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## Opinion

### Settling the maritime borders with Timor-Leste

Tolstoy once wrote a short story about a greedy peasant offered as much land as he could get around in a day. The man ran off into the steppe, returning to complete his vast circuit at dusk, only to drop dead from exhaustion.

Tolstoy's parable "How Much Land Does a Man Need?" comes to mind as one of the sorriest chapters in Australia's diplomatic history draws close to resolution: the story of how one of the richest countries in the world with a maritime zone already encompassing a vast stretch of the globe's surface, pressured a much smaller and poorer neighbour into giving it more.



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The game seems to be up. While most of us were on holiday in early January, Foreign Minister Julie Bishop slipped out a brief notice that Australia had agreed to begin negotiations with Timor-Leste on a permanent maritime boundary. About the same time, Timor-Leste gave notice it was terminating an existing temporary border and petroleum revenue agreement, known as the treaty on Certain Maritime Arrangements in the Timor Sea, or CMATS.

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CMATS was signed with great reluctance by Timorese leaders in 2006 as the best deal in the circumstances. Two months before the newly independent nation came into being in May 2002, the Howard government announced Australia's withdrawal from the jurisdiction of the international courts on maritime boundary issues. So there was no referee.

Meanwhile, Australia had plenty of oil and gas resources and insisted on maintaining a joint development zone worked out with Timor-Leste's Indonesian occupiers in 1989. Time was on its side. Timor desperately needed the Woodside Petroleum consortium's Greater Sunrise gas field in the disputed zone. It caved in, accepting a split of 50:50 in the eventual Greater Sunrise revenues instead of its 18 per cent share under a previous treaty, with fishery rights thrown in. A permanent boundary was put off for 50 years.

But even that deal started foundering within four years, as Woodside balked at the Timorese demand for the gas to be piped across the 3000-metre-deep Timor Trench to a liquefied

natural gas plant on its coast. It preferred a floating LNG plant above the gas field, or failing that, a pipeline to Darwin, longer but in relatively shallow water and hence less risky.

It then came out that the Australian Secret Intelligence Service (ASIS) had bugged the cabinet room in Dili in 2004 as negotiations on CMATS proceeded. Last year Timor-Leste took Australia to The Hague over this bad faith, and won, against Canberra's opposition, an order for compulsory conciliation. In January, Timor-Leste invoked a clause requiring a start of Greater Sunrise development within 10 years as the basis for its withdrawal from CMATS.

Conciliation is less than adjudication or arbitration, but still an independent monitor. A five-member panel of maritime law experts, chaired by Denmark's Peter Taksøe-Jensen, is supervising the bilateral negotiations under way in Singapore. The panel aims to draw recommendations "appropriate for an amicable settlement" by September 19.

Both sides are bound by confidentiality, but a high degree of optimism emanates from Timor-Leste that the commission will accept its case for the boundary to be fixed along the median line between the two coasts. Australia's argument for decades has been that the Timor Trench, much closer to the coast of Timor, is the natural boundary between two continental shelves. It's getting harder to argue, as geologists now say Australia's tectonic plate collides with the Indonesian plate north of Timor and the trench is but a ripple.

But this would be a largely symbolic victory for Timor-Leste. And for Australia, it would open up a potentially lasting embarrassment with the neighbour it regards as the most critical element in its national security, Indonesia. This is an issue our leaders need to address in a fashion that puts long-term national interest ahead of immediate mercenary gains.

Many of Timor-Leste's supporters would have it that a median line boundary would deliver it Greater Sunrise, enabling Dili to order Woodside to develop the field its way, or hand over to someone such as the Chinese. But getting more or all of Greater Sunrise requires the commission to agree on swinging the eastern lateral boundary of the disputed zone outward.

For 12 years, Dili has been nursing opinions from British and Australian sea-law experts that by taking into account a small island off the eastern end of Timor, discounting lightly populated small Indonesian islands, and fixing on certain bits of Australia's coast, the side boundary could be swung outwards to take in the parts of Greater Sunrise currently in Australia's exclusive economic zone.

It's a perhaps heroic case. But it's also a "huge gamble", as the Australian Catholic University's Frank Brennan, a supporter of Timor-Leste's quest, has pointed out. The Timorese have gone back to their 18 per cent entitlement, and lost their fishing rights, with no guarantee they will get a border adjustment awarding them more than 50 per cent of Greater Sunrise. Then, of course, they would need to get Woodside to proceed with a development plan it regards as uneconomic and technically risky.

Nor is it entirely up to Australia. The eastward expansion of Timor's jurisdiction would require Indonesia's agreement to its small islands being discounted in the geometry, and sections of Australia's seabed rights being transferred to Timor-Leste, rather than Indonesia. It is understood that Jakarta has formally notified the conciliation commission of its interest.

Even setting this complexity aside, a permanent median-line boundary would stick out like a dog's hind leg on the map, reminding Indonesians of how they were "taken to the cleaners" – the phrase of Jakarta's chief negotiator and later foreign minister Mochtar Kusumaatmadja – when Australia fixed its maritime boundary with Indonesia in 1970-72 on either side of then Portuguese Timor.

As early as November 1965, Canberra knew the Timor Trench argument was a political risk. As noted in a submission to a parliamentary inquiry on relations with Timor-Leste in 2013, by former secretary to the committee on foreign affairs and defence Robert King, then national development minister David Fairbairn argued for the median line, but the Menzies cabinet took the advice of attorney-general Billy Snedden to stake out the bolder claim, which Indonesia had not challenged. "Jurisdiction asserted without challenge constitutes a powerful claim in international law," Snedden said.

Indonesia was then of course in the middle of horrendous political violence, and unlikely to be thinking much about the seabed. By the time foreign minister William McMahon launched boundary negotiations, its experts such as Mochtar were very aware of the tectonic plate science, but were overruled by General Suharto, who wanted a quick agreement to show Indonesia was turning away from *Konfrontasi* with its neighbours and grateful for Australia's support for his new regime.

After the annexation of Portuguese Timor, Canberra also played the diplomatic card as hard as it could with a much cannier Mochtar and his successor as foreign minister, Ali Alatas, parlaying recognition of Indonesian sovereignty over Timor for the joint development zone between the median line and the Timor Trench.

As with the Timor-Leste negotiations, there was some dirty play. Throughout, according to authors Brian Toohey and William Pinwill in their book *Oyster: The Story of the Australian Secret Intelligence Service*, ASIS kept Canberra supplied with purloined information on the Indonesian case.

The heritage of the two Billys, Snedden and McMahon, lives on in Australian foreign policy, in the form of the Timor Trench as natural boundary. Whether our leaders sincerely believe in it, there seems to be a feeling it can't be let go. As then foreign minister Alexander Downer said in April 2005: "What Australia doesn't want is to unravel all of our maritime boundaries which have been laboriously negotiated over many years with all our neighbours." The big worry, Downer said on other occasions, was Indonesia.

To its credit, Indonesia has never sought to reopen the border issue with Australia. But it has been mentioned as a grievance by the current armed forces chief, General Gatot Nurmantyo, and the negotiations with Timor-Leste must lead to Jakarta being brought into discussions. "In resolving one maritime boundary dispute with Timor-Leste, Australia will therefore want to ensure that it doesn't create a fresh dispute with its biggest maritime neighbour, Indonesia," Australian National University professor of international law Don Rothwell has pointed out.

What should Australia do? The simplest and most honest solution would be to explore with Indonesia, at the highest levels, a unilateral offer to redraw the boundary in the Timor and Arafura seas along the median line, transferring the rights under whatever existing exploration and development leases granted by Australia in affected areas.

As Robert King concluded in his inquiry submission: “The Australian government is bound to act in the best long-term interests of Australia, and that is best served by policies that are in accord with international law and equity. A fair border in the Timor Sea is in the best long-term interests of Australia. The current, essentially belligerent, stance taken by the Australian government (which has been taken consistently by all Australian governments since 1965) is contrary to the national interest (though it might be favourable to some particular interests).”

To offset any Indonesian claims for revenues extracted from these leases since 1972, Indonesia would gain the residual Australian share of Greater Sunrise. Most of the partners in the Woodside consortium already have or have had operations in Indonesia and don't seem to be complaining about its petroleum regime.

A maritime boundary fixed according to the best geological and legal principles would be an investment in Australia's relationships with its region. In the short term, it would be a huge boost for the increasingly embattled secular-nationalist government of President Joko Widodo, who has made control and development of the archipelago state's maritime zones a hallmark policy.

When the border was negotiated 45 years ago, Australia seemed abundant in every resource except petroleum and felt it needed every offshore prospect it could grab, while the world's oil companies were rushing into Indonesia's petroleum-rich Java Sea. Now Indonesia is an oil-importing country, and Australia is about to become the world's biggest exporter of LNG. How much gas does a country need?

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