

Talking Points

East Timor's Boundary Dispute with Australia

- 1) Australia and East Timor have not agreed to a permanent maritime boundary. In August 2003, nearly ten months after East Timor's prime minister requested negotiations on the boundary, the Australian prime minister agreed to begin talks by the end of the year, but he declined to accept a timetable or an end date for resolving the issue.
- 2) East Timor's parliament passed a maritime boundaries law in July 2002, claiming a 200 nautical mile Exclusive Economic Zone in all directions, subject to future negotiations with Indonesia and Australia. If current international legal principles are applied, a "median line" boundary would likely be drawn between Australia and East Timor, since the distance between them is less than 400 miles. Under legal principles established by case and statutory law since the signing of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), drawing a line halfway between the coastlines of two countries is the normal way to establish maritime boundaries when two countries are closer than 400 nautical miles apart.
- 3) Several interim resource-sharing agreements have been signed between Australia and East Timor. These agreements are derived from the illegal 1989 Timor Gap Treaty between Australia and Indonesia. That treaty heavily favored Australia, which asserted title to resources that should be within East Timorese territory. (Portugal, the legal administering power at the time, was not included in the negotiations.) The 1989 treaty created a "Zone of Cooperation" (ZOC) within which Australia and Indonesia would share oil development and profits. This zone cheated East Timor out of maritime resources since it was based on the Australia-Indonesia boundary drawn in 1972 (again, Portugal did not participate in the talks). The lateral (east-west) dimensions of ZOC intruded into East Timorese territory and the ZOC is entirely on East Timor's north side of the median line, closer to Indonesia and East Timor than to Australia. Portugal strongly protested these treaties both before and throughout Indonesia's occupation of East Timor.
- 4) In March 2002, Australia gave formal notice that it was withdrawing from international legal mechanisms to resolve boundary issues that cannot be settled by negotiation -- the International Court of Justice and the 1982 UNCLOS Tribunal. These actions left the soon-to-be-independent East Timor with no legal mechanism to establish its boundaries, in the absence of cooperative negotiations from Australia.
- 5) Agreements signed between independent East Timor and Australia take the central oil-bearing portion of the ZOC and re-label it the Joint Petroleum Development Area (JPDA) and alter the division of revenues. But under this arrangement, the largest amounts of what should be East Timor's petroleum resources are excluded from the JPDA. These include the bulk of the Greater Sunrise field and the nearly-depleted Laminaria-Corallina field; together they are far more lucrative than the Bayu Undan field, which is within the JPDA. Australia has taken possession of these resources outside the JPDA, although both countries claim them and they would belong to East Timor under UNCLOS principles. In the International Unitization Agreement (IUA) signed in March, the two countries agreed to "unitize" the vast Greater Sunrise gas field, deciding that 80% of it lies outside the JPDA (and hence under Australian control unless boundaries are settled). The IUA must now be ratified by both countries. Revenue from the 20% inside the JPDA will be divided. The agreements purport to be "without prejudice" to future boundary settlement, but they remain in effect unless boundaries are settled.
- 6) Australia has bullied East Timor by threatening to delay production and much-needed revenue for the new country unless it agreed to Australia's terms. Indeed, it is widely believed that the reason Australia agreed to start boundary negotiations by the end of the year was due to East Timor's reluctance to ratify the IUA. Many are skeptical that the Australian government will follow through on the negotiations and actually establish a permanent boundary within a reasonable amount of time, which East Timor's prime minister has suggested is 3-5 years. East Timor needs Bayu-Undan revenues (the large field nearest to commercial production) in the short-term (3-4 years); Australia held that project hostage in order to pressure East Timor

to sign the IUA, which is much more lucrative for Australia. According to a leaked transcript of one negotiating session, Australia's Foreign Minister Alexander Downer told East Timor's prime minister "We don't have to exploit the resources, they can stay there for 20, 40, 50 years." Later, Downer warned, "We are very tough. We will not care if you give information to the media. Let me give you a tutorial in politics - not a chance." (Find a copy of the transcript at: <http://www.crikey.com.au/politics/2003/03/06/20030306downertimor.html>.)

7) Without both internal and external public pressure, Australia profits by waiting out the exhaustion of oil and natural gas resources before agreeing to a boundary, taking revenue rightfully belonging to East Timor (perhaps as much as \$30 billion over three decades). This is revenue that can help East Timor become independent of foreign donors and escape from dire poverty as Southeast Asia's poorest country.

8) Every nation has the right to know where its territory ends and that of its neighbors begins. East Timor's independence will not be fully realized until its boundaries, both land and sea, are well-defined and accepted by its neighbors.

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