

ABC Radio National - Rear Vision program

Battle over the Timor Sea

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Since it became an independent country in 2002, Timor-Leste has argued for a permanent maritime border in the waters it shares with Australia.

Negotiations begun in 2015 may soon bear fruit but it's unclear how the resources of the Timor Sea's Greater Sunrise oil and gas reserves will be divided.

For Timor-Leste, the most oil dependent country in the world, the decision is critical to its future.

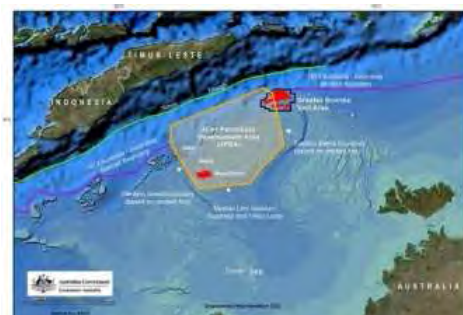


IMAGE: CURRENT BOUNDARY IN THE TIMOR SEA (AUSTRALIAN GOVERNMENT; GEOSCIENCE AUSTRALIA)

Transcript

Keri Phillips: Hello, I'm Keri Phillips and this is *Rear Vision*. Who owns the gas and oil beneath the Timor Sea? It's at the heart of the dispute that has dogged Australia's relationship with East Timor since it won its struggle for independence in 2002.

Kofi Annan [archival]: At this moment we honour every citizen of East Timor who persisted in the struggle for independence. We also remember the many who are no longer with us but who dreamt of this moment.

Xanana Gusmão [archival]: Today you are witness of the resolve to build a democratic foundation of development for the entire Timorese society.

Keri Phillips: Former UN leader Kofi Annan and Xanana Gusmão, hero of the independence movement, speaking at the birth of the new sovereign state in May, 2002. Although many rejoiced to see an end to Indonesia's brutal occupation, Timor-Leste—East Timor, with a population of just over one million, was and remains a poor place. It's one of the most oil dependent countries in the world; around 90% of its state budget comes from that single source.

James Scambary is a Visiting Fellow in the State, Society and Governance in Melanesia Program at the ANU.

James Scambary: They had no industry to speak of. Eighty-five percent of their country was destroyed by the 1999 militia violence and the very vindictive acts by the retreating Indonesian military. So there's really nothing there at all. The coffee industry was still...as it still is, it's still a fledgling industry, so oil was their ticket out of poverty.

Keri Phillips: Timor-Leste shares waters and the oil and gas resources below them with Australia. On independence, the two parties signed the Timor Sea Treaty, one which gave the new nation a generous share of the wealth but failed to set a permanent boundary in the sea between them.

Journalist [archival]: On the day of East Timor's independence, the signing of the bilateral treaty was given top priority. It allows for the revenues of oil and gas production in the Timor Sea to be divided proportionally. East Timor will get 90%, and Australia 10%.

Donald Rothwell: The first thing that needs to be said is that it's really quite an exceptional agreement.

Keri Phillips: Donald Rothwell is Professor of International Law at the ANU College of Law.

Donald Rothwell: Not because it's a joint development agreement, and there are a number of joint development agreements that exist with respect to maritime areas where there is a rich oil and gas field and the relevant countries can't reach agreement on a permanent boundary so they say, well look, let's share the resources to this area, let's jointly benefit from the development of this area, and the way it will do that is through a joint development regime. So it's not necessarily extraordinary, but most of course of the joint development areas that have been developed very much favour a more equitable 50/50 split.

Now, at the time, Australia's Foreign Minister, Alexander Downer, explained the justification for the 90/10 split in East Timor's favour in the sense that Australia wanted to make sure that East Timor did gain the benefit of the resource riches in the Timor Sea, that this was Australia seeking to assist and help out East Timor as it began its journey as a newly independent state. And also of course there was a national interest on Australia's part that Australia didn't want to have a newly independent East Timor

quickly become a collapsed state with all the consequences that would flow on from that. So that was the way in which Australia pitched the 90/10 split in favour of East Timor.

But of course from East Timor's side there was no permanent maritime boundary agreed, and so that was the concession that Timor made in that particular situation.

Keri Phillips: Rebecca Strating, a lecturer in politics at La Trobe University, says that Australia also won an additional benefit from the Timor Sea Treaty.

Rebecca Strating: Australia won the rights to pipe that oil and gas to Darwin where it was processed, which is lucrative in itself. The other reason why Australia was prepared to give 90% to Timor-Leste was because Timor-Leste agreed to maintain a moratorium on boundary delimitation. So in return for receiving 90% of the revenues, Timor-Leste agreed that Australia would have the processing rights and that they wouldn't create a boundary. When Timor-Leste became independent, we're talking about the poorest state in Southeast Asia, desperately in need of revenues, so it's significant that this treaty was signed on the day that Timor-Leste became independent.

Keri Phillips: In between the signing of Australia's Timor Gap Treaty with Indonesia in 1989 and the negotiations with Timor-Leste, the UN Convention on the Law of the Sea or UNCLOS had come into force. It settles overlapping maritime territorial claims by drawing a middle line between the two countries. As we'll hear, that kind of judgement would have been greatly to Timor-Leste's benefit in relation to the Greater Sunrise oil and gas field, which lies 150 kilometres south-east of Timor-Leste and 450 kilometres north-west of Darwin. However, in 2006, when the two countries signed a further agreement (known as CMATS), a decision on a permanent maritime boundary was put off for 50 years.

Journalist [archival]: Australia and East Timor have finally signed a treaty to share billions of dollars in earnings from the oil and gas fields of the Timor Sea.

Journalist [archival]: A dispute over the maritime boundaries between the two countries is being put aside for 50 years, and revenue from the rich Greater Sunrise field will be shared equally. Australia had argued originally for around 80% of the revenue, while on the other side there was a legal opinion East Timor was entitled to 100% under international law, law Australia decided to no longer recognise before negotiations began.

Rebecca Strating: The CMATS Treaty basically set the terms for how the revenues of the gas would be distributed, but it didn't come to an agreement about how the gas would be processed. There was I believe an expectation that Timor-Leste this time around would get rights to process the gas. However, after the CMATS was signed and it came to actually nutting out a development deal between Australia and the venture partners led by Woodside and Timor-Leste, there was a real failure to negotiate an agreement. So Timor-Leste wanted a pipeline, it wanted to be able to pipe the gas from the Greater Sunrise field to the south coast of Timor-Leste where they would develop an industrial plant in order to process the gas. But Woodside did not think that this was a viable option, and Australia supported Woodside as the venture partner in this deal.

Keri Phillips: The negotiations over CMATS ultimately triggered an international legal challenge.

Journalist [archival]: A bitter court battle between Australia and East Timor has taken an extraordinary turn tonight after the home of a key lawyer was raided. Files from the house and office of Canberra-based lawyer for the East Timorese government Bernard Collaery were removed by ASIO in the raid. East Timor has accused Australia of using its spies to bug the Timorese Cabinet rooms during negotiations with Australia over the carve-up of multi-billion-dollar gas and oil reserves. East Timor says Australia's actions have invalidated the resources treaty and has taken the case to The Hague.

Donald Rothwell: We had a very famous situation arise in late 2013 when the Australian federal police raided the home of East Timor's Canberra-based legal advisor and seized various documents and data during that raid. And then within a matter of weeks in late 2013 East Timor had taken Australia to the International Court of Justice seeking the return of those documents and data. So that was, if you like, a low point in the relationship between the two countries. And whilst that aspect of the disagreement between the countries didn't directly relate to the maritime boundary, it was a consequence of the ongoing issues and tensions and allegations being raised about the way in which the 2006 CMATS treaty was negotiated.

Ultimately the International Court in early 2014 issued some orders for the return of the documents and data by Australia to East Timor, and ultimately that matter was effectively settled and didn't proceed any further. But it just indicated the height of the tensions and the way in which East Timor was exploring a number of international litigation options to get Australia before an international court and tribunal in matters associated with the maritime boundary issues.

Keri Phillips: You're listening to *Rear Vision* with Keri Phillips on Radio National, RN.

Today we're hearing about the battle over resources in the waters that lie between Australia and Timor-Leste. At stake is Greater

Sunrise, the biggest oil and gas field ever discovered in the Timor Sea, worth around \$40 billion.

A sovereign wealth fund, the Timor-Leste Petroleum Fund, had been set up in 2005 to manage the money flowing in from oil and gas. How wisely has the government been spending the money? Damien Kingsbury is professor of international politics at Deakin University, and husband of the Honorary Consul for Timor-Leste in Victoria.

Damien Kingsbury: There's no doubt that since 2008 the government has been spending money much more quickly than it has been earning it. So there's been income from the Timor Sea which was meant to go into a sovereign wealth fund, and the government should have used the interest from that fund to pay for its activities. It has been dipping into the fund though at the rate of \$800 million-\$1 billion a year above sustainable withdrawals. So it is actually not allowing the fund to grow as quickly as it should have, and indeed the current rates of spending or previous rates of spending would see the fund essentially emptied out by late in the 2020s.

The bottom line is that if Timor-Leste doesn't find a new source of income very soon, basically get that on-stream within the next five or six years, the country is heading into a very serious financial crisis. It will run out of money, it won't be able to pay for the government activities. The government currently underwrites the economy at more than three-quarters of the economy, probably close to 90%. So really without that revenue stream, Timor-Leste is going to face economic collapse, and that would be absolutely ruinous for its people who have come to rely very heavily on government spending to underwrite the economy, and also to underwrite things like the provision of subsidised food. Timor-Leste doesn't provide enough food for its own needs, and can't afford to buy food on the international market at normal prices. So there's a number of problems that are going to come from this and impact on the people quite severely.

James Scambray: I don't have the exact figures, but it was about after 2007 that the interest for the funds came on line. So the government could actually start spending it. And in one way the incoming government, the CNRT led by Xanana Gusmão, in one way they spent the money wisely in that they started resurrecting or reconstructing the country, building roads, electricity. They renovated old buildings.

And if you'd been to East Timor around...between 2003 and 2008, there was just rubble everywhere, big holes in the ground, and it was a pretty depressing place. There was hope about independence, but at the same time there was just all this legacy of destruction and the sense that nothing was really improving for people, which wasn't really the government's fault, as I said, they didn't really have much of a budget. But with the incoming government they certainly went to town on this, and suddenly there were parks, there were new roads, footpaths, everything. And so on a visual level it gave people optimism about the future, that things were moving on. They increased the public service by about 45%. So it was good, they got things moving, they didn't waste any time.

How they spent the money is another question all together, and there tends to be an approach of bypassing all the different regulatory bodies that have been set up, the ADB, the World Bank, the Australian government and others have done a lot of work in providing them with the mechanisms for regulating government spending and making sure that it's transparent and procurement processes followed due process. Gusmão was once quoted as saying that this procurement process was a bureaucratic luxury. So there has been this pattern of largely bypassing even ministries, not just the regulatory bodies but also ministries.

So if you take, for example, they ordered two patrol boats from China, about \$35 million, and it turns out that they didn't even consult the Ministry of Defence. And so they've got two boats that can't actually leave the port because they are designed for river patrols in China.

The electrification project, a great idea. The first tender there was only a two-week process, the specifications were about two pages when they should be hundreds or even thousands, and you need at least a year's consultation. It made people think that the outcome had already been decided. So it went to a Chinese company, they made a complete hash of it. The project got taken off them, and then given to an Indonesian company, and there was no tender at all. That's bad enough because you don't know how much is being paid, and you also don't have specifications. So they built the power station and that's great, everyone got electricity. If you ever lived in Dili before that, it was pretty unreliable. But they built it, but as a result it generates five times the peak demand for electricity, which means also that they use heavy oil and generators and the price of that generating fuel is forever going up. So this is one of the major parts of the budget, is fuel for these generators. So it's left a legacy. That decision to construct an electricity system that isn't appropriate to East Timor's needs and demand has implications for future generations.

Keri Phillips: After 15 years of independence, has life changed much for the people of Timor-Leste?

Rebecca Strating: Nearly half of the East Timorese continue to live in conditions of extreme poverty. There is a significant

majority of East Timorese who actually work outside of a formalised economy. There is a feeling I think among certain segments of the community of being left behind while there are developments going on in Dili.

There's enough research out there on rent seeking and corruption and a lack of transparency that suggests that there are still significant political problems in Timor-Leste, and that not everybody is reaping the benefits of independence or of the oil wealth that has been generated following the Timor Sea Treaty.

James Scambary: You have really just half a dozen people in the country who make the decisions, and some of these people are not elected. They are powerful broker type figures. They bring in the vote, they can mobilise large groups of followers, they have some kind of pull which makes them very important. Part of that circle, they also act as brokers for foreign companies, they are the kind of go-to people; when you need a big project, they get on the phone to someone, usually in Indonesia.

Damien Kingsbury: The politics in Timor-Leste have been in many respects remarkably successful given the country's history, but like all postcolonial and post-conflict states, it's faced a number of internal challenges. Democracy is obviously quite new, it's still bedding in in many respects, there are still competing interest groups that still don't quite understand the idea of sharing power. And the so-called 'generation of '75', the resistance generation, has dominated politics, and a lot of people have been calling for change saying we need to move away from it, and frankly from the divisions that arose during the resistance and which had fed into post-independence politics. It's really around historical grievances, patron client group loyalties, and of course dominant personalities. Timor-Leste is still emerging from an era in which tribal personalities and dominant personalities were (and remain) very significant. So the idea of the charismatic leader is still probably more important than ideology in a formal sense.

Keri Phillips: Early last year, Timor-Leste initiated compulsory conciliation proceedings under the UN Convention on the Law of the Sea and the two governments have been negotiating over a permanent maritime boundary. James Scambary says that in anticipation of a win, Timor-Leste has been investing heavily in infrastructure.

James Scambary: Well, I guess the biggest one which has the most relevance to the Timor Sea dispute is the south coast project, also called Tasi Mane. The idea is that they will build this supply base port and this refinery and natural gas plant. As part of this there is a regional airport and there's a 250 kilometre long...I think something like that...it's like an autobahn, four-lane highway, right along the southern coast. If you see the pictures of it, the mock-ups of it, it's meant to look something like Los Angeles. The problem with this...well, there are many problems with it, one is that nobody really wants to build a pipeline to Timor. So this is all based on them getting a pipeline, which is far from certain. The other thing is that there is no feasibility study, like can they refine oil or gas cheaper than, say, in Malaysia or Indonesia. There's no regard for any kind of technical specification, so the facilities are strung out right along the south coast. One ends in...I think it's Betano they have the supply base which will...I think they envisage it even building oil platforms and things, becoming sort of an engineering centre. It's planned to have a port. And then you'll have the oil refinery a bit further up the coast, which means that if they plan to refine crude oil, import it, crude oil, and then sell it, that means it will have to come in through the port or the supply base, be piped up about 75 kilometres to the refinery and then back again. So that's about 140 kilometres of pipeline. And then further along there is a gas plant.

All the people I've showed this to—petroleum industry engineers, academics – have just laughed at it and said, why, there's no reason to do that. All of these engineers said no, you really should be siting them together. Obviously it means one port and one airport instead of two. So even the design of the project, even if they got the pipeline, it's impractical and will cause cost blowouts. And the way they've gone about it too doesn't say much for how you run major projects. So there's going to be a sea wall for the port and this supply base. The Audit Chamber I think back in 2015 actually rejected it, this contract, they said it did not follow the most basic standards in force in Timor. So that's for a \$720 million contract, but they didn't follow the most basic tender or due process.

Keri Phillips: In January this year, in a carefully worded joint statement, both countries announced an end to the CMATS agreement. And then, at the end of August:

Journalist [archival]: Australia and East Timor have resolved their long-running dispute over oil and gas reserves in the Timor Sea. They've been locked in a disagreement in the permanent court of arbitration over maritime boundaries, including access to oil and gas deposits worth \$40 billion. The court has announced they reached an agreement on Wednesday over a maritime border and sharing arrangements for the Greater Sunrise oil and gas field. Foreign Minister Julie Bishop says it's a landmark day in the relationship between East Timor and Australia.

Keri Phillips: No details were announced but it's hard to see how a boundary could have been drawn that satisfied both parties.

Damien Kingsbury: Well, the desires of both countries really I think shouldn't be the issue here. What should be the issue is

what is the requirements under international law. The Convention of Law of the Sea says that a permanent maritime boundary should be at the median point between two countries based on a lateral principle which is determined by the edge of the landfall, drawing straight lines between the edge of the landfall. It's actually a relatively simple process.

Australia is saying, well, we have concern with the lateral boundaries because it overlaps with our current arrangements with Indonesia. The question then is would Indonesia be prepared to renegotiate its lateral boundaries? It would mean giving up a very marginal slice of its seas, but I don't think it would be a major strategic or economic problem for Indonesia to do that. The real issue though is Australia has consistently argued against that. It has basically been dragged screaming and kicking into the arbitration process. It's taken many, many years to get here. And Australia has argued consistently for decades that it did not recognise the Convention of the Law of the Sea, that it had a different understanding of where a boundary should be drawn and why it should be drawn there, one that entirely suited Australia's economic interests but certainly didn't comply with any notion of international law.

Keri Phillips: So if the Law of the Sea is applied, Timor-Leste will end up with all of that Sunrise field in its waters?

Damien Kingsbury: In principle, yes, but the Law of the Sea may not apply because the lateral boundaries and negotiations with Indonesia about changing lateral boundaries would make the process much more complicated, so there could well be a compromise around the lateral boundaries which would then leave some of Greater Sunrise in Australian territorial waters. The question is how much, and what would be the proportion of the allocation of resources on that basis? And that's the critical question.

Keri Phillips: A domestic political crisis which will probably mean fresh elections early next year in Timor-Leste has now further complicated the settlement of these contested issues. An announcement on the details of the deal was supposed to be made before the end of the year but that's now been postponed.

Damien Kingsbury: Both sides have agreed that there should be a permanent maritime boundary, and that's critical. That was the bottom line for Timor-Leste, and Australia has finally agreed that that will be accepted. The question is where the laterals of that line are drawn. Because Australia had an agreement with Indonesia to draw its boundaries, really overlapping with what should be Timor-Leste's sea boundaries, there is still some negotiation around the edges, around the margins. The problem is the margins include the Greater Sunrise LNG field, which is worth somewhere between \$40 billion and \$50 billion and which is obviously very significant to Timor-Leste's economic future.

Timor-Leste's original claim was that all of Greater Sunrise should belong within Timor-Leste's sovereign waters, and under international law that would be correct. Australia appears to be putting a case to say, well, some of it will come to us, some of it will go to you, we don't know the proportions. But that is certainly contrary to Timor-Leste's original claim.

The second issue is where the LNG is processed. There is a lot of money to be made from the upstream activities, from the processing and selling activities. So if Timor-Leste could ship or pipe the LNG to its south coast, develop a processing plant there and then on-sell the gas, that would be the basis of giving a second string to Timor-Leste's economic bow.

Of course it's enormously expensive to do that. It's certainly questionable in terms of its viability, both in terms of running a pipe to Timor-Leste's south coast and the provision of facilities which currently don't exist. Woodside Petroleum, the joint development leading partner in the Greater Sunrise area has said it wants a floating processing platform and then would allocate funds on that basis, and of course the Australian government has argued...originally argued that the gas should be piped to Darwin and processed there, basically backfilling the oil pipelines which currently exist and which in a couple of years time will essentially be dry and not be used for anything else. So if Timor-Leste wants income from Greater Sunrise quickly, backfilling of the existing pipes to Darwin is the quickest solution but it's not one that fulfils its demands around processing on its south coast and it doesn't give it that second string to its economic bow.

Keri Phillips: The very future of Timor-Leste itself depends on the outcome of these negotiations with Australia.

James Scambray: The NGO La'o Hamutuk was saying this well before anybody else said this, but now pretty much everyone, the donors, even previously pro-government academics, now are all agreeing that they may be bankrupt within a decade or just over a decade. At current rates of spending, they are spending well above the estimated amounts of the oil fund on a regular basis. So based on those projections they are going to go bankrupt. That means not just all of their megaprojects but they also don't produce enough food. This is what people often miss, is that they still import most of their food, rice, noodles and lots of other things, chicken, eggs and many other things are imported. They have a massive trade imbalance. So that's funded by oil money. If you take that away, there will be a food crisis. They haven't set themselves up to be self-sustaining because of this thing, this idea that they are going to be the next Singapore or the next Dubai.

They really need that money. Again, as La'o Hamutuk says, it's just a temporary stay of execution if they don't develop some non-oil alternatives. It's not the end of all their problems. It will sustain them for a bit longer but at least it will give them a second chance. If they want to curb this current level of spending and they get another injection of funds down the track, then it means everything. But then again, we still don't know exactly where the Greater Sunrise field will fall along that line, but wherever it falls it means that there will be some money down the line, if it ever gets developed that is.

Keri Phillips: Dr James Scambary from the Australian National University. The other people you heard were Professor Damien Kingsbury from Deakin University, Doctor Rebecca Strating from La Trobe University, and Professor Donald Rothwell from the ANU College of Law.

I've put a link to La'o Hamutuk—the Timor-Leste NGO mentioned in the program—on the *Rear Vision* website, if you'd like to know more.

Isabella Tropiano is the sound engineer for this *Rear Vision*. Thanks for listening and bye from Keri Phillips.

Guests

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Further Information

La'o Hamutuk

Credits

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Comments (1)

Kim McGrath :

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Crossing the Line, Australia's Secret History in the Timor Sea, by Kim McGrath:

<https://www.blackincbooks.com.au/books/crossing-line>

The Lowy Institute review:

<https://www.loyyinstitute.org/the-interpreter/review-shameful-lust-riches-under-timor-sea>