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Timor Sea policy a challenge for Labor

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Australia is a sparsely populated island of 24 million people, separated from our billions of neighbours in Asia by the Timor Sea. We have the good fortune to inhabit one of the most economically successful, peaceful and environmentally diverse nations on the planet.

Australian governments of all persuasions have recognised that it is clearly in our national interest for international relations to be conducted according to the rule of law and without resort to conflict.

Gregory Poling, a fellow with the Pacific Partners Initiative at the Centre for Strategic and International Studies in Washington, recently observed that as "a maritime nation and Indo-Pacific middle power, the protection of the global maritime commons, international rules and norms at sea, and freedom of navigation and overflight, are vital Australian interests".

Yet in 2002, Australia unilaterally withdrew from the maritime jurisdiction of the International Court of Justice and the International Tribunal for the Law of the Sea. This decision was made by then foreign minister Alexander Downer just after Australia negotiated an agreement with the United Nations that had the effect of impeding the new nation of Timor-Leste from claiming rights to billions of dollars worth of oil and gas reserves in the Timor Sea, on

the Timor side of the median line with Australia.

Leaving aside the merits of Australia's maritime boundary claim in the Timor Sea – and our subsequent belligerent conduct towards one of our poorest andmost vulnerable neighbours – by stepping away from the international umpire we have undermined our ability to contribute positively to efforts to embed the rule of international law and reduce the risk of conflict in our region.

Australia's decision to walk away from the international umpire has reduced our credibility.

Take the South China Sea dispute, for example. As Poling notes, who controls what bit of dry sand or coral is not a vital interest for Australia, but "seeing an Asia Pacific in which an emergent China plays by the same rules and norms as everyone else, not one in which might makes right, certainly is".

Australia's decision to walk away from the international umpire in regard to maritime boundary delimitation issues has reduced our credibility when it comes to efforts to peacefully resolve the maritime boundary disputes between our Association of South-East Asian Nations neighbours and China.

Calls by Prime Minister Tony Abbott, Foreign Minister Julie Bishop and Defence Minister Kevin Andrews for China to "avoid unilateral actions" smack of hypocrisy given Australia's history of unilateral conduct in the Timor Sea.

In the 1960s Australia unilaterally issued exploration permits in the Timor Sea to resource companies north of the median line, in areas that were also claimed by Indonesia and Portuguese Timor.

When the resource companies called on the Australian government to guarantee the security of tenure of their permits, the Menzies cabinet debated whether to fall into line with the way international law was trending and pull back to the median line – and avoid a possible confrontation with Indonesia – or, as then attorney-general Billy Snedden advocated, maintain the permits "against all criticism".

The cabinet decided to unilaterally confirm existing permits and then went further, reserving the right to claim "areas beyond" the permits.

After the Indonesian invasion of East Timor in 1975 we again acted unilaterally to become the only Western nation to recognise Indonesia's sovereignty so we could negotiate a petroleum-sharing arrangement with Indonesia in the Timor Sea.

And, as discussed above, in 2002 we unilaterally withdrew from the maritime jurisdiction of the international courts.

The Australian Labor Party is equally hypocritical on this issue. During Labor's last term in office, Australia took Japan to the International Court of Justice to challenge its whaling practices.

Japan could have unilaterally withdrawn from the court's jurisdiction, but out of respect for the rule of law, and because it believed what it was doing was legitimate, Japan allowed the international umpire to hear the matter.

The then attorney-general, Mark Dreyfus, QC, appeared in the ICJ personally – and obviously very ably, as Australia won.

Yet during Labor's last term in office the government continued to refuse to allow Timor-Leste the opportunity to have the maritime boundary dispute with Australia heard in the international courts.

The shadow minister for foreign affairs, Tanya Plibersek, has recently noted in relation to the South China Sea dispute that a "multilateral rules-based system in which all countries observe international law gives us the best hope of reducing conflict".

This puts both sides of politics on the record arguing that a multilateral rules-based international system is in Australia's national interest. In which case, both major parties should be acting to ensure Australia agrees to play by the rules and lets the international umpire have the final say on our maritime boundary disputes.

Stepping back into the maritime boundary jurisdiction of the international courts will also be in the interests of the resource companies with permits in the Timor Sea issued by the Australian government.

Woodside Petroleum was first issued a permit NT/12 over an area of the Timor Sea 150 kilometres from the coast of Timor and 450 kilometres from the Australian coast in 1963.

Despite the Menzies government's bullish efforts to offer security of tenure over the permit, and the equally bullish efforts of all following conservative and Labor governments, Woodside is no closer to having the security of tenure it needs to begin extracting oil and gas from the massive Greater Sunrise field it discovered in permit area NT/12 in 1974.

The current arbitration over the Timor Sea Treaty, based on allegations Australia spied on the Timorese treaty negotiators, puts Woodside's directors further away than ever to being able to green light Greater Sunrise.

Timor-Leste wants Australia to recognise international law and step back to the median line in the Timor Sea. This would potentially put Greater Sunrise in Timorese waters as it is clearly on Timor-Leste's side of the median line. Australia, however, is still claiming up to the Timor Trough, a deep valley in the seabed that runs roughly parallel to the coast of Timor-Leste, 55 to 110 kilometres offshore.

Our claim is based on an outdated continental shelf concept that has been superseded in the United Nations Convention on the Law of the Sea by the right of coastal states to claim a 200-nautical-mile exclusive jurisdiction offshore in which they have sovereignty over oil, gas and any other resources in the water column or under the seabed. Australia and Timor-Leste are both signatories to the convention.

The Timor Sea is too narrow to allow Australia and Timor-Leste to each claim a full 200-nautical-mile exclusive zone and as such the convention provides that there should be an "equitable solution" in accordance with international law – and international law clearly recognises the median line as an equitable solution.

But Australia is refusing to adopt the median line as the maritime boundary or to allow an international umpire to decide the matter. This leaves Woodside's shareholders in limbo, where they have been for the past four decades.

Alexander Downer told the ABC's *Four Corners* last year that all Woodside wanted was "a stable investment regime if they were to exploit the Greater Sunrise field".

But the only way Woodside can get a stable investment regime and security of tenure over the NT/12 permit area is by Australia agreeing to structured negotiations with Timor-Leste in accordance with international law or by a ruling of the international maritime court.

Downer claimed Australia's prior treaties with Indonesia ruled out "special provisions for East Timor" because of the risk Indonesia would then want to renegotiate the Australia–Indonesia maritime boundary.

This is a perverse argument on two levels. First, it is Australia that is relying on a "special provision" – it is arguing for the superseded continental shelf theory, while Timor-Leste is simply seeking a median line boundary.

Second, Indonesia has no grounds on which to seek to terminate existing treaties with Australia. The fact another nation negotiates a better deal is not a recognised ground to terminate a treaty – but failure to negotiate in good faith (by, for example, bugging the opposing negotiating team) surely is.

The Labor Party has the opportunity to take the lead on this issue at its national conference later this month.

Labor's former foreign minister, Laurie Brereton, managed to shift Labor policy in 1997 to support self-determination for the Timorese. It seems remarkable now that such a policy position was ever controversial.

Tanya Plibersek has the opportunity to right another historic wrong and resolve that the next Australian government formed by the Labor Party will observe the rule of law, and resubmit to the maritime jurisdiction of the international courts.

Labor's shadow resources minister, Gary Gray, is a former Woodside executive. He is ideally placed to support such a motion because it is clearly in Australia's national interest and because it will finally provide Woodside with the stable investment environment needed to make operational the resources of Greater Sunrise.

Allowing Timor-Leste and Australia to finalise our maritime boundary according to the rule of law, and with resort if necessary to an international umpire, should not be a controversial policy shift for the Labor Party in 2015. ●