BENEATH THE SEA

Determining a maritime boundary between Australia and East Timor

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Beneath the sea between Australia's northern shores and the half island of East Timor lies a treasure trove of natural resources. It is estimated that the seabed of the disputed area of the Timor Sea holds US$30 billion worth of oil and gas deposits. For the nascent country of East Timor, the potential tax revenues from the exploitation of these deposits could, if used wisely, significantly reduce the inflictions of poverty which plague the country. But East Timor's southern neighbour is laying claim to the most lucrative oil and gas fields and consequently the revenues from its spoils. The Australian Government claims that much of the oil and gas is within Australian territory despite the fact that the disputed fields lie twice as close to East Timor as they do to Australia. The East Timorese Foreign Minister has likened these claims to Bill Gates stealing from his cleaning lady and argues that Australia is violating East Timor's sovereign rights. So far negotiations between the two countries over the contended territory and the determination of a permanent maritime boundary have failed — the governments are at loggerheads. With Woodside Petroleum now halting its investment in the Greater Sunrise field there is pressure on both governments to reach a commercial solution to this complex dispute.[1] The question is: where to now?

Background

Following centuries of oppressive Portuguese colonial rule and decades of bloody resistance to Indonesian occupation, in May 2002 the East Timorese people were finally free to exercise sovereignty over their land. When, in 1999, 78.5% of the population voted for full independence from Indonesia, the Indonesian military and militia groups carried out their threat of unleashing terror on the population, and razing infrastructure and the land. By the time the UN Sanctioned International Force for East Timor (INTERFET), led by the Australian army, was given the go-ahead by the politicians to restore peace, the rampage had resulted in approximately 1000 deaths and 250,000 refugees being forcibly sent to West Timor. Entire villages had been razed and it is estimated that 70% of all buildings were destroyed. Along with the devastation of all social institutions, physical infrastructure and services including water supply systems and electricity throughout East Timor were either destroyed or stolen by the departing Indonesian military and militia.

The Australian soldiers were hailed as heroes by the East Timorese people. Undeniably the peace-keeping force created an enormous amount of goodwill between the two neighbours. However, Australia's dubious actions over the previous few decades were not forgotten. When in 1975 Indonesia invaded East Timor and when in 1976 it claimed sovereignty over the half island, it was widely recognised that Indonesia was violating international law and the East Timorese people's right to self-determination.[2] However, following at least subtle encouragement for the invasion and occupation from Australian Prime Ministers on both sides of politics, a few years later Australia became the only country to ever officially recognise Indonesia's annexation of East Timor.

It is widely regarded that the de facto and de jure acquiescence was linked to a perception that it would be able to negotiate a better deal with Indonesia than an independent East Timor over the oil and gas reserves in the Timor Sea. A leaked telegram sent by the Australian Ambassador to Indonesia, Richard Woolcott, in August 1975, immediately preceding the invasion, explicitly suggested to Canberra that the invasion be left 'to take [its] course' for that very reason.[3] De jure recognition followed a Department of Foreign Affairs advice to the Foreign Minister, Andrew Peacock that it was a requirement for commencing negotiations with Indonesia in relation to the 'Timor Gap'.[4]

The Timor Gap Treaty

In 1989, Australia and Indonesia signed an exploration agreement to exploit the oil and gas fields. The *Timor Gap Treaty* divided revenue from the seabed resources within the *Zone of Cooperation* (ZOC), Central Area A, equally between the two countries. Australia controlled areas east and west of the ZOC (see map). The agreement was overwhelmingly favourable to Australia, and it is widely regarded to have been its reward for its recognition of Indonesia's illegal annexation of East Timor.

Still considered as the 'administering power' for East Timor, Portugal attempted to challenge the legality of the *Timor Gap Treaty* in the International Court of Justice (ICJ). However, the Court found it was unable to consider the matter as Indonesia did not recognise its jurisdiction.[5]

In Australia, the legality of the *Timor Gap Treaty* was challenged in the High Court on the grounds that, as the annexation of East Timor by Indonesia was a violation of international law, the making of the treaty itself was illegal and void under international law. Therefore, it

REFERENCES

1. Woodside Pulls Out of US$5.2 Billion Timor Sea Gas Project,' Financial Times (UK), 17 November 2004.

2. SC Res 384, UN SCOR, 1869th mtg (1975).

3. Noam Chomsky, 'An Island Lies Bleeding', *The Guardian* (London, UK), 5 July 1994.

4. Department of Foreign Affairs and Trade (DFAT), *Australia and the Indonesian Incorporation of Portuguese Timor 1974–1976* (2000) 840.

5. *Case Concerning East Timor (Portugal v Australia)* [1995] ICJ 90.

was contended, the treaty was beyond the Executive power of the Commonwealth and the implementing legislation were not valid laws of the Commonwealth.[6] The High Court rejected this argument stating that the Commonwealth power was not confined to 'the enactment of laws which are consistent with, or which relate to treaties or matters which are consistent with, the requirements of international law'.[7] In essence the court found that a treaty entered into by the Executive is valid under domestic law regardless of its lawfulness at international law.

The Timor Sea Treaty: the 90:10 deal

On Indonesia's withdrawal from East Timor, the *Timor Gap Treaty* became invalid. During the UN Transitional Administration (UNTAET) period, action was taken to preserve the existing contracts for exploitation and exploration. The first UNTAET–Australia agreement in 2000 continued the terms of the *Timor Gap Treaty*. The ZOC Area A was renamed the Joint Petroleum Development Area (JPDA). The following year, UNTAET and Australia renegotiated the agreement to divide petroleum production revenue in the JPDA, so that 90% flowed to East Timor.[8] This 90:10 revenue allocation in the JPDA was maintained in the *Timor Sea Treaty* signed on East Timor's restoration of independence on 20 May 2002.[9]

The 90:10 deal on its face appears to be munificent to East Timor and Foreign Affairs Minister Alexander Downer has utilised the spin for all its worth. He has stated that the agreement was made 'on the basis of generosity'.[10] However, on a closer examination it is clear that generosity played no part in the arrangement. The JPDA to which the 90:10 revenue division applies is situated entirely north of the mid-point or 'median line' between Australia and East Timor. Its southern border marks the halfway point between the two countries. Thus as East Timor's President Xanana Gusmao argues, East Timor is in fact 'giving 10% of what belongs to [it] to Australia'.[11]

Furthermore, East Timor claims that an equitable delimitation of a maritime boundary would, according to current international law, result in territory to the east and west of the JPDA belonging to East Timor. In July 2002 the East Timorese Parliament passed the *Maritime Zones Act* declaring continental shelf and exclusive economic zone rights to at least 200 nautical miles.[12] This claim has the effect of overlapping with previous maritime claims made by both Australia and Indonesia. It is within this disputed territory that the most resource intense and profitable oil and gas fields are situated (see map). Currently Australia controls and profits from these fields. The Australian Government describes this territory as 'sole Australian seabed jurisdiction'[13] and continues to issue exploration licences and exploit resources in the disputed seabed area contrary to its obligations to exercise restraint pursuant to international law.[14]

The *Timor Sea Treaty* and its JPDA arrangement is an interim agreement that applies only until the delimitation of permanent maritime boundaries between Australia and East Timor or for a maximum period of 30 years, whichever is sooner.[15] The preamble to the treaty expressly states that it is a provisional arrangement 'which do[es] not prejudice a final determination of the seabed delimitation'.

Negotiations for a maritime boundary

By the end of the first round of negotiations a deadlock prevailed. The message of the Australian negotiating team was clear and obstinate: the median line argument is unacceptable and the lateral boundaries beyond the current JPDA are non-negotiable. In August 2004, following a meeting between Foreign Ministers Alexander Downer and Jose Ramos Horta, the nations appeared to have reached a breakthrough on a new framework for negotiations. Australia would offer East Timor billions in extra revenue from the disputed areas including the Greater Sunrise field in return for East Timor deferring its seabed boundary claims.[16] Details of a 'creative solution' were to be nutted out in October 2004. However these negotiations failed when, behind closed doors, Australia refused to discuss anything beyond a cash settlement, negating East Timor's sovereign rights to participate in the development of its resources.[17]

Australia argues, as it has for over 30 years, that the natural prolongation of its continental shelf entitles it to all areas up to the Timor Trough, which lies just south of East Timor. As early as October 1970, the Australian Government proclaimed that:

> The rights claimed by Australia in the Timor Sea area are based unmistakably on the morphological structure of the sea-bed. The essential feature of the sea-bed beneath the Timor Sea is a huge steep cleft or declivity called the Timor Trough, extending in an east-western direction, considerably nearer to the coast of Timor than to the northern coast of Australia. It is more than 550 nautical miles long and on the average 40 miles wide, and the sea-bed slopes down on opposite sides to a depth of over 10,000 feet. The Timor Trough thus breaks the continental shelf between Australia

6. *Horta and Others v The Commonwealth of Australia* (1994) 181 CLR 183, [6].

7. Ibid [10].

8. *The Timor Sea Arrangement,* incorporated as Attachment A to the Memorandum of Understanding, 5 July 2001, Australia–East Timor Transitional Administration (ETTA).

9. *Timor Sea Treaty*, 20 May 2002, [2003] ATS 13, art 4.

10. Alexander Downer, Foreign Minister, 'Rich Man, Poor Man' Four Corners, ABC, 10 May 2004, <www.abc.net.au/4corners/content/2003/transcripts/s1105310.htm> at 17 November 2004.

11. Above n 9.

12. *Maritime Boundaries of the Territory of The Democratic Republic of Timor–Leste*, Law No 7/ 2002, (East Timor), ss 7–8.

13. Alexander Downer, Foreign Minister, 'Australia's Sovereign Rights', Letter to the Editor, *The Wall Street Journal* (New York City, USA) 25 June 2004.

14. 'Unlawful Exploitation,' *Timor Leste Sun*, 21 to 27 May 2004, <www.easttimorsun.com/english/regional_news/21-5-04/unlawful_exploitation.htm> at 17 November 2004.

15. Above n 8, art 22.

16. Mark Forbes and Brendan Nicholson, 'Deal Struck Over Timor Sea Oil', *The Age* (Melbourne) 12 August 2004 <www.theage.com.au/articles/2004/08/11/1092102523212.html> at 17 November 2004.

17. Dr Mari Alkatiri, Timor–Leste Prime Minister, *Prime Minister of East Timor Statement by Timor–Leste Prime Minister on Timor Sea Talks*, Press Release, 27 October 2004, 1.

Australia argues, as it has for over 30 years, that the natural prolongation of its continental shelf entitles it to all areas up to the Timor Trough, which lies just south of East Timor.

> and Timor, so that there are two distinct shelves, and not one and the same shelf, separating the two opposite coasts. The fall-back median line between the two coasts, provided for in the Convention in the absence of agreement, would not apply for there is no common area to delimit.[18]

This stance was the basis of the 1972 seabed boundary treaty between Indonesia and Australia which created the 'Timor Gap' as Portugal, the colonial ruler of East Timor at the time, was unwilling to participate in the negotiations. The treaty with Indonesia placed the border just south of the trough, on the basis that the trough divided two separate continental shelves, arguably following accepted international law at the time, which allowed a state to have sovereign rights over the natural promulgation of its continental shelf.[19]

However, as customary international law developed, geological features were deemed increasingly irrelevant in the determination of maritime boundaries. By the 1980s it became established law that where opposite states are less than 400 nautical miles apart, as is the case with East Timor and Australia, the median line should constitute the boundary. By this time, even Indonesia was contending that the Timor Trough was a geological irrelevance for the purposes of closing the gap and completing the maritime border with Australia.

Essentially East Timor argues that a permanent maritime boundary should be drawn at the median line between the coasts of East Timor and Australia to reflect current international law. This argument is supported by customary international law and has been explicitly supported by the ICJ in a number of cases, including a case involving a similar dispute between Libya and Malta.[20]

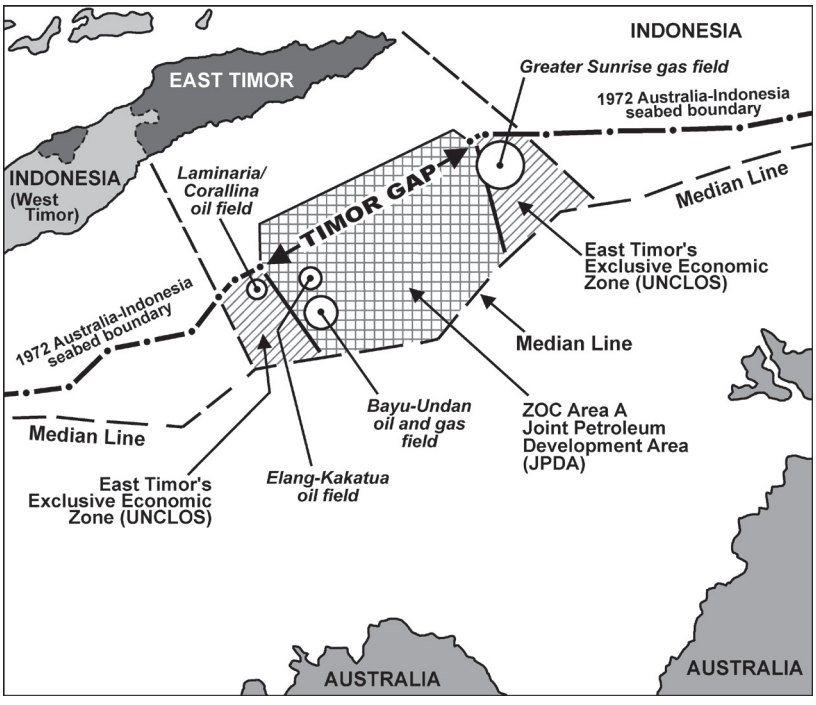
Moreover reports of several geologists claim that East Timor in fact shares a continental shelf with Australia, for the purposes of the international law definition of 'continental shelf' and the Timor Trough does not amount to a cessation in the natural promulgation of Australia's territory.[21] Thus, even if there is some legal validity to Australia's argument, it would appear to be technically flawed.

Contentions over the lateral boundaries pose an even more complex question and hold a greater significance in terms of control over the most profitable resource areas. The positioning of the lateral lines of the JPDA does not legally constrain the outermost limits of East Timor's maritime claims. The lines of the JPDA reflect those of the ZOC from the *Timor Gap Treaty* which in turn reflected the 1972 boundary treaty between Indonesia and Australia. That treaty explicitly recognised the possibility that overlapping claims might be made by, at that time, Portugal. Article 3 of the treaty stated:

> In the event of any further delimitation agreement or agreements being concluded between governments exercising sovereign rights with respect to the exploration of the seabed and the exploitation of its natural resources in the area of the Timor Sea, [Australia and Indonesia] shall consult each other with a view to agreeing on such adjustment or adjustments, if any, as may be necessary in those portions of the boundary lines…[22]

As a result of the position of some of the most profitable oil and gas fields, such as the Greater Sunrise field and the Laminaria–Corallina fields, if even slight adjustments were made to the lateral boundaries, the impact on the revenue allocation would be enormous.

While Australia contends that the limits of the JPDA would be maintained as lateral demarcations of maritime boundaries, East Timor argues that international law would allow a widening of its territory to some degree to both the east and west. The eastern lateral line of the JPDA is drawn so that all points on the line are equidistant from the nearest points in East Timor and the closest Indonesian islands. However, these Indonesian islands, such as the island of Leti, are very small. There is a multitude of international



18. *Australian Yearbook of International Law, 1970-73* (1975) 145–146.

19. *The North Sea Continental Shelf Cases (FR Germany v The Netherlands; FR Germany v Denmark)* [1969] ICJ 3.

20. *Case Concerning the Continental Shelf (Libyan Arab Jamahiriya v Malta)* [1985] ICJ 13, para 35-40.

21. Vaughan Lowe, Christopher Carleton and Christopher Ward, *Opinion in the Matter of East Timor's Maritime Boundaries*, 11 April 2002, para 10.

22. *Agreement Between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia Establishing Certain Seabed Boundaries in the Area of the Timor and Arafura Seas* [1972] SPT 1 ('1972 Seabed Agreement') art 3.

law that states that small islands should not have a disproportionate and inequitable effect on maritime boundaries. Depending on its relative size and position small islands should be allowed only a proportionate effect. The practical result of a revision of the eastern lateral to create a more proportionate and equitable boundary, in conjunction with a median line horizontal boundary, would be that most if not all of the Greater Sunrise field would fall within East Timorese territory.

Some academics have contended that this argument may be tempered by the fact that Indonesia has formally claimed archipelagic state status.[23] The *United Nations Convention on the Law of the Sea (UNCLOS)* permits archipelagic states to 'draw straight archipelagic baselines joining the outermost points of the outermost islands…' and the exclusive economic zone and the continental shelf to be measured from these baselines.[24] However, it would appear that these provisions would need to be read in conjunction with those in relation to the delimitation of maritime boundaries between states with opposite or adjacent coasts which require an 'equitable solution' to be achieved. Further, Indonesia agreed to giving a partial effect to its islands of *Natunas* for its seabed boundary with Malaysia, despite the fact that the islands lie within archipelagic baselines.[25]

In relation to the western lateral boundary, East Timor argues that the demarcation of an equidistant boundary should not have taken into account the prominent headland, *Tanjong We Toh* in Indonesia. The impact of the geographic feature on the western lateral line, positions it, so as to slope inwards and create an inequitable result. Rather, the line should be drawn so that it lies perpendicular to the general direction of the coast, discounting features such as *Tanjong We Toh*. This would cause the boundary to extend in a straighter southerly direction, rather than sloping in, in a south-easterly direction.[26] This adjustment to the western boundary, combined with a median line southern boundary, would have the effect of encompassing the profitable Laminara–Corrallina oil fields within East Timor's territory (see map).

International law requires that maritime boundaries achieve an 'equitable solution'.[27] According to Nuno Antunes 'it is fair to argue that giving East Timor no access to the Laminaria–Corallina fields, and only some 18% of the resources of the Greater Sunrise fields, falls well short of an equitable resource-sharing — thus being on its own a reason for deeming unreasonable the strictly equidistant "lateral boundaries"'. He states that '[t]o suggest otherwise would be a striking proposition …'[28] According to Jeffrey Smith, the lateral points of the JPDA are 'demonstrably too narrow'.[29]

Technically, Indonesia's consent is not required for the determination of any maritime boundaries between Australia and East Timor. However, Indonesia will eventually need to negotiate maritime boundaries with East Timor in relation to areas north of its boundary with Australia set by the1972 treaty, a further hurdle for East Timor. The East Timorese Government has invited Indonesia to commence negotiations and expects discussions to begin in the near future.[30] At least on a political level such negotiations could influence the outcome of the negotiations between Australia and East Timor with regard to lateral boundaries. Further, it may provoke renewed debate between Australia and Indonesia over boundaries established in the 1972 Seabed Agreement. Australia is clearly reluctant to enter into such dialogue with Indonesia and has stated that it would be 'a deeply unsettling development in [its] relationship with Indonesia, and for [its] foreign policy generally…'[31] From a legal standpoint, Australia's apprehension is somewhat misguided as neither government can unilaterally withdraw from the 1972 agreement and negotiations with East Timor do not require any such withdrawal to occur.

Australia's rejection of the jurisdiction of the ICJ and ITLOS

In March 2002, Australia made a declaration, pursuant to the optional clause of the Statute of the ICJ and art 298(1)(a) of *UNCLOS*, that expressly denied its acceptance of the jurisdiction of the ICJ and the International Tribunal for the Law of the Sea (ITLOS) with respect to maritime boundary delimitations and the jurisdiction of the ICJ in relation to disputes concerning the exploitation of an area in dispute or adjacent to an area in dispute.[32]

As this declaration was made by Australia just two months prior to East Timor's independence, it was unsurprisingly perceived as an 'unfriendly act' by East Timor.[33] Despite weak justifications given by the Department of Foreign Affairs and Trade that Australia prefers to negotiate such matters, the withdrawal from the international courts' jurisdiction undeniably represents acts of bad faith by the Australian Government.

What's at stake?

Under current interim arrangements East Timor expects to receive an estimated US$4.4 billion in tax revenue

23. *Act No 6 of 1996 Regarding Indonesian Waters* (Indonesia) art 2(1).

24. *United Nations Convention on the Law of the Sea*, opened for signature 10 December 1982 (entered into force 16 November 1994) (UNCLOS) arts 47(1) and 48.

25. *Agreement between the Government of the Republic of Indonesia and the Government of Malaysia Relating to the Delimitation of the Continental Shelves between the Two Countries*, opened for signature 27 October 1969, 9 ILM 1173 (entered into force 7 November 1969).

26. Nuno Atunes, 'Spatial Allocation of Continental Shelf Rights in the Timor SE: Reflections on Maritime Delimitation and Joint Development', <www.timorseaoffice.gov.tp/nunoarticle13-13.pdf> at 17 November 2004, 29-30.

27. Above n 22, arts 64(1) and 83(1).

28. Above n 26, 31.

29. Jeffrey Smith, 'The Offshore Jurisdiction of Timor Leste in the Timor Sea, Summary Opinion', March 2003, <www.etan.org/et2003/march/01/07offsho.htm> at 17 November 2004, para 4.

30. Timor Sea Office, 'Fact Sheets — Maritime Boundaries', <www.timorseaoffice.gov.tp/boundariesfacts.htm> at 17 November 2004.

31. Alexander Downer, Foreign Minister, *Insight*, SBS, 23 May 2002.

32. Alexander Downer, Foreign Minister and Daryl Williams, Attorney-General, *Joint Media Release of the Australian Minister for Foreign Affairs, Alexander Downer, and the Attorney-General, Daryl Williams, Changes to International Dispute Resolution*, 25 March 2002, <www.foreignminister.gov.au/releases/2002/fa039j_02.html> at 17 November 2004.

33. 'Canberra's "Unfriendly Act" over Gas Field Irks Timorese', *The Sydney Morning Herald* (Sydney) 13 April 2002.

The practical result of a revision of the eastern lateral to create a more proportionate and equitable boundary, in conjunction with a median line horizontal boundary, would be that most if not all of the Greater Sunrise field would fall within East Timorese territory.

from the oil and gas deposits in the Timor Sea. If a permanent maritime boundary were positioned to reflect East Timor's legal claims, the predicted revenues that would flow to East Timor over the life of the project would be in the order of US$12 billion. For a ravaged country with an annual government budget of US$74.6 million, heavily dependent on foreign aid, the difference is immense. According to the Timor Sea Office, the full amount of revenues would allow East Timor to both 'save sufficient revenues for the future, and to spend about US$300 per capita per year'.[34] As stated by President Gusmao, the sums in question are a matter of 'life or death, a question of being continually poor, continually begging, or to be self-sufficient'.

According to a recent Oxfam report, East Timor ranks as one of the poorest countries in the world with one of the highest child mortality rates and an average life expectancy of just 57.4 years; 41% of the population lives below the national poverty line of US 55 cents per day, and over half the adult population is illiterate.[35] It need hardly be mentioned that the comparisons with the majority of the Australian population are striking to say the least. However, the East Timorese Government and civil society groups insist that this is not a matter of charity but a matter of economic independence and territorial integrity. Prime Minister Mari Alkatiri states that '[d]espite what has been quoted in the media lately, Timor–Leste does not claim these resources because we are poor. Timor–Leste claims these resources because it is our international legal right'.[36]

According to the Department of Foreign Affairs and Trade, since 1999 the Australian Government has provided approximately AU$234.5 million in development assistance to East Timor and promises to provide approximately AU$40 million per annum over the period 2004–05 to 2006–07.[37] While Australian aid and assistance has had enormous benefits for reconstruction, development and security for East Timor, the figures must be viewed in the context of Australia's controversial gains from disputed areas of the Timor Sea. Since 1999 Australia has received approximately AU$2.14 billion in revenues from oil and gas fields in areas wholly claimed by East Timor.[38] As pointed out by Oxfam, this amounts to nearly ten times as much revenue from Timor Sea oil and gas deposits as it has provided in aid to East Timor since 1999.

And as negotiations stall, Australia continues to receive revenues of $1 million per day from the disputed Laminaria–Corallina and Buffalo fields that are now considered to be at least 75% exhausted. Indeed, it is a great source of fear for East Timor, that by the time a permanent maritime boundary is negotiated, the profitable resources of the seabed will be all but depleted. It is difficult to perceive a less sinister explanation for Australia's unwillingness to negotiate in good faith and in an expeditious manner or to allow an international tribunal to arbitrate on the matter according to international law.

Beggar thy neighbour

In both Australia and East Timor, non-government organisations, other civil society groups and individuals have spoken out against Australia's behaviour towards East Timor over the Timor Sea dispute. At a time where there is little to feel heartened by in matters of foreign policy, Australians are proud of the leadership role their government played in INTERFET and UNTAET and do not want to see the neighbourly goodwill dissipate. The Timor Sea Justice Campaign commenced in Melbourne earlier this year and has grown to become an impressive and vocal nationwide pressure group on this issue. The campaign seeks to change Australian Government policy in relation to the Timor Sea and is made up of concerned individuals of various ages and professions working on a voluntary basis. Spokesperson for the campaign, Dan Nicholson has stated that '[m]any Australians feel ashamed at the government's treatment of East Timor and we have received overwhelming support for our campaign'.

In East Timor, civil society is becoming increasingly infuriated with Australia's stance. The Movement Against Occupation of Timor Sea (MKOTT) organised huge peaceful demonstrations during the first round of negotiations and a further rally in front of the Australian Embassy in Dili on the second anniversary of East Timor's restoration of independence in May this year. In a submission to the Australian Senate, The East Timor Institute for Reconstruction Monitoring and Analysis told the Australian Government that, through its actions, it 'den[ies] the independence that so many East Timorese people struggled and died for over the past quarter-century'. Referring to Australia's role in INTERFET, it stated that 'many East Timorese are beginning to wonder if it was a more pragmatic move — the beginning of a new military occupation so that our southern neighbour could continue to steal our oil, just as our northern neighbour formerly took our lives'.

'Beneath the Sea' continued on page 298

34. *Timor Sea Office*, 'Fact Sheets — Summary', <www.timorseaoffice.gov.tp/summary.htm> at 17 November 2004.

35. Oxfam Community Aid Abroad, 'Two Years on … What Future for an Independent East Timor?' (2004) <www.oxfam.org.au/campaigns/submissions/easttimor/twoyearson.pdf> 2.

36. Dr Mari Alkatiri, Timor–Leste Prime Minister, *SEAAOC 2004 Keynote Address*, (9 June 2004).

37. Department of Foreign Affairs and Trade, 'East Timor — Country Brief', (June 2004) <www.dfat.gov.au/geo/east_timor/east_timor_brief.html> at 17 November 2004.

38. Timor Sea Office, *Australia Is Undermining 'Greater Sunrise' Development*, Press Release, 22 March 2004 <www.timorseaoffice.gov.tp/pressreleases.htm> at 17 November 2004.

to as the 'Step Up' program. This involves loans of between $800 and $3000 being made to low-income earners at a fixed interest rate of 6.9% for the purchase of household goods and services.

Clause 34 of the Code already provides for the establishment of a Code Compliance Monitoring Committee, responsible for monitoring compliance with the Code and naming banks in connection with Code breaches. A regulatory authority, such as APRA, could also be given responsibility to enforce sanctions against banks that did not comply with the community service obligations set out in the Code or it could impose conditions on banking licences where those obligations had not been complied with.

Clearly, the effectiveness of this model will depend upon the regulator being adequately resourced, and upon penalties for non-complying banks being sufficiently punitive. This might avoid the perceived failings of the 'co-regulatory' regime established for the regulation of the telecommunications industry in Australia, in terms of consumer protection.

Conclusion

This article has described a social problem that has arisen as a result of the failure by mainstream financial institutions to serve low-income earners. The solution proposed is that banks be subject to regulation to ensure that low-income earners have access to affordable and 'safe' financial services in Australia. Economic justifications for regulation have been outlined, namely the market failures demonstrated by both a lack of competition in the low-income market, and a lack of adequate information concerning the risk of lending in this market. Proposed models of regulation that have been outlined include monetary incentives, adverse consequences in relation to a bank's licence, and enforced self-regulation. The latter model has the advantages of encouraging industry commitment to rules and well-informed rule making.

The enacting of the *Community Reinvestment Act* in the United States over 25 years ago provides some precedent for the need for government intervention to deal with the issue of access to financial services by low-income earners. To do nothing and allow the status quo to continue, will be to leave a section of our community both financially and socially marginalised.

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'*Beneath the Sea*' *continued from page 293*

Where to now?

For East Timor, there appears to be little room to move in the dispute with Australia over the Timor Sea. The Australian Government's unwillingness to negotiate with any real substance and its refusal to allow an international court to arbitrate on the complex legal issues are casting dark shadows over the relationship.

As suggested by the East Timorese Government, the Australian Democrats, the Australian Greens, the Timor Sea Justice Campaign, Oxfam and other groups, an important step towards resolution is to place all Australian revenues from disputed areas into escrow until such time as permanent maritime boundaries are determined. On a final boundary demarcation the trust would be distributed accordingly. Such action would have the effect of removing any incentive for the Australian Government to continue to stall on negotiations and act in bad faith. Further, it would not jeopardise the stability of the fiscal and regulatory framework required by the petroleum companies to continue exploration and exploitation of the oil and gas fields.

In attempting to position itself as the regional policeman, rather than undermining international law, the Australian Government must recognise that there is a moral and legal imperative to abide by. Australia cannot expect to be a respected and positive role model in the region if its own behaviour is reprehensible. Such behaviour will only continue to foster negative perceptions of Australia and Australians and assist the cause of those who wish to harm our interests. Supporting East Timor as it struggles to rebuild and become a self-sufficient, stable, democratic nation can only serve to benefit Australia and the future of the region.

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