic state. And so, they are nothing more, as I said, than ambit claims.

Now, our view is that, you know, we give those claims no credence. The issue really is about where the line is drawn between the top of the JPDA and the bottom of the JPDA.

I might leave it there and happy to answer any questions.

QUESTION: The indications ... from memory the creative solution was pretty close to agreement when things fell apart in October. Are the indications that we're looking at the same model that created the (indistinct)?

DFAT: Yeah, something similar to that, yes, very similar to that is what we believe we'll talk about.

QUESTION: And returning to the last few days of negotiating before the wheels fell off?

DFAT: I don't know if the wheels fell off. There was a little bit of a change in the negotiating positions, but, yeah, my expectation is we'll talk about issues that were on the table in Dili.

QUESTION: Are you talking about money (indistinct)?

DFAT: Well, yes, money is part of that and that is part of a package deal that would have the permanent boundaries put off for some considerable period of time and, you know, provide the legal certainty for the Sunrise to go ahead. Yes, there were discussions and I expect there will be discussions on revenue transfers, yes.

QUESTION: Boundaries ... permanent boundaries being put off (indistinct) for the life of the project?

DFAT: Well, our position is that the permanent boundaries should be put off for quite some considerable time. At least until the resources have been exploited.

QUESTION: Six years?

DFAT: Probably more than that. I mean, you know, it's at that ballpark, you know, 50, 60, 70, 80, 90, 100 years. I mean, you will recall that this was often talked about as the Hong Kong solution and I think the Hong Kong years were ninety-nine, I believe. So it's certainly putting it off for quite some considerable time.

QUESTION: East Timor's been doing a lot of lobbying particularly International Security Council members. Has Australia felt that pressure hard, would you say?

DFAT: No, not at all; not at all. We're aware of the lobbying that East Timor is doing. Quite a bit of it is based on misinformation. The advertising campaign in Australia, you know, it glosses over this ambit claim of East Timor's and it tries to focus solely on the median, you know, the median line. And it's not just about the median line ... where do you draw a line?

I mean, it's worth noting that it is not in East Timor's interest to have that line drawn across the JPDA too soon, because they are getting 90 per cent of the royalties out of Bayu-Undan and Bayu-Undan is right at the bottom of that JPDA. So East Timor, I would think, would be quite worried that a line will be drawn north of Bayu-Undan, and eight billion dollars goes down the gurgler for them.

QUESTION: US dollars?

DFAT: US dollars, yes.

QUESTION: I just want to (indistinct) in the creative solution you're putting off the permanent boundary (indistinct)? So that means what the negotiations are ... essentially, is going to be about is just to rake up the royalties for the Greater Sunrise?

DFAT: Yeah, well, the creative solution has a number of elements to it, but one of them is putting off permanent boundaries. East Timor and Australia are working together on the exploitation of the resources and East Timor has a key role now as, you know, in a sense the majority partner in the JPDA. As they're receiving 90 per cent of the royalties they have the upper hand in the control of the exploitation of the JPDA.

So we would continue that interim Timor Sea treaty for the period of the creative solution, that, you know, 50, 60, 70, 80 years whatever. So that would remain.

They would ratify the unitisation agreement, which would allow Sunrise to go ahead. And there would be a revenue transfer. Now, we're not talking about any changes in royalty transfers; the respective legal positions would stay the same.

So, you know, we're not talking about expanding the JPDA so that it legally encompassed more of the Sunrise project. As far as we're concerned, there cannot be any change that would prejudice our legal position. So, the JPDA would stay fixed as it is.

So, it's not a change in royalties; we're talking about a revenue transfer.

QUESTION: So, how does a revenue transfer, which is basically the Australian Government's talking about what the ...how would you describe it? I mean, is it going to be for aid, is it going to be for (indistinct) a sovereignty offset?

DFAT: I mean, those things will need to be talked about in the negotiations, but how it is characterised, and how it is paid and how much it is will need to be worked out in our negotiations. I mean, there have been reports that Australia has made an offer. Australia has never offered any amount of money in these negotiations yet.

QUESTION: (Indistinct) a bit of the comments (indistinct) Sunrise at that time (indistinct) staff and it involves a lot of projects. But is there any new guarantee, though, that Woodside will come back and give that priority again. You know, that window (indistinct) past.

DFAT: Well, I mean, that's an issue for Woodside. What we're doing is trying to provide the conditions that would allow Woodside and its partners to make that decision, but that is their decision. And obviously, any creative solution, any creative deal would have to be based on a prerequisite that the Sunrise proceeds.

QUESTION: Has Woodside given you any indication of where the next window is for (indistinct)?

DFAT: No, they haven't, no.

DFAT: We do talk to Woodside in general terms about, you know, the fact that negotiations are going on, and we will give them some broad indication of how they're going. But beyond that these are commercial decisions. Our job, as I think Woodside have said, they're waiting for some legal and fiscal certainty and that's what we're seeking to provide. But there is no guarantee that Sunrise will proceed.

QUESTION: (Indistinct) the ballpark figures on Sunrise revenue as well (indistinct)?

DFAT: I think it's something like nine billion. It's something of that order in total over the 30-year period ... the life of the project. And under the unitisation agreement, basically 20 per cent for East Timor, 80 per cent for Australia, and that's because, for the obvious reason, that the vast bulk of the Sunrise resources are in areas of exclusive Australian jurisdiction, they're outside the JPDA. There is a small part of it that cuts into the JPDA.

DFAT: Could I just add one point. The 80 per cent split is not something that we've just made up after the event. It's actually specified in the Timor Sea Treaty which set up JPDA. And that's something that's often forgotten that it's actually in the Timor Sea treaty which established the JPDA.

QUESTION: With royalties are ... royalties (indistinct) non-negotiable, but we are here to talk about revenue streams?

DFAT: That's right.

QUESTION: And how does this mechanism work?

DFAT: Well, that's still to be sorted out. I mean, we still need to talk to the East Timorese about how any revenue would be transferred, what the mechanism would be. How, when, how much, will still need to be sorted out with the East Timorese.

QUESTION: And how ... what is the Timorese concern? Is it a form of ... Australia actually not so much a tight (indistinct), but Australia having a lot more control over the way they spend the money?

DFAT: I mean, no, not at all. I mean, there's no suggestion on our part that we would seek to control how the money was spent.

QUESTION: How much is (indistinct) the pipeline an issue?

DFAT: I don't know; I can't answer that. As you know, East Timor put that proposal to us in Dili last year that they wanted Australia to force the operators to build a pipeline to East Timor, and we said we weren't in that game. You know, these are commercial decisions. I mean, East Timor knows our position on that, it's quite clear, and that's really a question for them to answer.

QUESTION: They dropped that idea before you even gave that creative solution?

DFAT: Well, that can't be part of a creative solution, that element.

QUESTION: If the creative solution is taken off (indistinct), if the East Timorese take that off the table and say, no, (indistinct) ... and start negotiating that now, is that something that will take years and years, a decade to sort that out, or is that something that you can (indistinct)?

DFAT: I don't know how long it will take. But they do take time, they take a lot of time. I mean, we've just concluded with New Zealand after what was it eighteen years? And that's not unheard of. They do take time. You fill the room with scientists who, you know, the first thing they're going to have to sort out is, you know, are we on different continental shelves. East Timor believe that they're on the same continental shelf as Australia. That's the first thing.

Now, I'm not an expert in this field but I'm sure there are experts who will need to sit in the room and sort this out amongst themselves. Once that's sorted out you then have to get into the issue of what weighting do you give to Australia's claim on its continental shelf in drawing a line.

Now, you can see the black line there. That is where Australia and Indonesia agreed the maritime boundary should be. That takes into account Australia's continental shelf. Our agreement with New Zealand recognised the respective continental shelves and our agreement with Papua New Guinea, both of those take into account continental shelves; so that will need to be sorted out.

But as I said before, what makes this more complicated is this ambit claim of East Timor to large parts of Indonesian sovereign territory and, you know, that's very difficult for us to negotiate; and as I said earlier, they are issues that, rather than beating up on us, they should be talking to the Indonesians about it.

QUESTION: And at what stage (indistinct) Timorese have some idea of what you're offering for that (indistinct) ...revenue transfer?

DFAT: Well, I think it's fair to say both sides are aware of what a mechanism might be to work out what an amount of money should be, but there are details of that that need to be sorted out, need to be negotiated so that a dollar can be found.

QUESTION: There's been a whole delay in the permanent boundaries. Does that affect East Timorese (indistinct) resources like fisheries?

DFAT: No, not at all, no, it's seabed, that's what we're talking about ... It depends which area you're talking about. Close to the coast obviously they (indistinct) territorial (indistinct) and otherwise the JPDA is basically about seabed matters.

QUESTION: Were those black lines that are the Indonesian (indistinct), were they connected to Portuguese (indistinct) ...?

DFAT: Well actually, that's the reason there was a gap because the line stops where Portuguese Timor began. There has never been a line between A16 and A17. That's why it's called the Timor Gap.

DFAT:

Although it is interesting to note that the Portuguese did issue or draw up a number of exploitation or exploration parcels in that part of the ocean and it's not by coincidence that those parcels they were going to allow companies to explore and exploit match almost exactly the JPDA. So the point being that even the Portuguese gave some kind of de facto recognition to those lateral lines, of east and west lines as being the median lines between Portuguese East Timor and Indonesia at that time.

QUESTION: Will (Indistinct) creative solution includes things like education (indistinct)?

DFAT: Yeah, it may. I mean, I've talked about the general issues that, I guess the key issues, that may be involved in a creative solution, but I wouldn't rule out other elements, for example, you know, working together on the security in that part of the world, security of the oil facilities, working together on the natural resources in that area. Looking at ways we can help with human resource development, for East Timor in the oil and gas industry. We recognise that that's an issue of some importance to them and there may well be issues there, so we may talk about other issues.

QUESTION: (Indistinct) the industry, could it be scholarships (indistinct) in Australia or work ...?

DFAT: We're happy to listen to you know, if they've got some ideas in that area, you know, that they want to bring into the negotiations, we're happy to listen to them and talk to them about it.

QUESTION: (Inaudible question) ... set a strong precedent ... the Continental Shelf ... use of equidistance?

DFAT: The answer is both. I mean, there are many, many countries that settle boundaries where it is the point of equidistance, but that's because they're on the same continent and that would be the default setting.

There are less boundaries settled where countries are on different continents, and if you think with Australia, then a hundred per cent of our settled boundaries have taken into account the Continental Shelf. And there are other examples around the world where Continental Shelf is a factor.

QUESTION: (Indistinct) of what (indistinct) negotiations broke down and there things (indistinct). Could you, sort of, go into a bit of detail of what the indications are that you're coming closer together in what areas?

DFAT: Yeah. I wouldn't describe us as being miles apart.

QUESTION: Mari Alkatiri thinks (indistinct) at the moment.

DFAT: I mean, you need to remember that it was East Timor who came to us in August and they suggested let's try and find a creative solution. And we were, you know, quite happy to go along with that, and we had a number of discussions on creative solution. They put forward some ideas on a creative solution. I mean, we put forward some ideas which they didn't want to talk about on a creative solution. We agreed to talk about some of their ideas, and then we reached a point where they decided not to pursue their ideas for a creative solution. Now, I don't know why, but they pulled their ideas off the table.

And that's their right, they can do that. What we've said to them was that, you know, if you've got some more ideas then come back to us, we're happy to talk creative solutions. But if not, then we're also just as willing to try and progress permanent boundaries. So, we never felt we were miles apart. These were their ideas, they decided not to pursue their ideas. So, it wasn't as if they were rejecting things that we were putting forward.

QUESTION: Will they effectively put the same ideas back on the table?

DFAT: No, no. I wouldn't say there are, you know, concrete ideas on the table. What we've had over the last few weeks are some very strong indications that they would like to further explore creative solutions, and along the lines of where we were in Darwin. Not saying exactly the same, but along the lines.

Now, we haven't seen the details of these ideas, but the signals are very positive and, you know, I'm always an optimist in these negotiations and, you know, I'm optimistic that we can come up with something that's acceptable to both sides.

QUESTION: But Woodside doesn't seem to agree ...

DFAT: Well again, that's something for them to answer. As I said, our job is to put in place the environment that would allow them to make commercial decisions.

QUESTION: So, that's ...

DFAT: Well that's you know, to a large extent, that's going to be up to Woodside talking to the East Timorese on fiscal certainty. But on, you know, the legal certainty, that's what these negotiations will be about.

And, as I said earlier, it shouldn't lose sight of the fact that a creative solution, a prerequisite for that to operate, is that Sunrise proceeds. It's not a hypothetical negotiation. Creative solution is all about having that project proceed and the revenues flowing; that's what it's about.

QUESTION: And that the IUA law passes in the East Timor parliament?

DFAT: That's right. The IUA obviously needs to be ratified, but there are a number of other steps as well in, you know, where the operators of Sunrise have to get a tick-off from the Australian Government and the East Timorese Government before gas starts flowing. And a deal would be conditional on those hurdles being overcome as well.

QUESTION: The third round (Indistinct) seven to ninth of March?

DFAT: Seven, 8, 9 is what we've pencilled in. How long it will take, you know, I don't know, but there's plenty of time being set aside. We may well finish a bit earlier. You know, we may make good progress and want to go away and, you know, discuss with our political masters, and we may decide to resume if things are going well, again soon after that.