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Why Australia and East Timor Are Struggling to Strike a Maritime Boundary

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A protester holds a poster during a rally outside the Australian Embassy, Jakarta, Indonesia, March 24, 2016 (AP photo by Dita Alangkara).

Despite announcing a breakthrough in their protracted negotiations over a maritime boundary in August, Australia and East Timor have yet to finalize an agreement that would allow them to move forward on the joint development of an important natural gas field. The delay is in part due to the difficulties of conducting a trilateral negotiation involving the two governments as well as private interests. In an email interview, Bec Strating, a lecturer in the department of politics and philosophy at La Trobe University in Australia focusing on Indonesia and East Timor, which is also known as Timor-Leste, explains the background to the maritime dispute and how crucial the natural gas field in question is to East Timor's flagging economy.

WPR: What is at stake in the maritime dispute between Australia and East Timor, and why has the process of finalizing an agreement stalled?

Bec Strating: There are a number of elements in the dispute regarding maritime boundaries and the development of hydrocarbon resources in the Timor Sea. With regard to the former issue, Australia has preferred delaying the delimitation of permanent maritime boundaries, while East Timor has more recently pushed for permanent boundaries. In 2006, East Timor and Australia agreed to a 50-year moratorium on maritime boundary delimitation in an agreement known as CMATS, which was designed to develop a contested but lucrative natural gas field in the Timor Sea called Greater Sunrise. The agreement laid out a revenue-sharing deal whereby Australia and East Timor would each receive 50 percent of the gas revenues.

However, the CMATS agreement also put aside the issue of how the field would be developed. East Timor wanted a pipeline to run from the field to its south coast in order to process the gas there, but the commercial venture partners deemed this unviable. Ultimately, this impasse led to East Timor's leaders renewing their pursuit of permanent maritime boundaries as leverage to advance its interests on the pipeline.

Currently, both states are in talks as part of a compulsory conciliation process initiated by East Timor in April 2016. As part of this process, East Timor has dropped the international court cases it had brought against Australia, and in return Australia assented to dissolving the CMATS agreement.

In August it was announced that Australia and East Timor had reached a breakthrough on the issue of a maritime boundary, agreeing to the central elements for permanent boundary delimitation. A treaty text has yet to be made publically available, but is reportedly ready to be signed and ratified by the states. The main issue, however, remains the development plan for Greater Sunrise. The agreement on boundaries hinges upon whether East Timor, Australia and the commercial partners can reach an agreement on how the gas from the field can be developed.

If East Timor's representatives continue to press for a pipeline, then the whole deal could come unstuck. Given that the talks are confidential, it is difficult to assess how they are progressing.

WPR: How important is the Greater Sunrise natural gas field to both countries, and how have the private partners developing the field influenced negotiations?

Strating: The gas field is far more important for East Timor than Australia in terms of economics. Around 90 percent of East Timor's state budget relies on oil and gas revenues from the Timor Sea, in a development area known as the Joint Petroleum Development Area, or JPDA. The resources in this area are expected to run out in the early 2020s, leaving East Timor without a significant income stream aside from its petroleum fund, which has over $16 billion but is being quickly depleted. Based on current spending trends, East Timor may be broke within a decade. Around 80 percent of the country's GDP is generated by oil and gas—East Timor's next biggest export, coffee, generates only around $15 million a year—making it one of the world's most oil-dependent nations. So its short- and mid-term economic viability depend upon the development of Greater Sunrise gas.

However, in terms of strategic interests, Australia has not wanted to engage in boundary delimitation with East Timor because it fears that it will open the door for Indonesia to try and unravel the maritime boundaries between Indonesia and Australia. These boundaries were drawn in the era before the United Nations Convention on the Law of the Sea, or UNCLOS, which means that Australia was able to persuade Indonesia to accept a line closer to Indonesia's coastline due to the principle of natural prolongation. Post-UNCLOS, the accepted principle is the median line, which, if applied, would drag that boundary closer to Australia.

The role of the commercial venture partners is significant. Currently, the consortium led by Australia-based petroleum company Woodside Petroleum has been instrumental in blocking East Timor's plan for development on the grounds that it is commercially unviable. Many oil and gas experts agree with Woodside that the pipeline and the south coast processing centers would cost more than they would provide in social and economic benefits, and that the best options are to use the existing facility based in Darwin, Australia, and to employ a floating platform for processing the gas. Australia has effectively deferred to the venture partners—if it is not deemed commercially viable by them, then Australia will not support it. This makes this a fascinating case study in an international trilateral negotiation held effectively between two states and a commercial consortium.

WPR: How have East Timor's internal politics affected negotiations with Australia, and how do you anticipate this playing out?

Strating: The first thing to note here is that East Timor's lead negotiator is Xanana Gusmao, a former president and prime minister who is currently the leader of the opposition coalition, as well as minister of planning and strategic investment. That an opposition leader is heading the negotiations indicates the unity of the different parties on the issue of the Timor Sea, as well as Gusmao's status in Timorese politics as a liberation hero. An agreement without Gusmao would likely fail, as he remains a powerful figure among the Timorese public. At the moment it appears that negotiations have continued on as they had before East Timor's parliamentary elections, which were held in July, although I must stress that the talks are highly confidential, so things may not be as they appear.

In this way, the negotiations have been somewhat divorced from the internal chaos that has stemmed from those elections, in which no party managed to secure a majority (https://www.worldpoliticsreview.com/trend-lines/22905/after-peaceful-elections-east-timor-s-new-government-is-facing-headwinds). The party that received the plurality vote, FRETILIN, has been unable to pass its national program through parliament, which potentially sets the scene for a constitutional crisis. How this might impact the negotiations is unclear, however. In any event, it seems that there are a number of challenges that need to be circumvented before the treaty text on maritime boundaries will be signed and ratified.