

## New Hope for fair deal over oil below Timor Sea

*By Maire Leadbeater June 2017 A version of this article appeared in the New Zealand Herald*

I visited Timor Leste this May, just as the first new nation of the new millennium turned fifteen. Dili was bedecked with the red, yellow and black colours of the Timor flag and the spirit of the people was infectious. I have not forgotten the fearful Dili I visited back in early 1999 when the Indonesian military was firmly in control and militia violence was just beginning to ramp up. So it was a great pleasure to sense the national pride and personal freedom of the young people around me.

Beyond Dili, change is in the air as massive road rebuilding projects, irrigation schemes and even new factories are well in evidence. Timor's 'think big' projects don't find favour with everyone, and there is concern that those at the bottom – the rural poor – will miss out on the new opportunities. However, there seems to be one resource issue that everyone agrees on: Timor's rights to fair share of the maritime oil reserves in its surrounding seas. One of the deep scars in Timor Leste's past is its unjust treatment at the hands of its large and prosperous neighbour, Australia. During more than 23 years of brutal occupation by Indonesia, Canberra was deaf to Timorese rights and Timorese suffering. Instead it profited from its good relationship with Indonesia by concluding a hugely beneficial joint exploration deal to exploit the resources of the Timor Sea. Although other western nations, including New Zealand, also betrayed the Timorese, Australia was the sole nation to grant full de jure recognition to Indonesia's violent take-over of the territory.

Since independence, Timor Leste has sought to complete its sovereignty by defining its maritime territory according to international law. But Australia has thwarted its small neighbour at every turn. It is interesting to contrast this situation with the way in which the maritime boundary between Australia and New Zealand was settled. In 2004 the two countries signed a Treaty which formalised their exclusive economic zone and continental shelf boundaries. There are now two separate boundaries set approximately at the mid points between the territories. In other words, the trans-Tasman neighbours followed the principles laid out in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). There were some issues to iron out, such as the effect of small islands, but the process provoked no angst.

No such luck for small and impoverished Timor Leste. Just months before formal independence in May 2002, Australia withdrew from the maritime boundary dispute resolution procedures of the UNCLOS. This means that Timor Leste cannot take any dispute to an independent third party arbitrator for a binding decision. The negotiations since then have seen the conclusion of interim resource sharing treaties such as the 2006 'Certain Maritime Arrangements in the Timor Sea' (CMATS). It has been a great deal from Australia's perspective as it has been able to go on exploiting oil fields such as the Laminaria-Corallina field which is much closer to Timor than to Australia. Also at stake is the yet to be exploited Greater Sunrise gas field that would be mostly on the Timorese side of a border set by the UNCLOS equidistance principle. Timorese NGO La'o Hamutuk estimates that Australia has profited by some 5 billion US dollars from 'Timor's' oil between 1999 and 2014. In comparison, Australian aid and peacekeeping assistance for the same period amounts to approximately 1.6 billion US dollars. So hardly a surprise to see anti-Australian graffiti around Dili.

To add shocking insult to deep injury there is the matter of alleged spying and overt attempts to cover up spying. A former Australian intelligence officer came forward with evidence that Australia had spied on the Timorese Cabinet office while the CMATS negotiations were ongoing. In 2013 Timor Leste sought help from the Hague Permanent Court of Arbitration, but this prompted Canberra to conduct a lightning raid on the offices of Timor's Canberra-based lawyer Bernard Collaery. The documents and data seized were the property of the Timor Leste government.

There is a glimmer of hope now Australia has agreed with its small neighbour to terminate the CMATS Treaty and to take part in a conciliation process under UNCLOS. But this non-binding process still leaves scope for Australia to broker an unfair deal. The Australian Timor Sea Justice Campaign is asking simply that Australia finalise a fair and permanent maritime boundary drawn half-way between the Australian and Timorese coasts as international law recommends. New Zealand should support this position, as it reflects exactly what happened when Australia and New Zealand determined their maritime boundary.

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