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MARITIME BOUNDARY DELIMITATIONS IN THE TIMOR SEA: AUSTRALIA'S EXPERIENCE DURING FIVE DECADES

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STRUCTURED ABSTRACT

Article Type: Commentary Essay

Purpose – The Government of Timor-Leste (formerly East Timor) sought the ruling of Compulsory Conciliation to resolve its differences with Australia, relating to a permanent maritime boundary in the Timor Sea in the vicinity of the Timor Trough. Australia was the reluctant party to the case for many reasons.

Design, Methodology, Approach – The narrative that follows discusses the issues and problems in defining and delimiting a maritime boundary and to resolve the alignment of lines of resource allocation, specifically, for hydrocarbon resources.

Findings – the delimitation of a maritime boundary was the product of compulsory conciliation following numerous attempts of bilateral negotiations.

Practical Implications – the exploitation of hydrocarbon resources will be managed in accordance with the terms of the agreement. The present agreement leaves unanswered the myriad questions on jurisdiction in the Timor Sea and management of the marine biotic resources and the marine environment. The development plans for the *Greater Sunrise* hydrocarbon reserve raises concern for potential operators and management.

KEY PHRASES

Compulsory conciliation; natural continental shelf; international law of the sea; trench and trough; equidistance lines; equitable principle

INTRODUCTION

An Agreement to delimit a maritime boundary in the Timor Sea, south of Timor-Leste was initialed, on 6 March 2018, by the representatives of the Governments of Australia and Timor-Leste and witnessed by the UN's Secretary-General and the legal teams of the Parties at the Compulsory Conciliation in New York. On 24 July 2019, the Parliament of Timor-Leste voted in favour of ratifying a maritime boundary agreement with Australia that governs how the two nations will share, in a formula yet to be approved, billions of dollars of hydrocarbon resources apparently lying in the substratum of the Timor Sea.[2] Ratification of the Agreement paved the way for development of the *Greater Sunrise* gas field, estimated to hold around 5.1 trillion cubic feet of gas; however, by December 2020, the laying of a pipeline from the gas field, the development of infrastructure and a processing plant on the south coast of Timor-Leste, have not been realized. Perhaps this is just a dream until 2022, or later, when investment decisions are finalised.[3]

The instruments of ratification were exchanged on 30 August 2019,[4] on the 20th anniversary of a referendum that secured independence of Timor-Leste (formerly Portuguese East Timor) from Indonesia, which annexed the former Portuguese colony in 1975. The relatively short time span between initialing the Agreement and its entry into force (as a Treaty), belies the issues and problems which preceded this event. The ratification process contrasts with an Agreement signed between Australia and Indonesia on 14 March 1997, which, by 3o November 2020, awaits entry into force.[5]

This study offers a narrative of events, issues and policies relating to maritime boundary delimitation that commenced for these regional seas as early as 1958, the year that the Four *Geneva Conventions* were concluded, one of which was the *Geneva Convention of the Continental Shelf*.[6] Australia was a party to this Convention; Indonesia did not ratify the 1958 Convention. This commentary infers that Australia was obviously pressured to forfeit its 'seabed rights' in the name of 'equitable principles' and 'social justice', because in the eyes of the international community Australia promotes a 'rules-based order'.

EQUITY: FLEXIBLE AS POSSIBLE

The introduction of concepts such as 'strict equidistance', 'simplified equidistance', 'modified equidistance', '**adjusted equidistance**', 'special circumstances of the case' 'half effect', and 'full effect', contrived by specialist in law, offer ample flexibility and capacity for the imagination to run wild in the negotiation of contemporary maritime boundary delimitation cases. No definite distinction has been made between the terms 'median line' and 'equidistance line'. However, some have claimed that the former term is

usually used in the case of opposite states, while the latter is used in the case of adjacent states.[7] Indonesia and Timor-Leste may be termed at times as 'adjacent' and 'opposite' states.

In the instance of '**adjusted equidistance**' it begs the question: Adjusted for what reason? Note the alignment of the lateral boundaries as depicted in Figure 1; they are adjusted to access all the present known hydrocarbon reservoirs that are allegedly located in the substratum of the Timor Sea in an area of overlapping disputed jurisdiction. The alignments of the east and west lateral boundaries infer that they were designed to encompass all the known hydrocarbon reserves within a defined marine area.

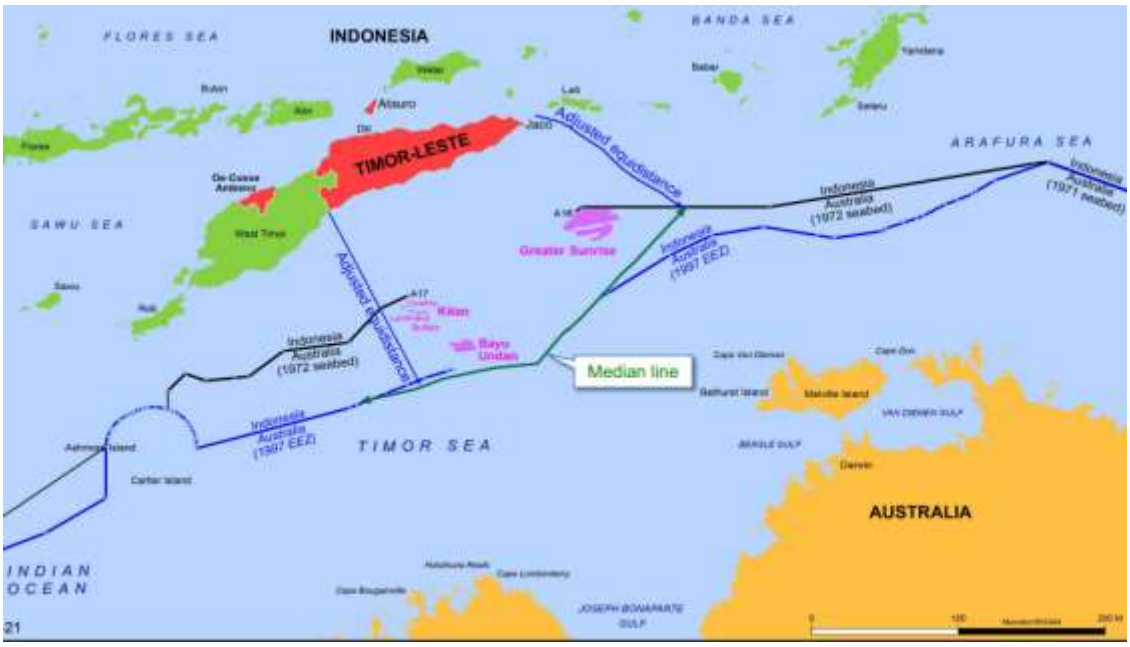


Figure 1: An extract of a map submitted by Timor-Leste to the Conciliation Commission.
Note: Timor-Leste's preferred options. (*Source*: PCA's *The Timor Sea Conciliation* of March 2018)

This commentary does not discuss the merits of the judicial processes of the Compulsory Conciliation and concepts of dispute resolution as these are amply discoursed in a vast array of legal literature such as the successive editions of the *Australian Yearbook of International Law* and other academic publications on the legal aspects of maritime boundary delimitation. An excellent and thorough study of *The Timor-Leste/Australia Conciliation* was produced by the Singapore-based Centre for International Law, in 2019.[8]

International customary and conventional laws offer solutions to disputants for the determination of maritime boundaries where disputes cannot be easily settled. Australia had ample experience in its bilateral negotiations of maritime boundaries and was generally seen as being amenable to the other Party's views. Case studies reveal that adjudicators will have deliberated extensively before handing down a decision. A legal framework exists in the form of international conventions, for example, the *1982 Third United Nations*

Law of the Sea Convention (1982 Convention), which entered into force on 16 November 1994.[9]

Australia deposited its instrument of ratification of the 1982 Convention on 4 October 1994; Timor-Leste did likewise on 8 January 2013. Both States made *Declarations* under Articles 287 and 298 of the 1982 Convention. Australia declared, on 22 March 2002, that under paragraph 1 of Article 287:

> *…it chooses the following means for the settlement of disputes concerning the interpretation or application of the Convention, without specifying that one has precedence over the other:*
> *(a) the International Tribunal for the Law of the Sea established in accordance with Annex VI of the Convention; and*
> *(b) the International Court of Justice.*

and, that

> *…it **does not accept** any of the procedures provided for in section 2 of Part XV (including the procedures referred to in paragraphs (a) and (b) of this declaration) with respect to disputes concerning the interpretation or application of Articles 15, 74 and 83 relating to sea boundary delimitations as well as those involving historic bays or titles.* [Emphasis added]

In the instance of Timor-Leste, its *Declaration* of 8 January 2013, stated in part:

> *4. For the purposes of Article 287 of the Convention, Timor-Leste declares that, in the absence of non-judicial means for the settlement of disputes arising out of the application of this Convention, it will choose one of the following means for the settlement of disputes:*
> *a) The International Tribunal for the Law of the Sea, established in pursuance of Annex VI;*
> *b) The International Court of Justice;*
> *c) An arbitral tribunal, constituted in accordance with Annex VII;*
> *d) A special arbitral tribunal, constituted in accordance with Annex VIII*

The 1982 Convention suggests that States produce a solution based on *equitable principle or equitable division*. However, in the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line. Determining the median line may not be an easy task if the configuration of the coastlines in question, and islands and other marine features are in the vicinity and marine biotic and mineral resources -- actual and perceived – straddle a potential maritime boundary prove to be issues in the negotiation process.[10]

Successive Governments of Australia, since 1958, had maintained that the bathymetric axis of the Sunda Trench and the Timor Trough, were the geographical and geophysical limiting lines of the natural prolongation of the Australian continent in these northern waters in accord with the 1958 *Geneva Convention of the Continental Shelf* and State practice until well into the 1990s.[11] Australia's natural continental shelf (the 200-metre isobath

limit) is relatively wide in the Arafura and Timor Sea; Timor-Leste's natural continental shelf is comparatively narrow. (Figure 2)

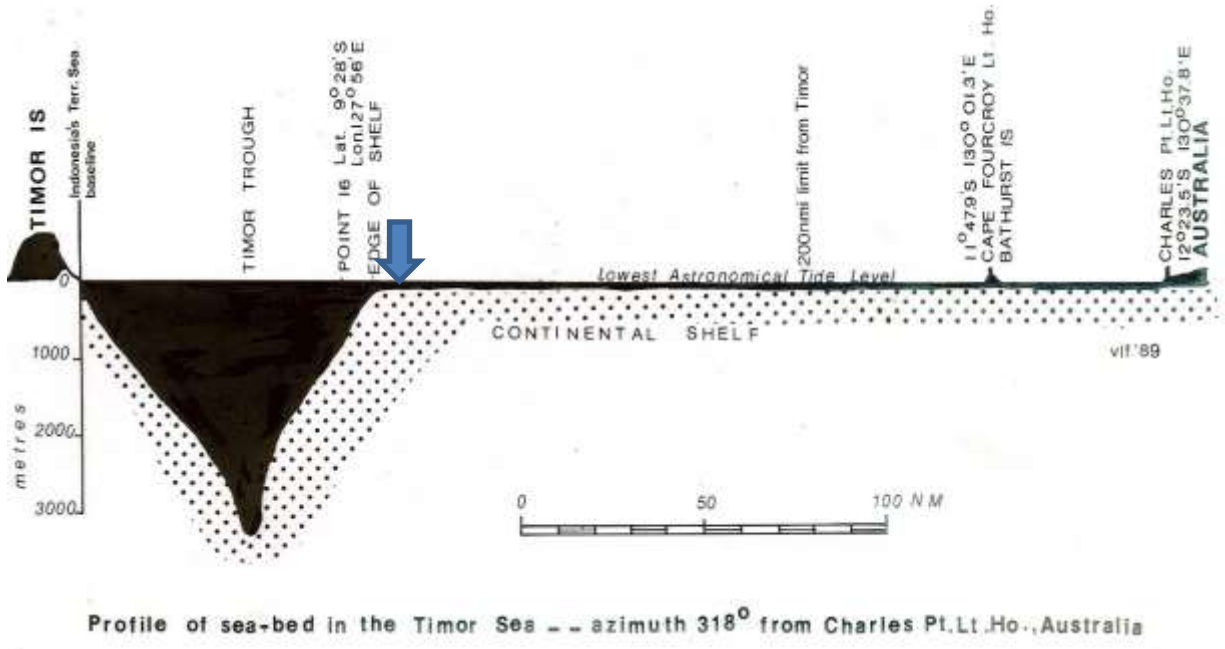


Figure 2: The *Greater Sunrise* Gas (blue arrow) field lies at the edge of the Australian continental shelf.
(*Source*: the present author)

GEOPHYSICAL FACTORS

The continental shelf of northern Australia covers an area of approximately 1,005,500 km^2 according to Geoscience Australia (2003: 42). The shelf can be divided into several distinct geomorphic provinces: The Gulf of Carpentaria, Arafura Shelf, Sahul Shelf and Rowley Shelf, all of which were drowned less than 18,000 years ago by the latest post-glacial marine transgression. The continental shelf is continuous between Australia and Papua New Guinea which formed an emergent land bridge during the last age.[12]

In tectonic terms, the Indonesian archipelago form stepping-stones which link the continents of Asia and Australia. The archipelago together with Asia is atop the Eurasian Plate; the continent island is on the Australasian Plate. The two plates are separated by Convergent Boundary which is aligned along the bathymetric axis of the Sunda Trench and Timor Trough (Figure 3); the latter, is about 3,500 metres; the former, attains depths of over 6,000m. The western portion of Timor Island and the adjacent Roti Island are in the vicinity of Lat. 19º S and Lon. 124º E as depicted in Figure 3. The extent of the Timor Trough, about 150 nautical miles (M) in length, 40M in width, is nearly parallel to, and south of Timor Island.

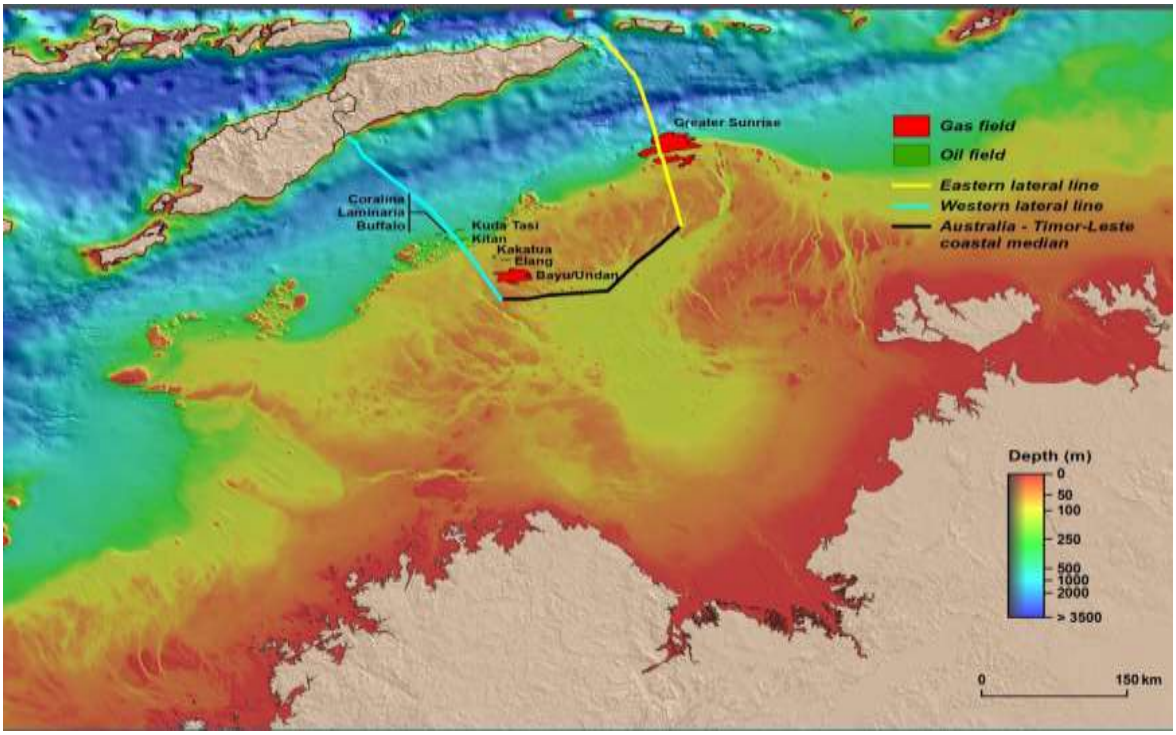


Figure 3: A graphic submitted by Australia to the PCA's *The Timor Sea Conciliation*, 2018

Note: The Timor Trough, dark blue tint, and Australia's version of the Eastern (yellow) and Western (turquoise) lateral lines. (*Source*: AGSO, 2018)

The Bonaparte Basin developed during two phases of Palaeozoic extension and late Triassic compression prior to the onset of the Mesozoic extension. The Bonaparte Basin consists of the following structural elements: Ashmore Platform, Vulcan Sub-basin, Londonderry High, Petrel Sub-basin, Darwin Shelf, Malita Graben, Sahul Syncline, Nancar Trough, Laminaria High, Flamingo High, Flamingo Syncline, Sahul Platform, Sahul Syncline, Troubadour Terrace, and Calder Graben.[13]

The Cambrian to Recent Bonaparte Basin is a fan-shaped hydrocarbon-bearing basin extending over 270,000km^2 in the north-western offshore and onshore Australia. The basin contains up to 15km of sediments and has a multi-phase history, comprising the southern Palaeozoic and northern Mesozoic depocentres – the part of a sedimentary basin where, a particular rock unit has its maximum thickness. The latter forms part of the Westralian Super-basin.[14]

The most prospective part of the Bonaparte Basin includes the Vulcan Sub-basin, Laminaria-Flamingo High and northern Sahul Platform. The oils in the basin are normally very light. The Late Jurassic marine section is the major source interval in the outboard grabens, together with Middle-Lower Jurassic marine shales and coastal plain coals. In the Petrel Sub-Basin the main sources are postulated Lower Carboniferous marine shales and Permian coastal plain coals and pro-delta shales. The basin has produced oil and gas and there are actual and potential reserves in the substratum of the Timor Sea.[15]

Earth scientists consider the bathymetric axis of the Timor Trough to be the tectonic boundary of the Australian/Asian plates. Indeed, it is a subduction-related folded belt and is part of the Sunda Trench. Timor-Leste officials take a fundamentally contradictory attitude on this matter, inferring that the trough is a mere 'crumple' of the seafloor and that Timor-Leste's continental shelf is thus one with that of Australia.[16] This is one of many divergent views and differing interpretations of geography, geology and international maritime law that are causes for disputes in maritime boundary delimitation.

TIME-WARP IN LAW OF THE SEA

The 1958 *First Conference of the Law of the Sea,* Geneva (which established Four Convention) was superseded by the 1982 Third *UN Law of the Sea Convention* (1982 Convention). The text of the 1982 Convention is likened to a constitution of the oceans and considered as a **'package deal'** to be accepted by all Parties. The 1982 Convention generally gained universal acceptance since it entered into force on 16 November 1994. By 19 July 2020, there are 168 States that are Party to the 1982 Convention; 15 states, six of whom, classified as Land-Locked, are not Party.[17]

Guidance on governance of all aspects of ocean space is offered in the 320 Articles and Nine Annexes of the 1982 Convention. Therein, are defined the maritime zones and provisions for the management of the marine environment. It suggests the direction that coastal and island states should adopt in their conduct of marine scientific research, economic and commercial activities, transfer of technology and the settlement of disputes relating to ocean matters. Thus, in accordance with the provisions of the 1982 Convention, coastal and island states may claim a suite of maritime jurisdictional zones. The limits of the *territorial sea*, the *contiguous zone*, the *exclusive economic zone* and *continental shelf* of coastal and island States are determined in accordance with rules applicable to continental and island territory, but rocks which could not sustain human habitation or economic life of their own have no economic zone or continental shelf regimes, however, they are entitled to a territorial sea if they meet the provision of Article 121.[18]

A significant aspect of the 1982 Convention is that it gives coastal and island States the right to explore and exploit marine biotic and mineral resources adjacent to their territorial sea in two jurisdictional zones: an Exclusive Economic Zone (EEZ), which can extend beyond 200 nautical miles (M) from the State's territorial sea baseline system, and in the instance of the 'legal' or *outer continental shelf* (OCS), which may extend to as much as 350M where circumstances permit. The 1982 Convention recognises that coastal and island States have inherent rights to a 200M continental shelf (that is, the distance-based continental shelf which overlaps with the 200M EEZ. Article 74 provides for the delimitation of the EEZ between States with opposite or adjacent coasts. Article 83 makes provision for the delimitation of the continental shelf between States with opposite or adjacent States. However, Article 83 does not provide detail guidance. Whereas, the *1958 Convention on the Continental Shelf* defined, in Article 1, the continental shelf by

reference to the 200-metre isobath and the so-termed exploitability criterion; Article 76 of the 1982 Convention defines the continental shelf by reference to the outer edge of the continental margin. [19]

Where the continental margin extends beyond 200M from the territorial sea baseline, the maximum allowable claim depends upon the geology and geomorphology of the area. However, if a State wishes to claim an extended continental shelf (by whatever term is applied – extended, legal or outer continental shelf) beyond the 200M of its defined (proclaimed) baseline, it should request the approval of the UN Commission on the Limits of the Continental Shelf (CLCS). Details of the functions of the CLCS are provided in Annex II of the 1982 Convention. By 2nd May 2020, 85 submissions to the CLCS had been lodged by States. Australia lodged its submission for an extended continental shelf on 15 November 2004. In addition, by late December 2019, documents relating to Preliminary Information have been submitted by 64 States.[20]

Articles 74(1) and 83(1) of the 1982 Convention, which are identical indicate, however, that: 'The delimitation of the (EEZ/CS) between States with opposite or adjacent coasts shall be created by agreement on the basis of international law…in order to achieve an equitable solution'. Further provision is made in Articles 74(3) and 83(3) that:

> *Pending agreement (on the delimitation of the EEZ/CS), the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangement of a practical nature and, during this transitional period, not to jeopardise or hamper the reaching of a final agreement. Such arrangements shall be without prejudice to the final delimitation.*[21]

Australia had entered into such resource-sharing agreements with Indonesia and again with Timor-Leste wherein exploitation of the hydrocarbons and the production of oil and gas was in process with profits being shared in the proportions stipulated under the terms of the respective agreements.

The rich jurisprudence developed by international courts and tribunals and the general methodology employed by such courts, it is generally contended, has provided a degree of certainty. The International Court of Justice and other arbitrary tribunals in the many Cases handed down has established procedures for the delimitation of a maritime boundary between States with adjacent or opposite coasts. The judge will rely on factors such as the relevant coasts and relevant maritime zones of each party to the dispute. The relevant coasts can have two different though closely related legal aspects in relation to the delimitation of the continental shelf and the EEZ. The judge will take into consideration the concepts of equitable principles to determine a provisional delimitation line using methods that are geometrically objective and also appropriate for the geography of the area in focus. In a boundary delimitation between adjacent States, an equidistance line will be drawn unless there are compelling reasons that make this unfeasible in the context. In the case of States with opposite coasts the provisional delimitation line will consist of a median line between the two

coasts. Thereafter, the '3-step process' of provisional equidistance, relevant circumstances and factors, and proportionality are introduced to arrive at a mutually accepted solution.[22]

Although the 1982 Convention clearly determined the precise limits of various maritime zones, it failed to agree on any single universal set of principles by which these boundaries were to be delimited. Consequently, the process of delimitation of maritime boundaries continues to remain in dispute if bilateral negotiations fail to resolve the problem.[23] As the 'median' or the 'equidistance' line between two coastal states had been enough to determine maritime boundaries – the territorial sea and contiguous zone – in the past, this principle has largely been followed in the 1982 Convention, for both adjacent and opposite coastal states. The 1982 Convention also stresses that neither of the two states is entitled, failing agreement to the contrary, to extend its territorial sea beyond the 'median' line. However, this is not to apply where it is necessary, by historic title or other special circumstance, to delimit the territorial sea between two states in a manner different from this provision.[24]

In terms of the delimitation of the EEZ – a maximum width of 200M (or about 370 km) or the continental shelf between adjacent and opposite states, no universally acceptable formulation evolved. As a result, Articles 74 and 83 of the 1982 Convention vaguely state that the delimitation of the EEZ or the continental shelf between states with opposite or adjacent coasts shall be affected by agreement on the basis of international law, as referred to in Article 38 of the statute of the International Court of Justice (ICJ), in order to achieve an equitable solution. Such a formulation has considerable potential for misinterpretation as no distinction has been made in terms of the delimitation between the EEZ and the continental shelf, or between adjacent or opposite coasts. In effect, it is widely agreed that this does not constitute a reliable guide to negotiators or even arbitrators of delimitation questions especially as in the case of determining a maritime boundary in the Arafura and Timor Seas between Australia and Indonesia and Australia and East Timor.[25]

LEGAL AND POLITICAL BACKGROUNDS

The then Government of Australia enacted the *Seas and Submerged Lands Act* 1963 in accordance with the provisions of the 1958 Convention.[26] Attempts to resolve some of the issues raised from the 1958 Convention were discussed in a Second UN Conference on the Law of the Sea in 1960. However, that Conference failed to reach a compromise on the breadth of the Territorial Sea. States' practice during the period varied from three to 24M or even wider belt. The Third UN Conferences on the Law of the Sea were initiated and spanned from 1973 to 10 December 1982. On that date, the document was opened for signature at Montego Bay, Jamaica. The 1982 *United Nations Law of the Sea Convention* (the 1982 Convention) is a comprehensive political and legal document, which includes directives for international law, geopolitical and international relations. An *Agreement Relating to the Implementation of Part XI of the 1982 Convention* (the Agreement) and the Agreement for the Implementation of the Provisions of the *Convention relating to the*

Conservation and Management of Straddling Fish Stock and Highly Migratory Fish Stocks are essential packages on international law. The 1982 Convention and the Agreements entered into force on 16 November 1994, 28 July 1996, and 11 December 2001 respectively, as a package deal.[27]

Indonesia adopted its territorial straight baseline system in 1960 and termed it archipelagic straight baseline system. Indonesia was keen to settle its continental shelf boundaries with its neighbours.[28] The first set, a continental shelf boundary with Malaysia, was negotiated in 1969, followed by a short segment termed, territorial sea boundary with Malaysia in the southern sector of the Malacca Strait in 1970.

The delimitation of a maritime boundary in the Arafura and Timor Seas via the negotiating process commenced in the 1970s. Australia and Indonesia established two segments of seabed boundaries in the Arafura and Timor Seas in 1971 and 1972, respectively. Portugal, at that time the coloniser of Timor-Leste, showed little or no interest in the negotiations, contrary to what some recent commentators may suggest long after the event. As Gillian Triggs stated (2004: 332). [29]

> *Portugal refused to participate in negotiations with Australia over the seabed boundary and wanted to wait until the 1974 Law of the Sea Convention was finalised. In this political climate it was impossible to finalise the boundary between Portuguese Timor and Australia, in the way that the boundary between Indonesia and Australia had been finalised by this 1972 Agreement. This situation resulted in the creation of the 'Timor Gap', a gap which could only be closed by further agreement involving Portugal.*

Australia delimited, through negotiations and agreements, its maritime boundaries with France, New Zealand, Solomon Islands, Papua New Guinea, Indonesia and Timor-Leste. It was the last two named countries that negotiations had caused angst, brought distrust and even divided citizens' and politicians' opinions in the three countries. Accusations and false or mis-informed news reporting by the media and numerous organisations on both sides of the Timor Sea are documented and mis-leading maps published in the electronic and print media.[30]

The geographical and legal basis by which Australia claimed sovereign rights to the resources on and under its natural continental shelf were clear and unambiguous. No other country has a right to claim sovereignty over this area of continental shelf. It was the 1945 [USA President] *Truman Proclamation* that asserted sovereign rights over the resources on and under the natural prolongation of the landmass which hailed the extension of coastal states' jurisdiction and perhaps paved the way for Coastal and Island States to extend their claims to the continental shelf fisheries jurisdiction. A listing of the international conventions and agreements (treaties) relating to the context of this commentary on the maritime boundaries between Australia, Indonesia and Timor-Leste in the Arafura and Timor Seas is given in the Annex, below. The list demonstrates Australia's willingness to negotiate with its near northern neighbours, in good faith, and when all else

fails to have the dispute heard by a third party. That Australia was willing to forfeit certain maritime space to Indonesia and royalties to Timor-Leste, was universally commended and should be a bonus to the Timor-Leste's economy and of benefit to the Indonesia's maritime industry.[31]

The Australian Government had maintained, with firm conviction, its position that the critical boundary between the two countries should reflect the extent of Australia's continental shelf. It is a fact that *geography was never intended to be equal* and that Australia's sovereign rights, naturally and legally, extend to the edge of the continental shelf and beyond within scientifically determined and defined limits. Maps and graphics that depict lines of resource allocation put forward by officials of Timor-Leste and other persons with a vested interest in the perceived resource wealth of the island to present their case, were generally misleading and mischievous, especially maps that inferred that Portuguese oil concessions, in 1974, extended southward of Timor covering a surface area of 50,000sqkm. In that era, any Portuguese exploration permits were limited to the narrow coastal zone area. The present author was engaged in exploration activities in the region during 1974-75. Any set of lateral maritime boundaries projecting southward from East Timor needed to be negotiated with Indonesia and with reference to the Australia/Indonesia maritime limits or lines of resource allocation as negotiated in March 1997.[32]

LINES OF RESOURCE ALLOCATION

Maritime boundary delimitations are negotiated by the parties in good faith and the terminal and turning points are defined by geographical coordinates and in some instances the line segments (geodesics) by azimuth and distance. The details are included in the Agreement and generally on a sketch map which is appended to the Agreement. The boundary is delineated on the map or nautical chart, the latter being more appropriate as it depicts the bathymetry of the area. The boundary will indicate the limit of state jurisdiction and often will represent a line of resource allocation. There may appear additional lines for administrative purposes as well as special purpose zones, for example, fisheries, offshore mining, marine parks and conservation zones.[33]

THE 1971 AND 1972 SEABED BOUNDARIES

The 1971 and 1972 Agreements between the then Governments of Australia and Indonesia delimited seabed (continental shelf) boundaries in the Arafura and Timor Seas that extended from the terminal point of the terrestrial boundary between Indonesia and Papua New Guinea in the east to a point referenced 'A25' in the western sector of the Timor Sea just north of Ashmore Islands. However, a gap in the boundary, came to be known as the *Timor Gap*, between points 'A 16' and 'A17', as defined in the 1972 Agreement, became apparent as the area of marine space and seabed lay just south of East Timor which was a 'neglected Portuguese colony' in 1974.[34] The Government of Portugal, in 1974, as noted above, was invited to participate in the deliberations to resolve the maritime boundary gap between A16 and A17 created by the 1972 seabed boundary agreement. That country's administration could not be persuaded, for

reasons that need not be discussed here, and by August 1975, the political complexions and physical dimensions of East Timor changed. It is beyond the scope of this discussion to enter the historical and political issues that ensued. Suffice to say that pressure was brought on the Governments of Australia and Indonesia to resolve the maritime boundary issue in the light of development of potential hydrocarbon reserves that was located in the substratum of the Arafura and Timor Seas in depths of water that were conducive to exploration and exploitation and the problems caused by not only illegal fishing operations but also by issues of the movement of refugees landing on the shores of the islands of northern Australia.[35]

A *Memorandum of Understanding* (MOU), signed in 1974, made provisions for Australia and Indonesia to exercise jurisdiction over sedentary fish species to the seabed boundaries agreed in 1971 and 1972. Article Six of the MOU was explicit in stating that the entire arrangement was provisional and that it would not prejudice the position of either government. It further stated that the 1981 MOU did not affect traditional fishing methods by Indonesia fishers under the terms of the 1974 MOU. It recognised the needs of the 'traditional fishing methods' and subsistence fishing of fishers operating from Roti Island. The MOU specified that Australian laws regarding fisheries applied to traditional Indonesian fishers operating in the vicinity of Ashmore Reef System and Islets, Browse and Cartier Islets, Scott and Seringapatam Reefs.[36]

In the time-warp of the 1958 and 1982 Conventions, the then Government of Indonesia (1970s) insisted that the seabed boundary was for the exploitation and management of marine mineral resources in the substratum of the seabed and that harvesting of marine biotic resources required a water column boundary. In late-October 1981, Australia and Indonesia signed a *Memorandum of Understanding* (MOU), which effectively gave Indonesia control of nearly 70 per cent of the disputed area. The MOU set in place an Agreement, in February 1982, between the two Governments for the establishment of a *Provisional Fisheries and Surveillance Enforcement Line* (PFSEL) whose alignment was deemed to be the median line between the northern Australia coast and Indonesia's Archipelagic Sea baseline which concept was incorporated in the 1982 Convention's Article 47. The PFSEL was not to be construed as an Exclusive Economic Zone (EEZ).[37]

1989 *TIMOR GAP TREATY (TGT)*

Following many rounds of negotiations between the representatives of Australia and Indonesia during the 1980s, an Agreement was drafted and by December 1989 was signed by Ministers of Foreign Affairs of the two countries. The agreement sought to resolve the dispute between Australia and Indonesia and in February 1991, it entered into force as a treaty which defined a *Zone of Cooperation*. It created a joint development regime for the exploration and exploitation of the hydrocarbon reserves in the Timor Sea south of Timor Island.[38]

The 1989 *Timor Gap Treaty* was of wide interest as it was the most detailed and comprehensive joint development regime in force during the 1990s. There was no requirement to enter into such agreements at customary international

law. However, the *Timor Gap Treaty* and for that matter other similar joint development regimes contributed to the development of a doctrine that there may exist a duty to cooperate on overlapping claims.[39]

This Treaty could be related to the widespread use of provisions for cooperation on hydrocarbon deposits that straddle perceived national boundaries. The Treaty indicated a broader and more comprehensive approach to such resource-sharing agreements than other settlements of similar nature. The *Timor Gap Treaty* (TGT) was vital to the future of Australia-Indonesia relations, and was perceived to have enhanced Australia's international image in the Asia-Pacific region by demonstrating the political will to resolve an issue amicably. The TGT, however, impinged upon the important issue of self-determination in East Timor at international law. International law with reference to the sea was in the making or more precisely on the verge of entering into force.[40]

The potential success of the Timor Gap Treaty's *Zone of Cooperation* was called into question when the Government of Portugal initiated proceedings, on 22 February 1991, at the International Court of Justice (ICJ) against Australia in the context of the *TGT*. Portugal sought a declaration from the ICJ that by signing the *TGT* with Indonesia, Australia had violated Portugal's rights as the competent authority in East Timor, as well as the rights of the people of East Timor. Portugal argued that Indonesia had no authority to enter into negotiation because it had no legal sovereignty over East Timor.[41]

Discussions on resolving the maritime boundary issues between Australian and Indonesian legal and technical experts were held during two periods in March and mid-October 1993. These talks and others held during 1994 and 1995 had failed to reach an agreement on the determination of a boundary between Java and Christmas Islands in the eastern sector of the Indian Ocean basin and for a westward extension of the seabed boundary from Point 25 of the 1972 boundary Agreement. On 9 and 10 August 1994 a High Court (Australia) hearing on the legality of the TGT took place in Canberra. The Plaintiffs in the case were three members of Timor-Leste's National Council of Maubere Resistance (CNRM) who were allegedly funded by certain Australian business enterprises and individuals.[42]

On 30 June 1995, the ICJ held by 14 to two votes, that it could not adjudicate upon the dispute referred to it by Portugal in matters relating to Australia and Indonesia with respect to the TGT. After examining the Australian objection that the 'real dispute' was rather between Indonesia and Portugal, the ICJ found that there was a legal dispute between Australia and Portugal. It concluded that Australia's conduct could not be ruled upon without first deciding why it was that Indonesia could not lawfully have concluded the TGT, while Portugal could have done so, and also noted that it could not "rule on Portugal's claims on the merits, whatever the importance of the questions raised by those claims and of the rules of international law which they bring into play". The very subject matter of the case related to the rights and obligations of a third State, namely Indonesia, which did not recognise the jurisdiction of the ICJ.[43]

Portugal lodged a protest on 28 August 1997 against the subsequent Australian agreement with Indonesia on the delimitation of respective exclusive economic zones in the Timor Gap. At that time, Timor-Leste was the 27th Province of Indonesia.[44] The Court failed to hand down a decision because Indonesia was not represented at the Hearing. Discussion between authoritative sources in Canberra and the present author in late-September 1996 revealed that further rounds of talks were held between the negotiators during the year, including one in Sydney, on 11-12 September 1996. During the September 1996 negotiations, an agreement to delimit two segments of the maritime boundary was reached in principle. The 1989 Treaty and Zone of Co-operation became null and void when superseded by the 14th March 1997 *Certain Maritime Boundaries Agreement between Australia and Indonesia*. It is well documented that the provisions of these maritime boundary agreements were perceived as being too generous to both Timor-Leste and Indonesia, indeed, to a degree of fault on the part of Australia. [45]

THE 1997 CERTAIN MARITIME BOUNDARIES AGREEMENT

This Agreement re-defined, or modified, the maritime boundary delimitation – thereby creating two regimes – to conform to the provisions of the 1982 Convention. This Agreement established Certain Maritime Boundaries as a 'package deal', which as stated earlier, is yet to be ratified by the respective governments. It created a dual regime for the management of the ocean resources of the Arafura and Timor Seas. It was intended to have water column (EEZ) and continental shelf (CS) or seabed regimes in an area of overlapping claims. In principle, that may be easy to implement; in practical terms, however, the regimes are fraught with problems for administrators, despite what may be claimed by the present-day Government of Australia, and presumably that of Indonesia.[46]

An analysis of a 1997 Maritime Boundary Delimitation Agreement between Australia and Indonesia suggests that the provisions in the agreement do not support the confident conclusion suggested by the Parties to the Agreement. This is proving correct after 23 years. The Treaty established a regime under which Indonesia practically enjoys unfettered sovereign rights to explore, exploit, conserve and manage the marine biotic resources in the water column of the zone of overlapping jurisdiction. This accounted for the provisions contained in Articles 74 and 83 of the 1982 Convention. The suite of delineated lines comprised the EEZ and the seabed boundary between the Australian territory of Christmas Island and Indonesian island of Java. The Treaty contained a range of provisions that govern the obligations and rights of the two countries in the region. With respect to a maritime boundary between the Islands of Christmas and Java, Indonesia contended that the median line was not appropriate. This was contrary to the stand it adopted in negotiating the southern boundary alignment of Area A of the ZOC, which was to all intents and purposes the median line in the vicinity.[47]

This 1997 Agreement awaits ratification by 22nd December 2020, thereby creating *one expansive area of uncertainty* in the northern seas of Australia. In this setting, illegal fishing, entry of boat people; exploration rights and other issues are topics of focus daily. In the legal grey area – the

overlapping zone between the water column and seabed boundaries– is fortunately coloured in a grey tint on the map attached to the Agreement. Perhaps one can infer that the drafters of the Agreement could predict that the contents of the Treaty would not be a foregone conclusion. The polygon depicted in light blue on the Agreement's map was the shape of the *Zone of Cooperation* which was defined in the 1989 Timor Gap Treaty. [48]

The provisions of the 1997 Treaty would appear to place Australia in a disadvantageous position in that the seabed and substratum rights held by Australia in an area of overlapping jurisdiction might only be enjoyed largely at Indonesia's discretion. On the other hand, the EEZ sovereign rights held by Indonesia would generally be unaffected by any jurisdictional position that Australia may implement consistent with international law with reference to resources on the continental shelf. The Treaty's provisions which recognises the regimes for ocean management depends on the continued goodwill between the Governments of the two countries. The Treaty, however, is quiet on matters that could be contentious, for example, people smuggling, apprehension of illegal fishers and other activities that might actively serve to aggravate relationship difficulties through differing interpretations of the Treaty and cultural misunderstandings. For example, within a "Legal Grey Area" [the present author's words], only Indonesian fishers may harvest marine biotic resources in the water column and on the seabed. If, however, Australian companies were to engage in exploring and exploiting the hydrocarbon reserves in the substratum of the seabed, they would first require permission from the Indonesian authority before drilling operations could take place. The terms relating operations within the ZOC were retained in the 1997 Treaty; [49] however, slightly modified for the arrangement with Timor-Leste in February 2000.

AUSTRALIA AND UN TRANSITIONAL ADMINISTRATION IN EAST TIMOR (UNTAET)
'ZOC A'* CONVERTED TO *'JPDA'

On the 30 August 1999, in an UN-sponsored referendum, the citizens of Timor-Leste voted in favour of independence from Indonesia. UNTAET (United Nations Transitional Administration in East Timor), a temporary governing authority was created by the UN Security Council for Timor-Leste in October 1999.[50] The *Zone of Co-operation* of the TGT of 1989 became null and void. On the *Exchange of Notes* of 19 February 2000, the floating polygon in the sea was given a new label: *Joint Petroleum Development Area* (JPDA), comprising Zone A to be operated by Australia and UNTAET. Zones B and C became defunct.[50]

Speaking at a seminar on maritime boundaries in the Timor Sea on 14 June 2000, Mr Bill Campbell, First Assistant Secretary, International Law Office, Attorney-General's Department, stated he favoured a negotiated settlement of the Timor Gap dispute rather than arbitration by an international court or tribunal because: "States lose a degree of control over maritime delimitation where the matter is placed in the hands of a court or tribunal. The resulting boundary/arrangements may not satisfy some or all of the Parties". Two decades later, his views ring true, loud and clear.[51]

Mr Campbell's speech foreshadowed a decision announced on 25 March 2002 in a joint statement by Attorney-General Daryl Williams and Foreign Minister Alexander Downer that Australia would henceforth exclude maritime boundaries from compulsory dispute settlements in the International Court of Justice and the International Tribunal for the Law of the Sea. 'Australia's strong view is that any maritime boundary dispute is best settled by negotiation rather than litigation', Foreign Minister Alexander Downer said. Mari Alkatiri, Timor-Leste's Chief Minister, described the move as 'an unfriendly act'. And yet, the Agreement of 2000 was drafted and signed by UNTAET, Timor-Leste and Australia.[52]

On 3rd July 2001, the Australian Government announced that Australia and East Timorese/UNTAET representatives had reached an Agreement on a new *Timor Sea Arrangement* to replace the 1989 *Timor Gap Treaty* relating to the development of hydrocarbon reserves in the Timor Sea.[53] Since that day, Timor-Leste's 's former Prime Minister, despite signing the agreement and the subsequent *Timor Sea Treaty* (TST) had constantly berated the arrangement and offered unconstructive comments. The arrangement was formalised on 5th July 2001 in a *Memorandum of Understanding* in what was termed the 2001 *Timor Sea Arrangement*. The JPDA corresponded to Area 'A' of the 1989 *Zone of Co-operation*. The provisions of the *JPDA* evidently had the blessing of the UN and presumably the East Timorese officials who witnessed the signing ceremony.[54]

THE 2002 TIMOR SEA TREATY (TST)

Immediately after Timor-Leste formally declared independence on 20th May 2002, it signed a *Timor Sea Treaty* (TST) which retained the terms of the earlier arrangements stipulating that the royalties from the hydrocarbons produced from the wells in the JPDA would accrue in favour of Timor-Leste at a **ratio of 90:10**, with Australia to receive an approximate **79:21** split from royalties from the *Greater Sunrise* gas field. There was also a substantial financial handout from Australia to Timor-Leste amounting to A$10 billion. The latter is documented but rarely mentioned in the narratives by the media and many commenters of certain political persuasions. Generally, there was international approval for the goodwill shown by Australia and for its commitment to ensure that Timor-Leste would benefit from the equitable sharing of the resources. There was, however, a minority of "do-gooders", both within and outside Australia, who advised the Government of Timor-Leste that the arrangements were not to their advantage and welfare. The Treaty would have been in force for 30 years unless a permanent maritime boundary was established earlier. The Treaty was silent on the sharing of the marine biotic resources and the responsibilities for ocean management.[55]

Government and non-Government officials of Timor-Leste continued to voice rhetoric for political gains and for a greater say in the management of the hydrocarbon resources. Unconstructive comments also emanated from groups in Australia and the United States who accused Australia of blackmail and robbery in its attempts to take control of the hydrocarbon reserves in the Timor Sea. Unfortunately, such comments did not accord with the facts. Indeed, a US Ambassador in 2001 delivered a speech on 9th April 2001 at the

APPEA Conference and US Congressmen sent a letter to the Australian Government in March 2004 urging it to move fairly and expeditiously in the boundary negotiations.[56] These equate to meddling in another State's internal affairs. Such external meddling, including a *Legal Opinion* of 2002 that was widely circulated and instrumental for the drafting of yet another agreement that would focus on the *Greater Sunrise* hydrocarbon reserve which promised potential wealth when the resources were exploited and developed. The authors of the *Legal Opinion* of 2002 analysed the situation and suggested possible lateral boundaries (Figure 4) between Indonesia and Timor-Leste and Common Points (Tripoints) for the three States. Determination was based on relevant jurisprudence employing variations of 'equidistance' and 'equitable principles'.[57]

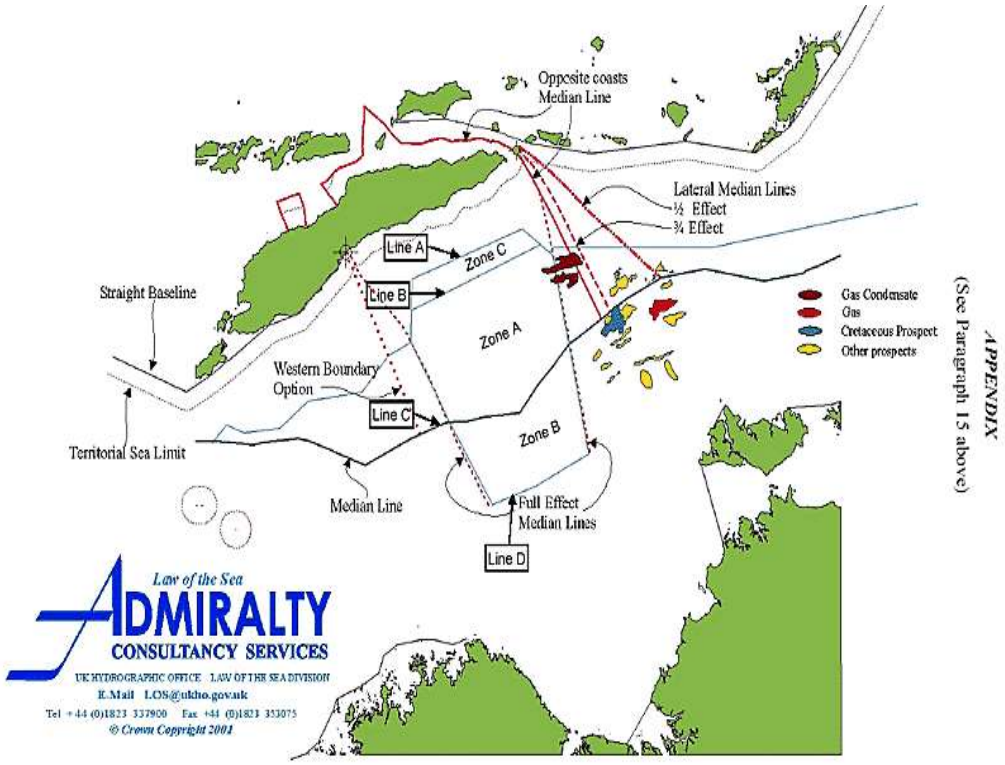


Figure 4: Map attached to the *Legal Opinion* of 2002, Lowe and others. *Note*: the options offered to determine the lateral boundaries.

THE 2003 *UNITISATION AGREEMENT* AND RELATED ISSUES

To implement their commitment, one year later, the Parties agreed on the *Unitisation of the Greater Sunrise* hydrocarbon reserve, which is partially located at the north-eastern corner of the *JPDA*. The agreement covered administrative matters and carried the proviso that production from the field would not commence unless a development plan was reviewed and approved in accordance with the Agreement. One of the sticking points was the direction to be taken by the pipeline: should it lead to Darwin or to the south coast of Timor-Leste? An existing pipeline connected the *Bayu-Undan* gas-condensate field to Darwin. In Timor-Leste, the site for downstream processing would be at the south coast of the island. Which country would gain the greater

financial benefit was cause for much angst and debate, perhaps even to the extent of a coveting the southern neighbour's partial continental shelf. Figure 5, prepared by the present author, depicts delineation of potential lateral boundaries for East Timor through objective interpretations based on the equidistance method; however, these limits obviously do not coincide with the versions proposed by Timor-Leste.[58]

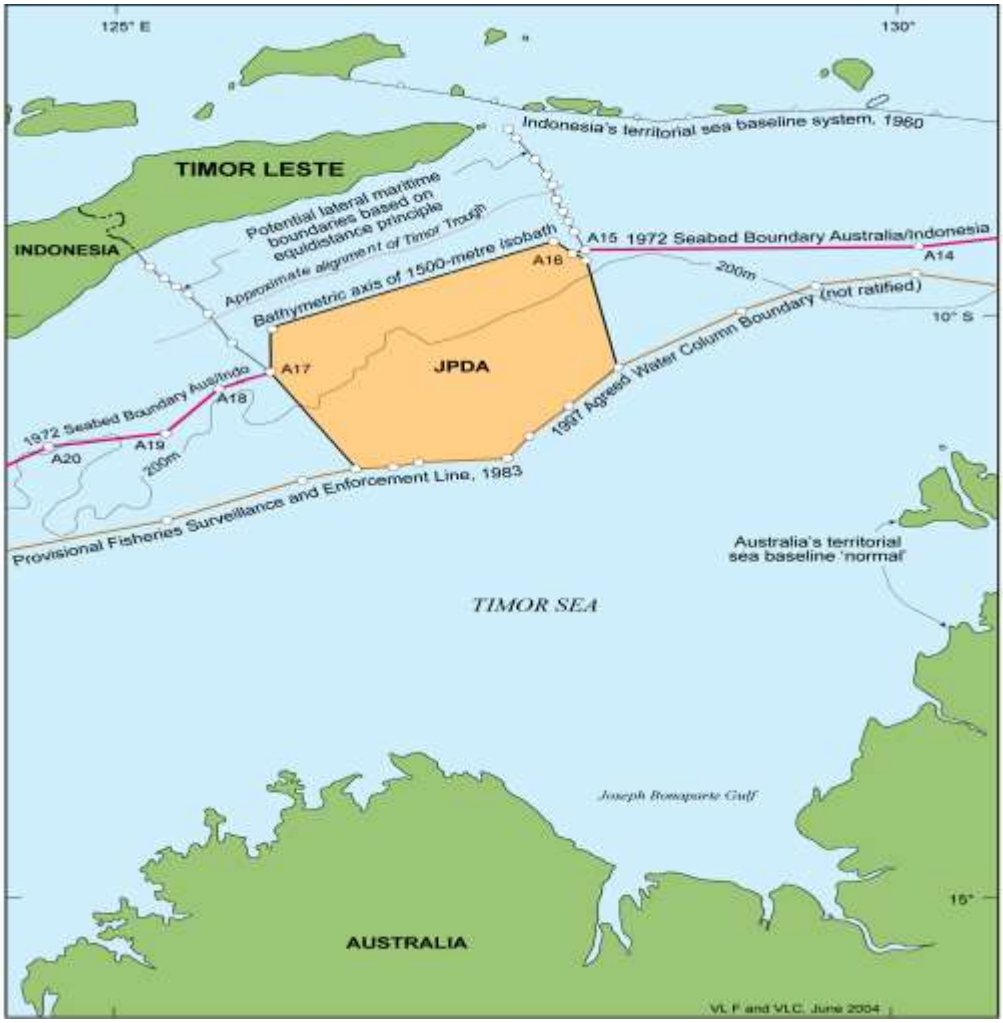


Figure 5: Potential Timor-Leste lateral equidistant maritime boundaries and JPDA.

Two critical issues came to the fore. The first was the allegations that persons from Australia had 'bugged' Timor-Leste's Cabinet Rooms in Dili in 2004, during negotiations over the sharing of billions of dollars in oil and gas. The pair were accused of disclosing secret information. That information related to an operation conducted by Australia's foreign intelligence agency during negotiations.[59]

THE 2006 *CERTAIN MARITIME ARRANGEMENTS* (CMATS)

A second issue was whether Timor-Leste would be entitled to more revenues from *Greater Sunrise* if the pipeline were aligned towards Darwin. After

several meetings, on 12th January 2006, the two countries signed yet another agreement on *Certain Maritime Arrangements*. A prolonged legal battle with Australia over the *Greater Sunrise* hydrocarbon deposits ensued, which ran counter to the economic and security interests of Timor-Leste. The domestic security and economic development of Timor-Leste would have been better served by giving exploration companies the confidence that they are dealing with stable political entities in which taxation rules are applied, transparently and impartially, and ethical business practices are maintained. The dispute was prolonged resulting in unpleasant comments and misinformation as reported in electronic and print media which are well documented and hence do not necessarily need to be explained and referenced here.[60]

SPYING CHARGES; SCRAPPING *CMATS; AND* SEEKING ARBITRATION

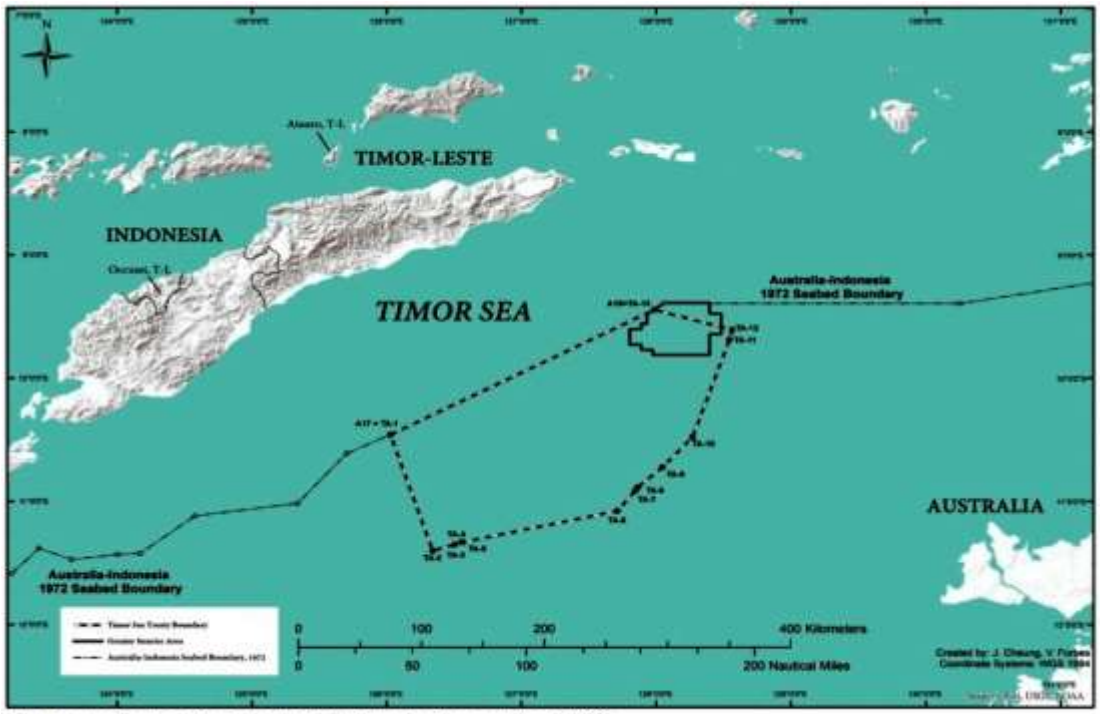
In December 2013, ASIO (Australian Secret Intelligence Organisation) and the AFP (Australian Federal Police) raided the homes/offices of the persons allegedly involved in the spying scandal. Many legal documents were confiscated. Based on these allegations, the Government of Timor-Leste lodged a complaint to the ICJ in the Hague, the Netherlands, in 2013 and sought an order from the ICJ for the sealing and return of the documents. The then Prime Minister of Timor-Leste, scrapped the CMATS. In March 2014, the ICJ ordered Australia to stop spying on Timor-Leste. In April 2016, Timor-Leste launched a case at the Permanent Court of Arbitration (PCA) in the Hague. In early 2017, Timor-Leste dropped the ICJ case against Australia after the Australian Government agreed to re-negotiate a (permanent) maritime boundary.[61]

THE 2018 *MARITIME BOUNDARY TREATY*

The Governments of Australia and the Democratic Republic of Timor-Leste successfully re-defined their maritime boundaries in the Timor Sea with the signing at UN Headquarters in New York of the Maritime Boundary Treaty, on 6 March 2018.[62] In the course of the conciliation proceedings, the Parties reached agreement on a treaty which delimited the maritime boundary between them in the Timor Sea and addressed the legal status of the *Greater Sunrise* gas field, the establishment of a Special Regime for *Greater Sunrise*, and a process to the development of the resource. The treaty also established revenue-sharing arrangements between the Governments of Timor-Leste and Australia where the shares of upstream revenue allocated to each of the Parties will differ depending on downstream benefits associated with the different development concepts for the *Greater Sunrise* gas field.

The Treaty signed by Timor-Leste and Australia formed part of the Comprehensive Package Agreement of 30th August 2017 concluded between them (the *'30 August Agreement'*). An integral part of the 30 August Agreement was the "action plan" for engagement leading to a decision on the development of the Greater Sunrise gas field. Pursuant to this action plan, the two governments and the *Greater Sunrise Joint Venture* (the licence holder to the resource) have engaged in intensive meetings and discussions.

The 2018 Treaty is an historical agreement for Australia and Timor-Leste that supposedly further cements the foundation for the relationship between the two close neighbours and which will benefit both countries. Australia recognised the significance of it for Timor-Leste and is committed to finding an outcome that would best support Timor-Leste's future. Figure 6 illustrates the maritime boundary between the two countries and the polygon within which lies, in the eastern sector, the *Greater Sunrise* gas field. The maritime boundary was based, conveniently, on a 'modified equidistance method'.



The Greater Sunrise field and the Joint Petroleum Development Area (JPDA)
Source: Author

Figure 6: The Australia/Indonesia Seabed boundary; Australia/Timor-Leste maritime boundary and the extent of the *Greater Sunrise* Gas Field

Australia and Timor-Leste acknowledge their continued commitment to their close relationship and that they will continue to work together on their shared economic, developmental and regional interests. Australia, through its actions, supported the international rules-based order and the 1982 Convention. Even so, there are many inherent problems with the 2018 Treaty, including:

- The fact that Indonesia and Timor-Leste have not defined or delimited their lateral maritime boundaries in the Timor Sea
- After 23 years, the 1997 Agreement between Australia and Indonesia still awaits ratification
- Indonesia has since indicated that it would like to revisit the terms of the 1997 Agreement
- The rules and regulations for management marine biotic resources and marine environment.

On 22nd November 2018, the Government of Timor-Leste announced that it had bought Shell's stake in the *Greater Sunrise* oil and gas fields for the sum of for US$300 million and stated that it would proceed with its contentious plan to pipe the natural resources to its proposed south coast processing plant at Beaço. On 16th April 2019, the Timor-Leste Government acquired a controlling share in *Greater Sunrise* with the US$350 million purchase of the 30 per cent share held by ConocoPhillips.[63] The Greater Sunrise and Troubadour fields are estimated to hold 5.1 trillion cubic feet of gas and 226 million barrels of condensate with a combined value of $US50billion, according to *Petroleum Economist*, in September 2019.

The Government of Australia was aware that before ratification, technical amendments were required to reflect the agreed boundaries between Australia, Indonesia and Timor-Leste to determine where the three countries' maritime boundaries intersect at the Common Points. The reactions of the oil and gas exploration companies involved in this regional sea are difficult to obtain, as are those of fishers and the administrators. Indeed, the economic prospects of the reserves are not fully understood, and the hoped-for hydrocarbon bonanza may not live up to expectations, after all, there is great dependency on 'supply and demand' and the complexities of geopolitics and economics, the effects of COVID-19 on international trade and the dwindling demand on oil and gas products, as we witnessed in the first six months of 2020.[64]

The new Treaty delimits the maritime boundary between Timor-Leste and Australia in the Timor Sea. The agreement on the boundaries is comprehensive and final. It encompasses the delimitation of both the 'continental shelf' (which entails rights to exploit seabed resources, such as petroleum) and the 'exclusive economic zone' (which entails rights to exploit resources in the water column, such as fisheries). The Treaty also addressed the legal status of the *Greater Sunrise* gas field, the establishment of a Special Regime for Greater Sunrise, and a process to the development of the resource. Upstream revenue from *Greater Sunrise* will be shared 70/30 in Timor-Leste's favour if the field is developed by a pipeline to Timor-Leste, or 80/20 in Timor-Leste's favour if the field is developed by a pipeline to Australia.

On 26 June 2020, certain Australian individuals were prosecuted for revealing allegedly Australian national secrets relating to the spying scandal. It is wise not to add further comment on this topic at this stage as the legal case was ongoing in July 2020.[65]

SUMMARY

The geographical focus of this narrative was the Arafura and Timor Seas and the sovereignty issue over the part of the continental shelf that is adjacent to Australia's northern coast. The northern Australian continental shelf and its marine resources have been coveted by both Indonesia and Timor-Leste since the early-1970s. Within this expansive maritime space, the range of geopolitical issues which exists required the attention of the three States. The issues demand regional cooperation, on a broad scale, in general, towards the effective management of ocean space and the marine; and, in particular

the exploitation of hydrocarbon reserves. There should have been no cause for dispute as Australia had demonstrated its willingness to accommodate its northern neighbours on numerous occasions over many decades, and indeed, as with other States in the numerous maritime boundary agreements that have been negotiated in good faith and cooperative attitude since the early 1970s, as alluded to in this narrative. The boundary lines of 2018 Treaty may require refinements in the years ahead especially as the 1997 Agreement awaits ratification; and the decisions of the Joint Venture Partners to bring to fruition the development of the hydrocarbon reserves.

Australia had apparently nailed itself into the "coffin-shaped" *Timor Gap Treaty's Zone of Co-operation* over the continental shelf issue in 1989 and forfeited water column rights again, in the 14th March 1997 Treaty, when it signed, in Perth, an Agreement with Indonesia relating to certain maritime boundaries. Finally, successive Australian Governments were persuaded, nay pressured, to accede to demands from Timor-Leste for a larger proportion of Australia's continental shelf and access to the hydrocarbon reserves contained therein, in agreements during 2002, 2006, 2013 and 2018.

Coveting a neighbour's continental shelf is regrettably a trend that has caused diplomatic rifts and become a contentious issue since the early 1960s. There are some recent cases where coastal and/or island States have experienced the problem in regional seas, for example, in the Arctic Ocean, the East and South China Seas, the Falklands Basin and the Timor Sea. Perhaps this ruffling of diplomatic feathers relating to the continental shelf may be partially attributed to select provisions contained in the 1982 Convention, the delimitation of a maritime boundary for the purpose of allocating jurisdictional limits to access marine biotic and mineral resources.

In retrospect, the Australian Government should have leased to Timor-Leste the *Greater Sunrise* Field and other prospective hydrocarbon fields for the duration of the economically productive lives of those fields on a 'peppercorn rental basis' and thereby retained sovereignty over the portion of the continental shelf which appears to have been forfeited. The geographical and legal basis by which Australia claimed sovereign rights to the resources on and under its natural continental shelf are clear and unambiguous. It could be submitted that the Australian Government did a disservice to its citizens by conceding to Timor-Leste's a vast swath of seabed jurisdiction. The 1982 Convention only suggested that states produce an *equitable* solution in the event of a dispute over the perceived alignment of maritime jurisdictional limits between states. Australia provided a more than equitable solution by generously giving 90 per cent and more in numerous aid packages in previous agreements.

Australia may have led by example and the 2018 Treaty's model could be used in other disputes in neighbouring regional seas. Exactly how many States would be willing, in an instance like this, to forfeit their seabed rights as, for example, in the South China Sea, is, however, certainly not clear and difficult to foretell. Perhaps it is an element of the curse of oil. It stands to reason that the final agreed Common Points will have an impact on Australia's maritime boundary in the Timor Sea. The gist of the argument used

in this narrative is that in order to achieve an equitable solution such a formulation has considerable potential for misinterpretation and flexibility as no distinction has been made in terms of the delimitation between the EEZ and the continental shelf, or between adjacent or opposite coasts.

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[51] www.aphref.aph.gov.au_house_committee_jsct_reports_report12.pdf;for B.Campbell's comments.

[52] Australia's Declaration re: Arts 287 and 298 of 22-3-2002; www.aph.gov.au/senate/comm/dfat...
[53] The ZOC void converted to JPDA; see V.L. Forbes 'The Hate/Love Triangle in the Timor Sea: Australia, Indonesia and East Timor'. A two-part series, *FDI Associate Paper*, 12 and 19 May 2010.
[54] The Agreement was signed and witnessed by members of UNTAET.
[55] See the Treaty's text; R J King 'The Timor Gap, 1972-2003', June 2003; *Timor-Leste's Maritime Boundaries*, 2016; R. Starting "Timor-Leste's foreign policy…', *AusJIL*, 71(3) 2017
[56] US Senators meddling in Australian affairs; US Ambassador Peter Galbraith, representing East Timor-led negotiations with Australia that would quadruple the oil available to East Timor for sale. See also J.D. Bovensiepen, *The Land of Gold*, Cornell University Press, 2015; G A McKee, 'New Realities'.
[57] Lowe and others 'Legal Opinion of 2002' prepared on behalf of Gov. of Timor-Leste.
[58] The text of Agreement of 2003 at ATS; R J King 'The Timor Gap, 1972-2003', Joint Senate Committee on Treaties, June 2003. The lateral boundaries and indeed the Indonesia/Timor-Leste land boundary have yet to be delimited and demarcated and given due publicity.
[59] ABC: 26 Aug. 2019; Four Corners; abc.net.au/2020_06_26; 'Timor Talks resume in Darwin, 29-9-04
[60] The text of the CMATS 2006 Agreement available ATS; C Schofield, 'Minding the Gap', 2017
[61] See ABC News; Hamish McDonald, 'Bernard Collaery's bombshell, National Affairs, 19 March 2020.
[62] The Timor Sea Conciliation; C Schofield and Bec Starting 'Timor Gap: A Boundary…'Lowy Inst.
[63] The reader may be interested in viewing: Hao Duy Phan, Davenport, Tara and Beckman, Robert (Eds) *The Timor-Leste/Australia Conciliation*, CIL and World Scientific, Singapore, 2019
[64] Visit the webpages for oil companies engaged and or with interest in the regional sea relating to the commitments, obligations and involvement. See also: J. Siapno "Timor-Leste on a Path of Authoritarianism? The author observes that "things are becoming more disheartening". Is this the curse of oil?
[65] Bernard Collaery *Oil Under Troubled Water* Australia's Timor Sea Intrigue, Melbourne: Melbourne University Press, 2020; Hamish McDonald, 'Bernard Collaery's bombshell, National Affairs, 19 March 2020.

ANNEX I
INTERNATIONAL CONVENTIONS AND BILATERAL AGREEMENTS IN THE CONTEXT OF THE ARAFURA SEA AND TIMOR SEA RESOURCE-SHARING ARRANGEMENTS

The Geneva *Convention on the Continental Shelf*, 29 April **1958**, 499 U.N.T.S. 311
Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia establishing Certain Seabed Boundaries in the Area of the Timor and Arafura Seas, supplementary to the Agreement of 18 May 1971, 9 October **1972**, 974 U.N.T.S. 319

United Nations *Convention on the Law of the Sea*, 10 December **1982**, 1833 U.N.T.S. 3 (Entered into Force **1994**)
Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of Australia Concerning the Implementation of a Provisional Fisheries Surveillance and Enforcement Line (PSFEL) Agreement, Signed, on 29 October 1981; entered into force: 17 February **1982**
Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia, 11 December **1989**, 1654 U.N.T.S. 105
Australia-Indonesia: Historic Maritime Boundary Agreement Statement made on 13 September **1996**.
United Nations Model Rules for the Conciliation of Disputes between States of 29 January **1996**
Treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an Exclusive Economic Zone Boundary and Certain Seabed Boundaries, 14 March **1997,** Australian Treaties (*not in force by 31 July 2020*) 4, reproduced in 36 I.L.M. 1053.
The "Memorandum of Understanding of Timor Sea Arrangement" concluded between Australia and UNTAET on 5 July **2001**
Timor Sea Treaty between the Gov. of East Timor and of Australia, 20 May **2002**, 2258 U.N.T.S. 3
Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to the Unitisation of the *Sunrise* and *Troubadour* Fields, 6 March **2003**, 2483 U.N.T.S. 317
Treaty between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea, 12 January **2006**, 2438 U.N.T.S. 359
The Arbitration Proceedings initiated by Timor-Leste with Australia pursuant to the Timor Sea Treaty on 23 April **2013**
The Comprehensive Package Agreement reached between the Parties in Copenhagen on 30 August **2017**
The Treaty Between the Democratic Republic of Timor-Leste and Australia establishing their Maritime Boundaries in the Timor Sea, signed: **6 March 2018 (Entry into Force 30 Aug 2019)**
PCA Case Nº 2016-10 'In The Matter Of The Maritime Boundary Between Timor-Leste And Australia' (The "Timor Sea Conciliation")
Report and Recommendations of the Compulsory Conciliation Commission between Timor-Leste and Australia on the Timor Sea. Dated: 9 May **2018**

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