

# Timor Sea boundary dispute: Australia is out of step with international best practice

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Previous Posts



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In a series of recent posts on The Interpreter (here, here and here), Stephen Grenville has suggested that if Australia agreed to enter into maritime boundary negotiations with Timor-Leste and, if necessary, allow an international umpire to determine a maritime boundary in the Timor Sea, Timor-Leste would somehow be worse off.

This is a strange assertion given the facts.



The 1982 United Nations Convention on the Law of the Sea gives every coastal state a right to 200 nautical mile Exclusive Economic Zone (EEZ) in which they have full sovereignty from the water surface to under the seabed. Australia signed this Convention in 1994.

Where EEZs overlap or are adjacent, international courts and tribunals have developed a process that uses the equidistant (or median) line as the starting point, and then adjusts the line to take into account 'relevant circumstances' which modify the line such as the location of minor islands or the concavity of coastlines.

The existence or otherwise of a continental shelf as claimed by Australia is totally irrelevant to the EEZ boundary delimitation in the Timor Sea.

Timor-Leste is confident that this internationally accepted method for delimiting maritime boundaries would result in the adjustment of the eastern lateral boundary in Timor-Leste's favour, placing the entire Greater Sunrise project in Timor-Leste's territory.

Unlike Australia, Timor-Leste is prepared to have this assertion tested in an international court or tribunal and allow an independent umpire to decide where the maritime boundaries should lie.

Timor-Leste is also confident that an international court or tribunal applying these principles would base a maritime boundary between Timor-Leste and Australia essentially on the median line.

However, Timor-Leste is unable have an independent umpire decide a maritime border with Australia because of a decision in March 2002 by Australian's then Foreign Minister Alexander Downer to pull Australia out of the compulsory jurisdiction of international courts and tribunals in relation to maritime boundary matters. This decision was made just two months before Timor-Leste finally achieved its independence.

This decision strongly suggests that Australia does not have the same level of confidence in its its legal position that Timor-Leste has concerning its own.

Australia's reliance on these temporary resource sharing arrangements was recently confirmed by Prime Minister Malcolm Turnbull when he rejected a request from the Prime Minister of Timor-Leste, Dr Rui de Araujo to commence negotiations to settle a permanent maritime border in the Timor Sea. [fold]

Australia has negotiated a maritime boundary with all our other neighbours, recognising that administrative certainty in regard to defence, immigration, fisheries and energy resources is in our national interest, and that of our neighbours. For example, in July 2004 Australia and New Zealand signed a maritime boundary treaty negotiated according to the principles set out in the UN Convention on the Law of the Sea. In a joint statement issued at the time, the Australian Foreign Minister Alexander Downer and New Zealand Foreign Minister Phil Goff said the Treaty

*...provides each of us with certainty of jurisdiction over both the water column and seabed, including fisheries and petroleum resources, as well as in relation to protecting and preserving the marine environment and undertaking marine scientific research. The Treaty will benefit our fisheries and extractive industries, and greatly reduces the potential for future disputes between us.*

At the same time, in bi-lateral talks in Dili, Australia was refusing to negotiate a maritime boundary with Timor-Leste according to the principles set out in the UN Convention on the Law of the Sea.

Timor-Leste's position was that the border should be the median line and that taking into account 'relevant circumstances' the laterals should be pushed further east and west.

Australia wanted to continue the temporary resource sharing arrangements negotiated in 1989 when Indonesia was still illegally occupying Timor-Leste.

It was during these negotiations that Foreign Minister Downer allegedly authorised Australian spies to secretly record the Timor-Leste negotiating team.

Two years later in 2006, Australia and Timor-Leste signed the Certain Maritime Arrangements in the Timor Sea treaty (CMATS) that Mr Grenville enthusiastically defends.

It will come as no surprise that Timor-Leste did not succeed in getting Australia to agree to an equitable, median line based maritime boundary, or movement on the laterals. Australia's concession to Timor-Leste in the CMATS Treaty was additional revenue from the Greater Sunrise field, which in fact lies 100% on Timor-Leste's side of the median line. Australia's big win was a 50 year ban on even talking about permanent maritime boundaries in the Timor Sea.

Mr Grenville rightly asks what aspects of the CMATS outcome would have been different if Australia had refrained from the 'bumbling stupidity' of the alleged spying exercise.

That's open to debate, but I suggest we may have had a median line border in the Timor Sea between Australia and Timor-Leste, and Greater Sunrise would be generating much needed revenue for Timor-Leste and value for Woodside shareholders.

There are two other highly relevant factors not covered by Mr Grenville.

Firstly, because Greater Sunrise had not commenced development six years after CMATS was signed, Timor-Leste and Australia have the option of terminating CMATS and the Timor Sea treaty. Timor-Leste has made it very clear that its preference is to negotiate permanent maritime boundaries before considering taking such a step.

Secondly, Mr Grenville, and most of the Australia media, have studiously avoided acknowledging that Indonesia has entered into good faith maritime boundary negotiations with Timor-Leste.

Perhaps because this fact, more than anything else, highlights how Australia's refusal to negotiate is out of step with international practice.

*Photo courtesy of Flickr user Geoff Whalan*