

The Lowy Interpreter (9 March 2016)

Comment to an article by Steve Bracks

Here are the facts as I understand them.

Regarding the JPDA:

- a. All of the JPDA is East Timorese Exclusive Economic Zone (EEZ).
- b. In that East Timorese EEZ 90% of the petroleum revenue goes to East Timor and 10% to Australia.
- c. The Joint Petroleum Development Area (JPDA) is delineated on its southern edge by a line which is slightly to the south of the actual median line between Australia and East Timor, to the advantage of East Timor.
- d. The lateral edges of the JPDA are almost perfectly equidistant to East Timor and Indonesia.
- e. North of the JPDA, East Timor and Indonesia have not defined their maritime boundaries yet.

Regarding Sunrise:

- a. 20% of Sunrise is in East Timorese EEZ.
- b. 80% of Sunrise is in Indonesian EEZ.

Here is the quandary: Mr Bracks claims a field for East Timor that is in Indonesian EEZ, in an area where Indonesia and Australia agreed 45 years ago that the seabed should be Australian.

East Timor and Australia can quarrel and negotiate all they want and submit the dispute to the Court of Law of their choice, they will not change the fact that 80% of Sunrise is in Indonesian EEZ. The geometry is unarguable and the median line will surely be insisted upon by the Indonesian government.

For East Timor to acquire 100% of Sunrise, the legal scenario would be as follows:

1. East Timor and Australia decide jointly to invalidate CMATS, reverting from the current 50-50% sharing of Sunrise revenue to 18-82%. The two would then be at liberty to negotiate a permanent boundary, which is the southern

edge of the JPDA, the only place where East Timorese and Australian waters are in contact.

2. East Timor and Australia decide jointly to invalidate the Timor Sea Treaty and negotiate the withdrawal of the 10% clause in the JPDA, leaving all the petroleum revenue to East Timor, in total accordance with the spirit of UNCLOS.

3. Indonesia and Australia decide jointly to invalidate their 1971 agreement and negotiate the transfer of the seabed from Australia to Indonesia, so that all the seabed north of the median line in Indonesian EEZ becomes Indonesian, in total accordance with the spirit of UNCLOS.

4. Once all of the above has been accomplished, East Timor and Indonesia decide to negotiate their common EEZ and seabed boundaries away from equidistance, so that all of Sunrise falls into East Timorese EEZ. A transfer of 12,600 square kilometers of what Indonesia presently regards as its EEZ is needed to implement that agreement, if it can be made.

This is the procedure for East Timor to obtain what it wants, i.e. a petroleum field lying inside Indonesian EEZ.

Let's analyze the procedure to reach the result desired by East Timor, step by step:

1. Australia may yield to East Timorese pressure and agree to invalidate CMATS so that the only East Timorese-Australian EEZ boundary (the current southern edge of the JPDA) is moved north several nautical miles, to the benefit of Australia, and Australia receives 82% of Sunrise revenue instead of 50%. If no further development happened after that it is impossible to understand the net benefit for East Timor.

2. Australia may agree to invalidate the Timor Sea Treaty now that the only surviving field in the area is near exhaustion, and then de-unitize Sunrise so as to be free to develop its 80% share of the field in case there were no further development with Indonesia, an outcome directly arising from the termination of CMATS, which is East Timor's present position.

3. Indonesia would undoubtedly welcome warmly the prospect of acquiring the seabed under her EEZ, while the loss of Australian seabed would probably have to be ratified in Australia by the parliament, if not by the people at a referendum.

4. Although quite unlikely, Indonesia may freely decide to make a gift of 12,600 square kilometers of her EEZ to East Timor. If not, the International Court of Justice may decide to mandate the gift based on the legal precedents raised by East Timor's lawyers, which incidentally happen to be quite unconvincing, if not totally irrelevant. So far, Indonesia has not given any indication that she would agree to a shift from equidistance, and recently even stated that she would not. The rationale for Indonesia to transfer to East Timor the seabed she must first obtain from Australia is presently unclear and is a rather difficult policy change to convince her people as well as her armed forces.

Mr. Bracks' insistence to refer to the median line between East Timor and Australia as if Indonesia did not exist is puzzling. As a preliminary, but indispensable, step, I suggest Mr. Bracks request the Australian Government to declare that Australia is willing to surrender to Indonesia Australian seabed under Indonesia's EEZ, in order for Indonesia to turn it over to East Timor, assuming of course that Indonesia has agreed on the method.