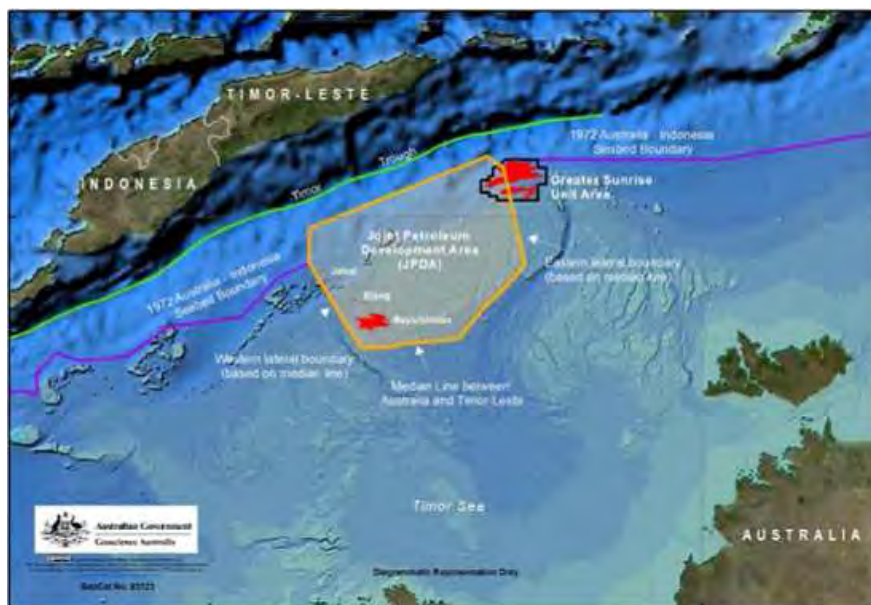




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Senator Wong urges the Australian government to commit to an international process of dispute resolution to settle the maritime border between Australia and Timor Leste. The conciliation process currently underway in The Hague goes quite some distance in this direction, providing each side with the opportunity to set out its case. You can listen to the streaming of the opening public session here. It's a reminder of how complex this issue is.



Source: Department of Foreign Affairs and Trade

The 2.5 hour opening session is a fascinating summary of the tragic history of Timor Leste and the series of negotiations and treaties, including Australia's ham-fisted spying efforts. If you just want an update on the rival border claims (which I looked at in detail here), start about 50 minutes in for the Timor Leste argument. For the Australian argument, start around 140 minutes in.

The commission can't determine the outcome of the dispute, but if it judges itself as competent to act in this case, it is likely to offer guidance on how the parties should negotiate a settlement. This guidance will not be binding on the parties, but will carry considerable weight. Finding an arrangement that both sides find equitable would challenge the Wisdom of Solomon.

Let's look at some possible outcomes:

- If the 2006 CEMATS Treaty is valid, this would leave Timor unhappy, as its position is that 'CEMATs must go'. Timor has the option of terminating CMATS, but this opens up a can of worms, with uncertainty as to whether earlier treaties apply and how revenue would be divided. The border would still be unsettled.
- If the commission suggests that the Joint Petroleum Development Area (JPDA) should belong to Timor (which might be the most straight-forward interpretation of a median boundary), this not only excludes most of Greater Sunrise gas field, but probably leaves Timor with significantly less revenue in the long run: it would get 100% of the JPDA revenue instead of 90%, but only 20% of Sunrise instead of 50%.
- To put Sunrise in Timor territory, Timor would not only have to own the JPDA, but as well the eastern lateral boundary has to be further eastward than the edge of the JPDA, which would take the boundary into waters currently administered by Indonesia. If Indonesia becomes involved it might raise two matters: Indonesia's belief that it was 'taken to the cleaners' in the 1972 Treaty, which might lead it to demand a renegotiation, on the same basis as Timor's claim that it negotiated CMATS under duress. Indonesia could also point out that most of Sunrise is closer to Indonesia than it is to Timor.

What would Solomon do? His solution to the earlier overlapping claims was to offer to cut the disputed baby in two, which brought the disagreement to an equitable conclusion. Maybe the equivalent shock-judgment in this case would be for the commission to recognise that there are three countries – Australia, Timor and Indonesia –with valid interests in the Timor Sea. Neither Australia nor Timor would welcome this (as most of Sunrise might well end up belonging to Indonesia), but if the key element of UNCLOS is equity, Indonesia should be there.