

The uncharted hazards of the Timor Sea dispute

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In the course of the Timor Sea maritime boundary quarrel, the recent declarations made by the main Australian opposition party in support of East Timorese territorial claims have the serious potential of irreversibly upsetting the territorial status quo, with adverse consequences for both East Timor and Australia, the only potential beneficiary being third party Indonesia.

At the heart of the quarrel are two large oil and gas fields, Sunrise and Troubadour, 80% of which lie under Australian seabed and Indonesian water, while 20% is in the Australian-East Timorese Joint Petroleum Development Area (JPDA), where East Timor commands 90% of all revenue and Australia 10%. Although this situation would result in Australia receiving 82% of revenue from the fields and East Timor 18% only, the two countries agreed in 2006 to share the revenue from Sunrise and Troubadour equally, 50% - 50%. Nevertheless, the development of the fields has ever since been stymied by East Timor, whose new avowed position since the agreement was signed is that boundaries need to be redrawn so as to give her 100% of the fields.

Technically, the dispute is about the reasonable assertion that one equitable method for defining maritime boundaries between two adjacent countries rests on the principle that relative distance to shore should be its sole determinant. However, the exponents of this legitimate principle are apparently unaware that the areas in dispute, on each side of the JPDA, happen to be closer to Indonesia, a circumstance that was certainly instrumental in defining the JPDA boundaries in the first place, as, undoubtedly, these were not drawn at random.

Over the past 45 years, Australia and Indonesia reached several agreements to share seabed and water column outside the area that later became the JPDA. Water column agreements were based on relative distance, while seabed agreements were not, and the result is that in certain areas Australian seabed underlies Indonesian water column. Seabed regards mineral rights, for example petroleum, water column maritime rights, such as fishing.

Should any executive declaration be made by Australia that relative distance to shore determines comprehensive maritime and seabed sovereignty, Indonesia would have a treble rationale for immediately claiming all the areas disputed by East Timor:

- A. Indonesia may very well infer that her own seabed treaty boundaries with Australia deserve renegotiation, having been established on the Australian contrary proposition that distance to shore was not instrumental, and claim for herself all seabed areas closer to her shores. These areas cover 45,000 square kilometres (17,000 square miles) and encompass not only Sunrise and Troubadour, but also the fields of Buffalo, Laminaria, and Corallina, which were developed in the past 15 years, all of their tax revenue flowing to the treaty owner of the seabed, Australia.
- B. If Australia went a step further and transferred to East Timor full jurisdiction over parts of its seabed lying under Indonesian water column, based on the concept of relative distance, Indonesia would likely apply the same concept to claim said areas from East Timor, as these areas are closer to Indonesia.
- C. The water columns above the disputed areas are a recognized and undisputed part of Indonesia's Exclusive Economic Zone and all Timorese claims are based on the desirable equivalence of seabed, water column, and Exclusive Economic Zone, according to which the nation who owns the water column also owns the seabed.

After transfer to Indonesia of all seabed areas under her water columns, existing exploration and production leases would be voided and re-auctioned by Indonesia. Contrary to the existing agreement between Australia and East Timor, Indonesia would probably not share petroleum revenue equally with East Timor, considering East Timor's efforts to take from Australia territories that would be Indonesian by virtue of distance. Indonesia would develop its 80% share unilaterally.

Neither East Timor nor Australia would end up winning the dispute. Indonesia would.

In East Timor and Australia, the state of public opinion about the current dispute is more or less as follows:

- In East Timor, the chief concerns among the population, recognized as the hungriest in Asia, are economic development, all but frozen indirectly since the mid-2000's, for the sake of the boundary dispute, and, incidentally, the return to unadulterated parliamentary democracy after executive power was disconcertingly transferred to the legislative minority without electoral consultation. Many Timorese perceive that they have nothing to gain, and much to lose, from a hard to justify boundary quarrel which is probably being used merely as a pretext for governmental inaction. After all, the rousing of nationalistic territorial passions is hardly a novel demagogic instrument when trying to distract a population from its economic woes.
- In Australia, the public have been told by critics for decades that their country was guilty of usurping foreign mineral resources and, as the Government have rarely, if ever, objected to such statements, the public have no reason to question these grave accusations.

It seems the main ferment in the dispute is the apparent aloofness of successive Australian Governments with regard to Timor Sea issues, which may have facilitated the unintentional perpetuation of a rapidly decaying situation:

1. By not explaining her position regarding maritime boundaries, Australia has let her own public doubt her fairness and honesty, while providing uncertain arguments to a group claiming territory to which they are not geometrically entitled.
2. By not intervening in the technical dispute between the Sunrise operator and the Timorese Government, in which the latter sought to impose its own technical choices, in contravention of the terms of the Treaties, Australia has helped freeze the project for years to come. A window of opportunity has been shut and it is likely that the next commercially viable opportunity will be quite contrary to the East Timorese government's current outlook.
3. By not shedding any light on the real motives behind its alleged spying activities in East Timor, however uncommendable, Australia gives of herself the appearance of a deceitful bully, whereas common sense would suggest that the actual motives were far removed from trying to obtain an unfair but hard to comprehend commercial advantage in the negotiation of Certain Maritime Arrangements in the Timor Sea (CMATS), the 2006 treaty which regulates the allocation of revenue from Sunrise and Troubadour. The East Timorese side seems to imply that some secret information, obtained by Australian spies, relieved Australia's negotiators from the necessity to renounce all of Sunrise. As stated above, East Timor owns less than 20% of the field geographically but was granted by treaty 50% of its revenue. What was the *bona fide* secret that, had it not been revealed to Australia, would have compelled her to give up all of Sunrise?

East Timor's future depends on the urgent removal of the fallacies and misconceptions that poison relations across the Timor Sea and continue to waste so much of the country's scarce human resources.

David and Goliath? Or Don Quixote's windmills?