

What is the interest behind the Indonesia-Australia Seabed Boundary?

A critical review of the Continental Shelf Agreement of 1972

Author

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Introduction

As a neighbour to Australian and Indonesia, early this year Timor-Leste Prime Minister Dr. Rui Maria Araujo with his ministers visited Indonesia, and as part of the agenda the Prime Minister had a discussion with the *President* of Indonesia Joko Widodo about the maritime and terrestrial boundary with Indonesia (Gabinette do Primeiro Ministro, 2015).

On the other side the relationship between Dili and Canberra could be said to be a little bit rough, especially since the ASIO raid on Timor-Leste documents in Canberra, followed by the Australian Government loss in the International Court of Justice in the Hague, which was related to the espionage case. As stated by former prime minister of Timor-Leste Xanana Gusmao in Manila on 7 June 2013, Timor-Leste foreign policy has zero enemies, and in particular Australia and Indonesia currently had an excellent relationship with Timor-Leste (Government of Timor-Leste, 2013).

This essay will not challenge Timor-Leste foreign policy strategy or diplomatic relationships, however it will critically review the continental shelf agreement of 1972, and will look at the interest between former Indonesian President Soeharto and former Prime Minister of Australia William McMahon back in the 1970's. This empirical study will also will provide some technical evidence of geological data which proves where the continental shelf of the island of Timor belongs.

History

First for some facts behind the continental shelf agreement between Australia and Indonesia which was signed in 9 October 1972 (United Nations, 1975). According to one of the Australian Senators Ian Sinclair, in 1956 Portugal claimed Timor-Sea sovereignty based on the

median-line principle (Sinclair, 1977), however Australia refused to recognise this and reclaimed sovereignty with the Continental Shelf platform (King, 2002). The pressure continued on by the Australian government in 1971, when the Portuguese still refused the seabed boundary as a border between two countries (House of Representatives Hansard, 1973). On the other hand, from November 1970 up until April 1971, the Portuguese Ambassador in Canberra, Carlos Empis Wemans was seeking consultation with Canberra, specifically with Deputy Secretary Owen Harry, however it did not happen because Canberra preferred to negotiate with Jakarta in favour of the seabed boundary (La Haye, 1991). The reason why Portugal was seeking a meeting with the Australian Department of External Affairs was because the *Boletim Oficial de Timor* of 24 October 1970 published a document request from the Oceanic Exploration Company with the date 31 December 1968 to the *Ministro do Ultramar* regarding an exploration concession in the Timor Sea area, and also because the licensing covered an overlapping area which was claimed by Australia (King, 2002). The Portuguese not only provided license to the Oceanic Exploration, but they also in December 1974 provided permits to the Petrotimor Company as a group consortium together with Oceanic Exploration and Portuguese Interests (The Age, 1974), for which the licensing covered 23,192 square miles or around 60,700 square kilometres (King, 2002).

Previously, before the giant company Oceanic Exploration which was based in Colorado United States touched the Timor Sea, in 1962 some large Australian oil companies such as Australian Aquitaine Pty Ltd, Arco Australia Ltd and Esso Australia Ltd, has started geophysical exploration (Laws & Kraus, 1974) and followed aeromagnetic survey in 1963 by Woodside Petroleum, Burmah Oil Company and Anglo-Dutch Shell Oil Company, and continued on with seismic study in 1964-1968 (Mollan et al, 1969). The study was conducted around the Bonaparte Basin which later on was to be called the Joint Petroleum Development Area (JPDA). In 1970 Bonaparte Gulf was revealed as potential fossil fuels region, which was estimated to contain between 500 million – 5 billion barrels of oil, and 50,000 billion cubic feet of gas (King, 2002).

In spite of potential reserves information above, on 23rd May 1973, Australian Senator Justin O’Byrne declared that;

“It can only be to our advantage to have this matter settled amicably. We have the very good fortune to possess a defined area that is potentially rich. It has been stated that this area could become the richest hydrocarbon empire in the world. It contains gas and oil in quantities that could match even the fabulous riches of the Middle East. The future of Australia, at a time when a fuel crisis is developing in the United States of America and when the traditional source of supply of hydrocarbons is the subject of very delicate arrangements, with certain traditional practices being changed and the prices being under barter, is bright. We are extremely fortunate that at this time we are emerging into an era of self-sufficiency or near self-sufficiency in the supply of hydrocarbons” (Senate Hansard, 1973:1838-1840).

After the exploration process by the Australian lead companies in 1962, they achieved a result in 1970. Strategically, Canberra was moving fast by establishing an official cooperation with Indonesia. Apparently, with or without direct support to the coup of the new regime under Commander General Soeharto in 1965 against the first President Indonesia Soekarno, the cooperation between Australia and Indonesia in 1966 was successful via the Inter-Government Group on Indonesia (IGGI) which agreed to a \$20 million aid program to Indonesia for the period 1972 – 1975. The aid included a military air-strike plane, Sabre jets [\$6.1m] and mapping in Indonesia [\$2m] (King, 2002). On 16 October 1970 Indonesia showed their own maps which were based on the continental shelf as the median line between Australian and Timor (Robinson, 1970). In February 1972, second Indonesian President Soeharto visited Australia (King, 2002), and asked fellow Prime Minister William McMahon in that time to work hard and fast to conclude the seabed boundary or continental self agreement, which was finally achieved on 9 October 1972 (McMahon, 1972).

The continental self talks between Indonesia and Australia began in November 1969 at the Economic Commission of Asia and the Far East conference (Sorby, 1969). In 1953 Australia had well prepared to claim its continental self as their maritime boundary position (Prescott, 1972), by developing two interpretations of Article 6.1 of the 1958 Geneva Convention on the Law of the Sea, which in regard to delimitation of international boundaries states:

“Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In absence of agreement, and

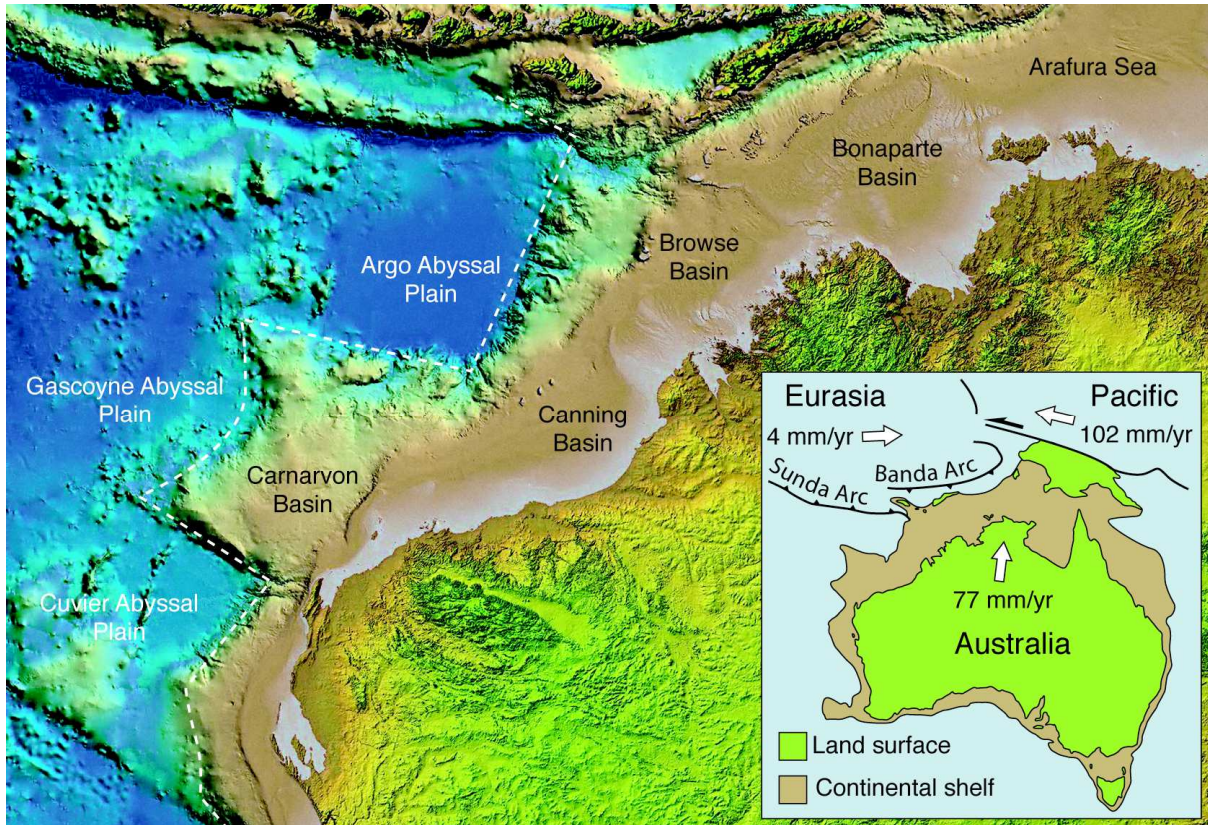
unless another boundary line is justified by special circumstances, the boundary line is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each state is measured” (King, 2002:2).

First Australia was concerned about drawing the line at the Arafura Sea, east of longitude 133° 14' East. The reason for the line was because the Australian government had already provided a license for petroleum explorations, which is in between West Irian and Aru Island (King, 2002). Therefore, Australia strongly believed the permits area was lying in the continental shelf which arbitrated to both Australian and Indonesia (Prescott, 1972).

A second interpretation is that Australia believed that the Timor Trough was a ‘huge steep cleft or declivity’ as stated by former minister for External Affairs William McMahon on 30 October 1970 at Parliament House; the Timor tranche is more than 550 nautical miles long or 1017.5 kilometres long with an average of 40 miles wide or 74 kilometres, and with the slopes down a depth of over 10,000 feet or over 3000 meters, and according to his source above, it is therefore what he called “unmistakably morphological”, meaning he claimed that the Timor Trough is consequently a boundary between Australia and Timor, which unravelling the continental shelf (Minister for External Affairs, 1970).

According to former Indonesian Justice Minister in 1976 and Foreign Minister in 1977, Dr. Mochtar Kusumaatmadja as stated in the academic journal *Far Eastern Economic Review* it “is not true that the Timor Trench constituted a natural boundary between the two shelves” (Richardson, 1979:45). As a law of the sea expert, Dr. Mochtar explained in the *APPEA Journal* that “The Timor Trough is a modern bathymetric trench in which water depths exceed 10,000 feet (3000m)The formation of the trough is probably due to isostatic adjustment following the collision in the Early Miocene of the Australian and Asian Plates in the region immediately north of the island of Timor” (Laws & Kraus, 1974:80). Dr. Mochtar also stated in the newspaper the *Sydney Morning Herald* on 3rd of June 1972 “If the plates collided north of Timor then the Trough/Trench was indeed merely 'an incidental depression in the sea-floor, not the definitive edge of two shelves” (Hastings, 1972). The same notions also came from Charles Hutchison, which declared that “the continental shelf unit extends from the Australia

Shaul shelf, beneath the axis of the Timor Through, to reappear uplifted and folded on the island, where it is widely exposed” (Smith, 2011:51)



The images above clearly show that the Australian continental self included Sumba, Timor and Papua Islands. These images were presented by one of the advisors (Geir Ytreland) working at the Timor-Leste Ministry of Natural Resources and Energy Policy (MNREP) in the first constitutional government (2005).

This research paper has been spent many hours finding empirical evidence such as the Seismic Study Survey which was conducted by the Department of Minerals and Energy of Australia. The researcher of this essay has enough evidence to counter the statement of William McMahon that the “Timor Trough is consequently a boundary between Australia and Timor”, as it is based on false evidence. See the documents below with some technical statements which are in contrast to McMahon’s declaration.

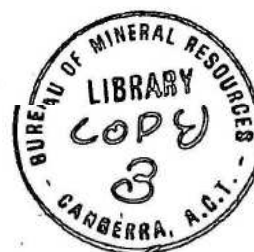
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DEPARTMENT OF
MINERALS AND ENERGY



BUREAU OF MINERAL RESOURCES,
GEOLOGY AND GEOPHYSICS

RECORD 1975/32



SEISMIC REFLECTION PROFILES ACROSS THE
TIMOR TROUGH.

LETTER TO NATURE

by

R.A.P. Garnett

BMR
Record
1975/32

The information contained in this report has been obtained by the Department of Minerals and Energy as part of the policy of the Australian Government to assist in the exploration and development of mineral resources. It may not be published in any form or used in a company prospectus or statement without the permission in writing of the Director, Bureau of Mineral Resources, Geology and Geophysics.

The scanned image above states that the Department of Minerals and Energy Australia has conducted a seismic survey across the Timor Trough, in which they found that the Timor Island was a part of the Australian Continental Shelf; this is in contrast to what William McMahon had declared. See the following statement as declared by that document.

The Timor Trough exists as an obvious bathymetric division separating Timor from the broad continental shelf off northern Australia. It has been proposed by Fitch¹, Warris², and others that the Trough is also the locus of a fundamental crustal plate boundary, now perhaps inactive. Audley-Charles et al.³ consider that the plate boundary lies to the north of Timor but that the Trough downwarped as a result of collision of the Australian continent with a subduction zone at that boundary.

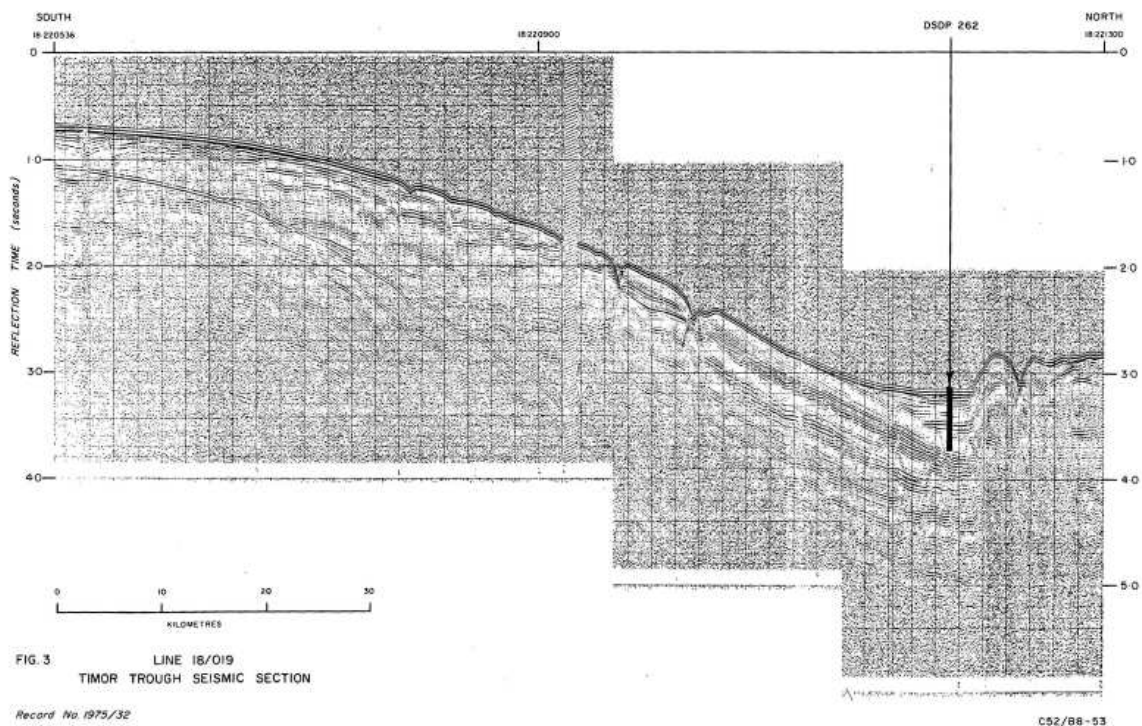
The statement above can be interpreted that the island of Timor was formed by a collision between Australian continents with another zone at that boundary, meaning the Indonesian continent.

The character of the seismic sections across the northern flank of the trough differs considerably from that to the south. Seismic horizons are apparent only to 0.5 seconds reflection time (500 m) beneath the rugged sea bottom, and they show considerable distortion of the sediments. The deepest of these reflections can scarcely represent the top of a crystalline basement since the magnetic field over the area is quite smooth. It seems more likely that the lack of discernible deeper seismic horizons is due to the highly disturbed nature of the rocks forming the northern flank of the trough. These rocks are probably sedimentary and may well be the same Bobonaro scaly clays which are found in a south-dipping formation along the south coast of Timor⁵.

The last sentence in this paragraph refers to the same sedimentary rocks in the Timor Trough as similar to clays in Bobonaro.

The origin of the Trough is not clear, but the theory that it represents the surface expression of a northward dipping subduction zone^{1,2} can not be discounted on this seismic evidence. The disturbed nature of the rocks to the north of the Trough and the fact that they appear to overlie to some extent the downward dipping beds of the southern flank may be due to overthrusting from the north but may also be caused by gravity sliding of the scaly clays, perhaps as a result of the uplifting of Timor since the Miocene⁶. If the distortion of the Pliocene oozes at the base of the trough is the result of folding, and not intrusion, however, either or both of these processes have continued since the downwarp.

This paragraph states that because of gravity sliding, this has lifted the island of Timor since the Miocene time which according to the geologic time scale means the formation of the island has happened around 5 to 24 million years ago.



The above images which were published with the above documents prove that the Timor Trough did not go a further 3000 meters downward.

Before entering further discussion this paper would like to review each of the articles that were comprised in the continental shelf agreement between Jakarta and Canberra of 18 May 1971, which were signed by former Australian Foreign Minister Nigel Bowen and Indonesian Mining Minister Soemantri Brodjonegoro on 9 October 1972 in Jakarta.

Continental Shelf Agreement of 1972

No.14123

“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)” Authentic text: English and Indonesian. Registered by Australia on 7 August 1975 (United Nations, 1975).

The cover of the agreement clearly illustrated Australian interest by registering the agreement without Indonesia participation. This could be the reason why Dr Mochtar Kusuma Atmaja stated that “Australia had taken Indonesia to the cleaners”; see Michael Richardson (1978), Peter Hastings (1978)

“The Government of the Commonwealth of Australia and the Government of the Republic of Indonesia, Recalling the Agreement between the two Governments, signed on the eighteenth day of May One thousand nine hundred and seventy-one, establishing seabed boundaries in the Arafura Sea and in certain areas off the coasts of the island of New Guinea (Irian),

Recalling further that in the aforesaid Agreement the two Governments left for later discussion the question of the delimitation of the respective areas of adjacent seabed in the Arafura and Timor Seas westward of Longitude 133° 23' East,

Resolving, as good neighbours and in a spirit of co-operation and friendship, to settle permanently the limits of the areas referred to in the preceding paragraph within which the respective Governments shall exercise sovereign rights with respect to the exploration of the seabed and the exploitation of its natural resources,

Have agreed as follows:” (United Nations, 1975).

The last paragraph of the preamble above reflects the hypothetical motion of the Australian side. As mentioned earlier in this essay, from 1962 to 1970 Australian oil companies had explored and identified fossil fuel resources beneath the continental shelf. The question is

how could Indonesia at that time not notice that under the coordinated points A16 and A17 lay five billion barrels of oil and fifty thousand billion cubic feet of gas.

Article 1

“In the area to the south of the Tanimbar Islands, the boundary between the area of seabed that is adjacent to and appertains to the Commonwealth of Australia and the area of seabed that is adjacent to and appertains to the Republic of Indonesia shall be the straight lines shown on the Chart annexed to this Agreement commencing at the Point of Latitude 8°53' South, Longitude 133° 23' (Point A 12 specified in the Agreement between the two countries dated the eighteenth day of May One thousand nine hundred and seventy-one), thence connecting in a westerly direction the points specified hereunder in the sequence so specified:

A 13. The point of Latitude 8° 54' South, Longitude 133° 14' East

A 14. The point of Latitude 9° 25' South, Longitude 130° 10' East

A 15. The point of Latitude 9° 25' South, Longitude 128° 00' East

A 16. The point of Latitude 9° 28' South, Longitude 127° 56' East” (United Nations, 1975)

Article 2

“In the area south of Roti and Timor Islands, the boundary between the area of seabed that is adjacent to and appertains to the Commonwealth of Australia and the area of seabed that is adjacent to and appertains to the Republic of Indonesia shall be the straight lines, shown on the Chart annexed to this Agreement commencing at the point of Latitude 10°28' South, Longitude 126° 00' East (Point A 17), and thence connecting in a westerly direction the points specified hereunder in the sequence so specified:

A 18. The point of Latitude 10° 37' South, Longitude 125° 41' East

A 19. The point of Latitude 11° 01' South, Longitude 125° 19' East

A 20. The point of Latitude 11° 07' South, Longitude 124° 34' East

A 21. The point of Latitude 11° 25' South, Longitude 124° 10' East

A 22. The point of Latitude 11° 26' South, Longitude 124° 00' East

A 23. The point of Latitude 11° 28' South, Longitude 123° 40' East

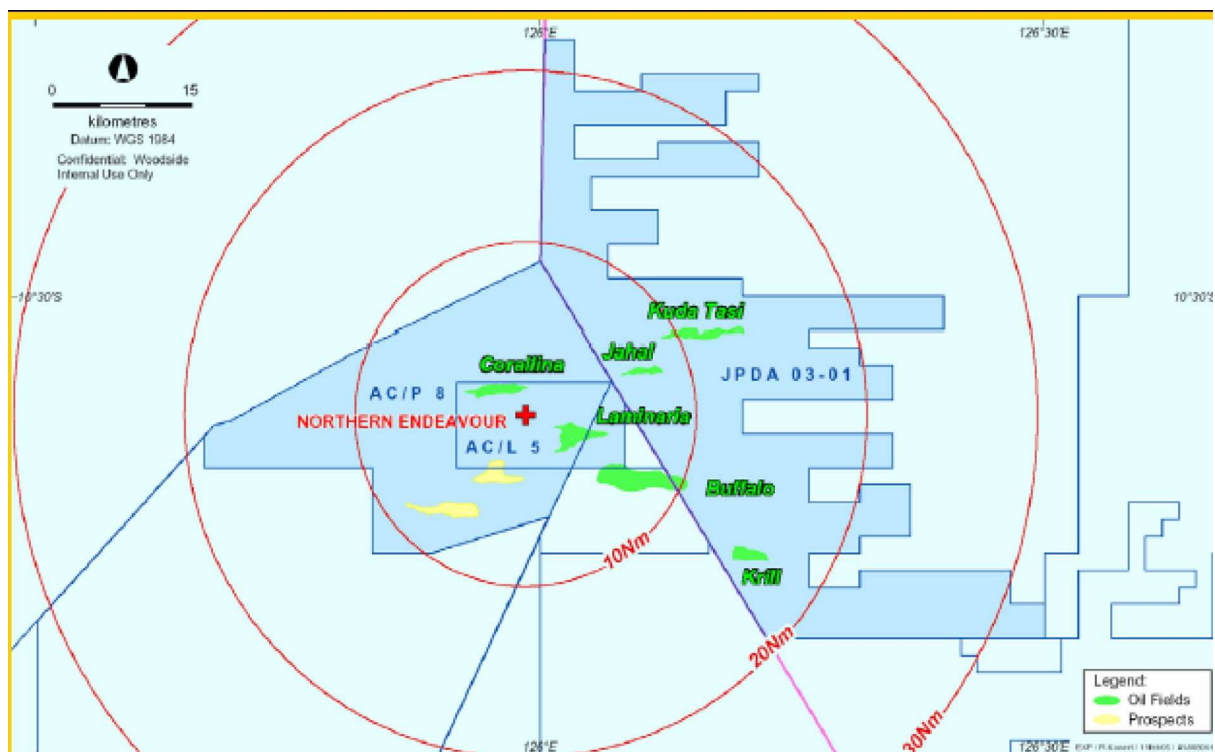
A 24. The point of Latitude 11° 23' South, Longitude 123° 26' East

A 25. The point of Latitude 11° 35' South, Longitude 123° 14' East” (United Nations, 1975)

Article 3

“The lines between Points A 15 and A 16 and between Points A 17 and A 18 referred to in Article 1 and Article 2 respectively, indicate the direction of those portions of the boundary. In the event of any further delimitation agreement or agreements being concluded between governments exercising sovereign rights with respect to the exploration of the seabed and the exploitation of its natural resources in the area of the Timor Sea, the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia shall consult each other with a view to agreeing on such adjustment or adjustments, if any, as may be necessary in those portions of the boundary lines between Points A 15 and A 16 and between Points A 17 and A 18.” (United Nations, 1975)

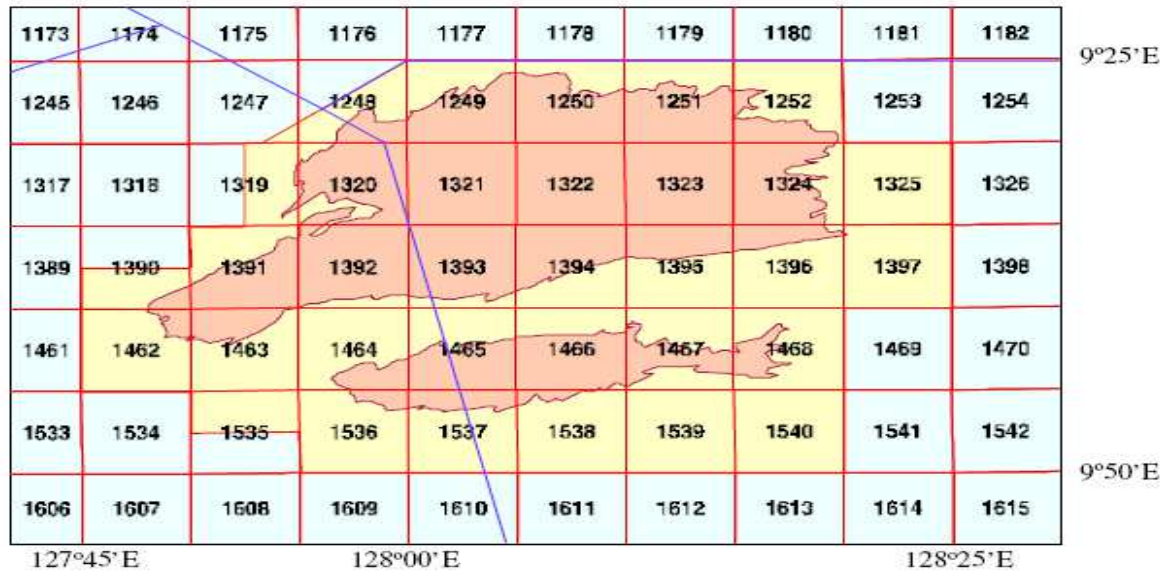
If we compare and analyse the Article 1,2 and 3 above, it’s clear that these continental self agreements are not rational because in Article 1 and 2 it clearly states the measurement coordinate points based on the adjacent position of two countries, but in Article 3, both governments ‘shall consult each other with a view agreeing on such adjustment or adjustments’, in terms of points A15 to A16 and A17 to A18. The question is, why do they have to consult with each other? If the coordinates are based on the spirit of the continental shelf, why are Australia and Indonesia concerned about these last four coordinate points? Is it because points A16 and A17 are the key coordinate points which are in favour of some large reservoir? Let’s see where exactly points A16 and A17 lie.



Source: Woodside

The images above are for Woodside’s internal use only, however the point of A17 is laid exactly near Laminaria, Corallina, and Buffalo fields. If the line just stopped at A18, this could mean that most of the fields lie inside the Joint Petroleum Development Area (JPDA).

Map showing outline of the Unit Area and outline of the Unit Reservoirs



Source for the images above is Greater Sunrise International Unitisation Agreement.

The above images show exactly where the coordinate points A15 and A16 are. According to the Seabed Boundary Agreement on the last page of the document, coordinate points A15 and A16 are divided between Sunrise and Troubadour fields, with 20.1% belonging to the JPDA and 79.9% belonging to Australia. The question is would Indonesia have agreed knowing that coordinate points A15 and A16 are lying on a gigantic gas field?

Article 4

“The Government of the Commonwealth of Australia and the Government of the Republic of Indonesia mutually acknowledge the sovereign rights of the respective Governments in and over the seabed areas within the limits established by this Agreement and that they will cease to claim or to exercise sovereign rights with respect to the exploration of the seabed and the exploitation of its natural resources beyond the boundaries so established.” (United Nations, 1975).

Article 5

“For the purpose of this Agreement, "seabed" includes the subsoil thereof, except where the context otherwise requires.”(United Nations, 1975).

Article 6

“1. The co-ordinates of the points specified in Articles 1 and 2 of this Agreement are geographical co-ordinates, and the actual location of these points and of the lines joining them shall be determined by a method to be agreed upon by the competent authorities of the two Governments.

2. For the purpose of paragraph 1 of this Article, the competent authorities in relation to the Commonwealth of Australia shall be the Director of National Mapping and any person acting with his authority, and in relation to the Republic of Indonesia shall be the Chief of the Co-ordinating Body for National Survey and Mapping (Ketua Badan Koordinasi Survey Dan Pemetaan Nasional) and any person acting with his authority.” (United Nations, 1975).

Article 4 states that with respect to the exploration of the seabed and the exploitation of its natural resources, “beyond the boundaries” is agreed to. How could Indonesia agree to let Australia explore and exploit beyond the boundaries? The emphasis is on Article 5 which re-declares that the seabed includes the subsoil, and that it will be an exemption which means that there is no requirement of disagreement on exploration and exploitation under the seabed. In Article 6, it clearly shows that the Australian regulatory body did not consult the Indonesian Badan Koordinasi Survei dan Pemetaan Nasional; it would be strange if Indonesia had noticed but still signed the agreement.

Article 7

“If any single accumulation of liquid hydrocarbons or natural gas, or if any other mineral deposit beneath the seabed, extends across any of the lines that are specified or described in Articles 1 and 2 of this Agreement, and the part of such accumulation or deposit that is situated on one side of the line is recoverable in fluid form wholly or in part from the other side of the line, the two Governments will seek to reach agreement on the manner in which the accumulation or deposit shall be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation.” (United Nations, 1975).

Article 7 shows the ambition of the Australian government for seeking oil and gas deposits even though the reservoir extended beyond the coordinate points.

Article 8

“1. Where the Government of the Commonwealth of Australia has granted an exploration permit for petroleum or a production licence for petroleum under the Petroleum (Submerged Lands) Acts of the Commonwealth of Australia over a part of the seabed over which that Government ceases to exercise sovereign rights by virtue of this Agreement, and that permit or licence is in force immediately prior to the entry into force of this Agreement, the Government of Indonesia or its authorised agent shall, upon application by the registered holder of the permit or licence, or where there is more than one registered holder, by the registered holders acting jointly, be willing to offer and to negotiate a production sharing contract under Indonesian law to explore for and to produce oil and natural gas in respect of the same part of the seabed on terms that are not less favourable than those provided under Indonesian law in existing production sharing contracts in other parts of the seabed under Indonesian jurisdiction.

2. An application for negotiation in accordance with paragraph 1 of this Article must be made by the registered holder or holders within nine months after the entry into force of this Agreement. If no application is made within this period, or if an offer made in accordance with paragraph 1 of this Article is, after negotiation, not accepted by the permittee or licensee, the Government of the Republic of Indonesia shall have no further obligation to the registered holder or holders of a permit or licence to which paragraph 1 of this Article applies.

3. For the purpose of this Article, "registered holder" means a company that was a registered holder of an exploration permit for petroleum or a production licence for petroleum, as the case may be, under the Petroleum (Submerged Lands) Acts of the Commonwealth of Australia immediately prior to the entry into force of this Agreement.” (United Nations, 1975).

Article 8 shows the Australian determination for releasing licensing to oil companies, and urges the Australian Act of (Submerged Lands) to rule this future industry. By finding no evidence over Indonesian involvement in release licensing around the Timor Sea area, it is proved that this Seabed Boundary agreement only provided one sided benefits to the Australina government.

Point number 2 clearly states that the Australian government frightened Indonesia by giving a nine month period to process the application of the registered holders. Why would this rule only apply to Indonesia; if this agreement is based on a relationship of mutual respect, it should be written for both, not just Indonesia.

At point number 3, tendentiously Australia refers to their laws not Indonesia.

Article 9

“Any dispute between the two Governments arising out of the interpretation or implementation of this Agreement shall be settled peacefully by consultation or negotiation.” (United Nations, 1975).

Article 10

“This Agreement is subject to ratification in accordance with the constitutional requirements of each country, and shall enter into force on the day on which the Instruments of Ratification are exchanged.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at Jakarta this ninth day of October 1972 in the English and Indonesian languages.”
(United Nations, 1975).

¹ Signed by Nigel Bowen – Signé par Nigel Bowen.

² Signed by Sumantri Brodjonegoro – Signé par Sumantri Brodjonegoro.

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Article 9 reflects a typical attitude of any country that has been ambitious or not fair in negotiations or agreements, that they always prevent future disputes by applying this section, in which any type of settlement has to be achieved “peacefully by consultation or negotiation”, meaning not to be taken to the International Court of Justice.

Conclusion

This essay has provided some evidence related to the history of Australian interest in the Timor-Sea, which clearly shows economic interests over Indonesia. The involvement of former Indonesia President Soeharto and former Australian Prime Minister William McMahon are very obvious, which we can see through trading over the continental shelf agreement with the twenty million Australian dollar aid program. Even though the empirical evidence such as seismic data surveys has proven that the island of Timor is part of the same continental shelf with Australia, still they ignored the facts. The Australian government will do everything to legalize the action of exploiting natural resources; we can see as a good

example the continental shelf agreement, which from Articles 1 to 10 is in favour of Australia and not Indonesia.

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