

DELINEATION OF MARITIME BOUNDARIES

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Introduction:

Timor-Leste has borders with Indonesia and Australia. The maritime borders with Indonesia are in the east, west and north, while the border with Australia is in the south.

The total land mass of Timor-Leste is about 15,000 km², while the maritime area is about 77,000 km². The maritime area is 5 times as large as the land mass.

We are now in the second decade of the XXIst century, but Timor-Leste has not yet established permanent maritime boundaries with Indonesia. The maritime boundary separating Timor-Leste from Australia is known as the southern edge of the JPDA, which was established in 2003.

Timor-Leste signed a treaty with Australia in 2003, the Timor Sea Treaty, which led to the development of the Bayu Undan oil and gas field. In 2006 the CMATS treaty was signed, which was supposed to pave the way for the development of Sunrise. One of the provisions of CMATS was that for 50 years boundaries would not be re-negotiated. In 2013 the government of Timor-Leste decided to unilaterally invalidate the treaty.

Records of territorial dispute resolutions show that they are a tediously long process. Specifically, the delineation of the land boundaries of East Timor took several decades and treaties between the former colonial powers, Portugal and the Netherlands, before they were settled: although the western part had been under Dutch authority since at least 1846, it took five conventions and treaties, in 1859, 1893, 1904, 1913, and finally 1916 before the borders were officially defined. The process had taken 70 years.

Timor-Leste is a sovereign and independent country, formally recognized by the United Nations on 20 May 2002, and as such has a full right to establish permanent maritime boundaries with its neighbors. Timor-Leste should do its best to define these boundaries where they do not exist, which is north of the JPDA, with Indonesia. The boundary with Australia is well defined and is represented by the southern edge of the JPDA, while the lateral edges of the JPDA delineate the boundaries between the EEZ's of Timor-Leste and Indonesia.

Australia and Indonesia maritime treaties:

1. In 1972 a Treaty was signed settling the seabed boundary between Indonesia and Australia. A gap was left south of what was then Portuguese Timor, as Portugal was not interested in negotiating the issue. The treaty entered into force in November 1973.
2. In 1989, a Treaty between Australia and the Republic of Indonesia established the Zone of Cooperation in an area between the Indonesia Province of East Timor and Northern Australia. The treaty also recognized Indonesian sovereignty over the EEZ north of the median line, on each side of the Zone of Cooperation.
3. These treaties resulted in most of Sunrise being under Australian seabed and Indonesian EEZ.

After Timor-Leste became Independent in May 2002, the central area of the former Zone of Cooperation became the JPDA, in which Timor-Leste is entitled to 90% of petroleum revenue and Australia to 10%, in particular the revenue from the Bayu Undan field, which was discovered in 1995. The content of the

reservoir before production started was 380 million barrels of petroleum liquids and 3.4 tcf of natural gas.

Bayu Undan Production:

Bayu Undan production of liquids started in 2004. In 2006 the production of natural gas followed. Production of natural gas has been steady, but production of condensate and LPG has decreased by as much as 75 to 80% since its peak in 2008/2009, when liquids represented 70% of revenue. Most of the money was in the liquids and originally gas production was not even considered. Revenue in 2015 was less than a quarter of peak revenue in 2012, not only because prices fell, but also because production tumbled.

According to the Ministry of Finance, Oil and Gas represented in 2013 76.4% of Timor-Leste's gross domestic product (RDTL GDS 2015), although a more realistic figure would be between 85 and 90%, and provided more than 93% of state revenue in 2014. Most of the income from the sale of the non-renewable petroleum has been saved in the Petroleum Fund, a sovereign fund containing \$16.5 billion. The Timorese people expect the Fund to finance state activities after the oil and gas fields are depleted in a few years, but the Fund may be empty by 2025. Timor-Leste has less than a decade to use its finite oil resources to underpin long-term prosperity and development (La'o Hamutuk, June 2015).

Sunrise Dispute:

The center of gravity of the Sunrise and Troubadour gas and condensate fields, collectively known as Greater Sunrise, is located approximately 160 km from Timor-Leste, 300 km from Australia, and 150 km from Indonesia. 82% of the fields is closer to Indonesian South Maluku than to Timor-Leste.

The fields were discovered in 1974 and hold resources of 5.13 tcf of gas and 225.9 million barrels of condensate.

In 2013, the Government of Timor-Leste referred a dispute with the Australian Government relating to the Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS) to international arbitration in accordance with dispute resolution procedures.

In 2016 the Government referred the dispute to a United Nations Conciliation Commission, which was finally convened at the end of June.

As per Woodside's website, once government alignment is established, the Sunrise Joint Venture believes there will be an opportunity to proceed with a development that benefits all parties (www.woodside.com.au).

Realities for Timor-Leste:

1. The history of Sunrise and the dispute over who owns it goes back more than forty years.
2. Australia and Indonesia signed a treaty "Establishing Seabed Boundaries" in 1972. This treaty was based on the continental shelf principle.
3. As Portugal objected to the negotiation, Australia and Indonesia left out of their scope all areas closer to Timor-Leste, called since the "Timor Gap".

4. Australia and Indonesia signed a treaty establishing EEZ boundaries in 1989. This treaty was based on the equidistance principle.
5. For various reasons, neither Australia nor Indonesia is bound by international court rulings regarding the issue.

Current Conciliation scenarios:

1. Australia wins the conciliation: back to CMATS (50:50) or Timor Sea Treaty (18-82%)
2. Australia loses, but chooses not to abide: back to Timor Sea Treaty (18-82%)
3. Australia loses and accepts to release the seabed, in which case:
 - a. Indonesia disagrees and gets 82% of Sunrise while Timor-Leste gets 18%
 - b. Indonesia agrees and Timor-Leste gets 100% of Sunrise

The only way for Timor-Leste to get 100% of Sunrise is if all the conditions below are met:

- A. The Commission decides Timor-Leste is entitled to 100% of Sunrise. The Commissions' decision is not binding upon the parties.
- B. Australia decides to comply, although it does not have to. The transfer of sovereignty would probably require that:
 - The Australian Constitution or law allow the transfer of sovereign territory to a foreign country
 - Australia organize a referendum about the loss of seabed
 - The Australian referendum approve the loss of seabed.
- C. Indonesia agrees, although it does not have to. The transfer of sovereignty would probably require that:
 - Indonesia Constitutions or laws allow the transfer of sovereign territory to a foreign country
 - Indonesia organize a referendum about the loss of EEZ of transfer of seabed under its EEZ
 - The Indonesian referendum approve the loss of EEZ of transfer of seabed under its EEZ

The risk of a loss for Timor-Leste is quite substantial. The probability of victory is on the contrary quite tenuous.

Timor-Leste's constraints:

- Lack of "in house expertise" for comparable cases prior to engaging foreign consultants
- Foreign consultants rely on "fees" but probably do not care much whether Timor-Leste wins or loses in court
- The recent experience with the Arendt Fox law firm, which handled the tax fraud case with ConocoPhillips, is that in the end Timor-Leste lost in Arbitration Court in Singapore, after having lost in 2014 in Dili Court. Timor-Leste will have to pay the terrific penalty of \$150 million, in installments
- The advisors to the chief negotiator XG must have the courage to say "what XG needs to hear" instead of "what XG likes to hear".

- Members of Cabinet in charge of Petroleum are “champions” at designing “fantasy” mega-projects for their own benefit rather than for the country’s development needs
- The Sunrise dispute is not an easy issue to tackle. It’s a complicated and complex “subject” to handle. Those in charge must show they master the 3 C’s: “Calm, Cool and Control”, which they must also couple with “Common-sense” – the sense of reasonable proportion. They also need to stop their wishful thinking and start anticipating the consequences of their policies

Timor-Leste can stop the Conciliation procedure any time it wishes, after due consideration of the lengthy procedure, its large costs, and the uncertain positive outcome. It took Russia and Norway 45 years to settle their maritime boundaries, and Indonesia and Malaysia 20 years so far, although they are still not agreed.

Considerations about the Bayu Undan assets:

There are four large groups of assets related to Bayu Undan. They are utilized to:

- extract the natural gas and liquids
- process and store the condensate and LPG
- pipe the gas to Darwin
- and finally produce the LNG for exports.

The Libertade FSO was the first integrated condensate/LPG (propane and butane) FSO ever built. It can store: 820,000bbl (130,000m³) of condensate, 300,000bbl (47,500 m³) of propane, and 300,000bbl (47,500 m³) of butane.

The pipeline is 500 km long, 26 inch in diameter, and supplies the natural gas from Bayu Undan to a 3.7 MTPA design capacity LNG plant.

The Wickham Point LNG facility was commissioned in February 2006 and delivered its first cargo of LNG to Japan in the same year. It converts gas to LNG at the export volume of 15 to 20 million cubic meters a day.

The total cost of the project was never made public, but it is quite probable that it amounted to about \$4 to \$5 billion in 2004/2006. It is acknowledged that for various reasons the cost would be much higher today, perhaps twice as much.

The reserve of liquids at Bayu Undan could last only a couple of years more, before the FSO stops operating.

The natural gas could last until 2020 or 2021.

Considering the existence of these valuable assets, soon to become idle, the government of Timor-Leste should be smart enough to consider taking advantage of the “golden” opportunity. Professor Alfredo Pires and his mates from Timor Gap and ANPM must use some “lateral” thinking to explore all possible avenues and find immediate solutions to pressing matters, rather than waste the People’s money for the imaginary and “absurd” projects of Taci Mane, while revenue, which has already considerably dwindled, will entirely dry up in a very few years if nothing is done.

Conclusions:

- The Timor-Leste's team overseeing the Conciliation effort must take the worst case scenario into consideration
- The Sunrise issue also involves Indonesia because of its existing EEZ over the fields
- For Australia and Indonesia, transferring national sovereignty to another country would need to go through a very rigid constitutional legal framework
- The decision of the Conciliation Commission will not be binding upon the parties
- Experience from other countries shows that maritime disputes are never an easy task and always take considerable time to resolve
- A quick, cheap, and imaginative technical solution has to be devised for Sunrise before revenue from Bayu Undan, already severely eroded, finally dries up.