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# Crossing The Line book extract

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The Palacio do Governo, with its white arched colonnade running parallel to the Dili foreshore, is one of the few Portuguese colonial buildings to survive the violence of Timor-Leste's turbulent past. It is where former Victorian premier Steve Bracks and I met with legendary resistance leader and then prime minister Xanana Gusmao, in September 2007.

Bracks was there in his new role as pro bono governance adviser to Gusmao. I was the adviser to the adviser. The Palacio do Governo is also home to the Cabinet room allegedly bugged by Australian spies three years earlier, when the fledgling state of Timor-Leste was trying to negotiate a maritime boundary with Australia.

Timor-Leste consists of the eastern half of the island of Timor, along with Atauro and Jaco islands and the enclave of Oecussi in West Timor. For over 400 years it was part of the Portuguese colonial empire and known as Portuguese Timor.

In 1974 Portugal granted its remaining colonies independence, and the following year the territory was invaded and occupied by Indonesia. For twenty-four years the Timorese fought a war of resistance, culminating in a vote of self-determination in 1999 and admission to the United Nations as the Democratic Republic of Timor-Leste in 2002.

The capital, Dili, is just over an hour's flight from Darwin across the Timor Sea to Australia's north.

As Bracks and I had our briefing in the prime minister's office, I surreptitiously studied a map of the Timor Sea pinned to the wall. It showed the only permanent maritime boundary in the Timor Sea – a line agreed to by Australia and Indonesia in 1972.

Portugal was excluded from the negotiations that left the "Timor gap", and Australia's subsequent attempts to negotiate a boundary and close the gap have all failed. While 98 per cent of Australia's massive maritime boundary is settled, there is still no boundary line between Timor-Leste and Australia. All oil and gas reserves shown on the map pinned to the wall were on the northern side of the line that runs halfway between the shores of Australia and Timor-Leste – the median line.

I was aware that much of this area had been unilaterally claimed by Australia when it issued exploration permits in the Timor Sea in the early 1960s. But I had no idea of the basis for Australia's claim under international law to oil and gas fields that were obviously much closer to Indonesia and Timor-Leste than to Australia.

Nor did I understand the Orwellian advice we received later that day: there was a ban on anyone in the Timorese government talking publicly about the need for a maritime boundary to close the Timor gap.

During that first visit, Prime Minister Gusmao hosted an official dinner for Bracks at his residence at Balibar, half an hour's drive from Dili along a treacherous winding road. We stopped on the way at a small village clinging to the side of the mountain so that his wife, Kirsty Sword Gusmao, could show us her plans for a new school and a modest museum at the site of a memorial commemorating the bond between Australian soldiers and their Timorese supporters during World War II.

I recalled the powerful ads that ran on Australian television in the lead-up to Anzac Day in 2005. In the ads, Australian veterans who had served in Timor called on the Australian government to stop stealing Timor-Leste's oil and gas and explained that they owed their lives to the people of East Timor.

### **Australia buries expert advice**

Australia and Indonesia held exploratory seabed boundary talks between 19 and 24 March 1970. Australia's negotiating position was set out in a McMahon Cabinet submission dated 27 February. Article 6 of the Convention on the Continental Shelf provides that a median line boundary should apply where the "same continental shelf" was "adjacent to the territories of two or more States whose coasts are opposite each other".

The DFA was aware that Indonesia would be seeking a median line boundary in accordance with the convention. Australia sought to avoid a median line boundary by arguing that it did not share the "same continental shelf" with Indonesia. Australia claimed the Timor Trough, a deep channel running parallel to the Timor coast about 30 to 50 nautical miles offshore, marked the edge of Australia's continental shelf. The existence of the Timor Trough, according to McMahon, meant "the question of fixing a common boundary in the Timor Sea does not really arise".

The question of whether the Timor Trough marked the edge of Australia's continental shelf was by no means clear and was debated by geologists at the time. The contrary view was that the trough was just a dint in Australia's continental shelf, which in fact extended beneath the island of Timor. If Australia's continental shelf did extend beneath Timor, then Article 6 of the convention would apply. Australia would be required to negotiate a median line boundary with Indonesia, and the permits issued north of the median line would be invalid.

Advice from Australia's own expert body indicating the Timor Trough did not mark the edge of Australia's continental shelf would have been explosive. Sandwiched between the draft and final versions of McMahon's submission on a DFA file on "continental shelf boundary negotiations" is a Bureau of Mineral Resources report titled *The Timor Trough – A Summary of Current Geological Knowledge*.

The paper, dated February 1970, concluded that there was "no evidence of oceanic crust in the floor of the Timor Trough and hence no evidence to suggest there is any continental margin between the Sahul Shelf and Timor". If, as the paper seemed to be saying, the Timor Trough did not mark the edge of Australia's continental shelf, Australia had no basis for its claim to sovereignty beyond the median line in the Timor Sea. Australia's core argument at the talks about to commence with Indonesia would be undermined.

Professor Mike Sandiford and Dr Brendan Duffy, geologists from the University of Melbourne, confirm that the Bureau of Mineral Resources was telling Australia's negotiators that there was no strong geological reason to refute Indonesia's claim of a common continental shelf between Timor and Australia. They say the weight of geological opinion, then and today, describes the Timor Trough as a buckling of Australia's continental shelf, which extends beneath the island of Timor. So expert geological opinion backs the position put by Indonesia.

But the bureau's report is not discussed in McMahon's Cabinet submission. I found another copy of the

bureau's report on a file dealing with Australia's negotiations with Portugal in 1974. There was a DFA covering note dated 5 March 1970 addressed to Laurence McIntyre and Kenneth Bailey, who were leading Australia's Timor Sea boundary negotiations with Indonesia. It simply stated: "Please find attached a paper prepared by the Bureau of the Mineral Resources at your request on the geology of the Timor Trough . . . This paper was originally sent to the Department on 18 February but was evidently not received." This covering note has ticks next to McIntyre's and Bailey's names, indicating that this time, at least, it was received by them.

While the report may not have been received in time for inclusion in McMahon's submission, it was certainly received before the start of the negotiations with Indonesia on 19 March.

Yet in his opening address at the explanatory talks with Indonesia, McIntyre completely ignored this advice from Australia's expert geological body, and instead mounted the argument that the Timor Trough marked the edge of Australia's continental shelf, and should therefore be the boundary. And in Australia's public opening address at the UN Australia Timor-Leste Compulsory Conciliation in August 2016, Australia was still claiming that the "physical continental shelves of Australia to the south and Timor-Leste and Indonesia to the north . . . are separated by the Timor Trough".

Australia's claim to oil and gas fields north of the median line is built on a chimera. On a false premise that – remarkably – still underpins Australia's claim beyond the median line today.

### **The Independent Adversary**

Indonesia's decision to allow, after twenty-four years, a vote of self-determination in East Timor has been attributed to a variety of factors, including the fall of Suharto, the Asian financial crisis and the mistaken belief that the Timorese would vote to stay with Indonesia.

Former Australian prime minister John Howard claims Australia was primarily responsible for East Timor's independence. Howard devotes a chapter of his autobiography to this: "When asked to list the achievements of my prime ministership of which I am most proud, I always include the liberation of East Timor in 1999."

In 2015 Howard wrote, "Australia's involvement in the liberation of East Timor in 1999 was one of the more noble things our country has done in many years. It directly led to the birth of a very small country whose people remain very grateful for what we did."

Howard's assessment of the significance of Australia's role in the liberation of East Timor has been embraced by the DFA. *East Timor in Transition 1998-2000: An Australian Policy Challenge* was published by the DFA in 2001.

It was launched by Downer and purportedly published to provide a "full and balanced account of Australia's response to the extraordinary foreign policy challenge of East Timor".

While the Downer Compilation, which was being prepared simultaneously, had a veneer of academic respectability, with an expert review panel and involvement of the Opposition, as Clinton Fernandes notes, *East Timor in Transition* was produced by a "team of departmental officers who had worked on East Timor over the period" so that "those who had implemented policy were assessing their own performances within the covers of a book they had themselves written, using material they had themselves selected".

Like the Downer Compilation, *East Timor in Transition* does not comment on the relationship between Australia's interest in oil and gas fields in the Timor Sea and its foreign policy response to the events

across the Timor Sea. There is no discussion of the fact that if East Timor became independent, the 1989 Timor Gap Treaty between Australia and Indonesia dividing up oil and gas resources would cease to exist and Australia would need to negotiate a new treaty with an independent East Timor.

Under this scenario an independent East Timor was a serious threat to Australia's access to oil riches – all of which were on the Timorese side of the median line. Australia's interest in oil and gas in the Timor Sea is mentioned once in the 312 pages, in a six-line section titled "Timor Gap Treaty".

The brief discussion skates over the enormous diplomatic effort required by the DFA and Alexander Downer to keep Australia's claim north of the median line alive. The Australian government records from 1998-99 are still in the closed period. I have little doubt there are files discussing legal advice that an independent East Timor would have rights to oil and gas resources to the median line in the Timor Sea – and what this meant to the Australian treasury.

Australia and Indonesia made \$US1.1 million from oil royalties from the Timor gap in 1998 and the figure for 1999 was predicted to rise to \$US2.2 million. But that was peanuts compared with the billions in taxes and royalties expected to flow into Australian government coffers when ConocoPhillips' Darwin LNG plant was operational and Woodside's massive Greater Sunrise field developed.

It is not surprising, therefore, that Australian officials were far from enthusiastic about moves at the UN to facilitate negotiations between Portugal and Indonesia about the future of East Timor. Events moved fast.

In 1998 the National Council of Timorese Resistance, the Timorese leadership, was formed and Xanana Gusmao elected president. In January 1998 the ALP's shadow foreign affairs minister, Laurie Brereton, pushed through a reversal of party policy to again support self-determination for the people of East Timor.

The ALP also recommended renegotiating the revenue-sharing arrangements under the Timor Gap Treaty. Downer visited Indonesia in July and pushed a plan for East Timor's "autonomy" within Indonesia, to be followed by a review of the status of East Timor at some unspecified point in the future. He said Australia wanted "Timor to remain a part of Indonesia" as a "vote on self-determination would only lead to renewed civil war in the territory".

A key meeting, not discussed in *East Timor in Transition*, occurred in August 1998. Gusmao secretly met with BHP's senior representative in Indonesia. According to petroleum geologist Geoffrey McKee, the meeting was part of a deliberate tactical shift by the Timorese leadership to "rob the Australian government, editorial writers, and the Timor Gap contractors of reasons for arguing that independence in East Timor would 'tear up the Timor Gap Treaty'".

Details of the meeting, attributed to a well-placed diplomatic source, were reported in *The Sydney Morning Herald* on 20 August 1998. According to the report, Gusmao agreed that an "independent East Timor would honour – during an interim period – the rights awarded to mining companies under the controversial 1989 Timor Gap Treaty".

Soon after, for the first time, Downer called for Gusmao's release. In December 1998 Prime Minister Howard wrote to Indonesian president Habibie. He did not recommend independence for East Timor. He proposed a "compromise political solution" with a "built-in review mechanism" which "would allow time to convince the East Timorese of the benefits of autonomy within the Indonesian Republic".

As Clinton Fernandes writes, it is "a revisionist distortion" to claim this letter is evidence of Howard's support for East Timor's self-determination. Downer's foreign affairs advisers, Josh Frydenberg and Greg Hunt (both now ministers in the Liberal–National Party Coalition government), wrote an opinion piece in

*The Australian* in mid-January 1999 arguing it was Australia's job to encourage opposition groups in both Indonesia and East Timor "to support a staged process rather than to make unrealistic demands for immediate independence".

It was the long-retired Richard Woolcott who stepped back into the limelight and spelled out Australia's real concerns. He told *The Australian Financial Review* that a change in the status of East Timor could "lead to substantial financial implications for the government if the Timor Gap Treaty, signed in 1989, were to unravel". Woolcott claimed the ALP's plans to renegotiate revenue-sharing arrangements could have "major legal and commercial implications".

This story was found at: **<http://www.smh.com.au/federal-politics/political-opinion/crossing-the-line-book-extract-20170817-gxyu3b.html>**