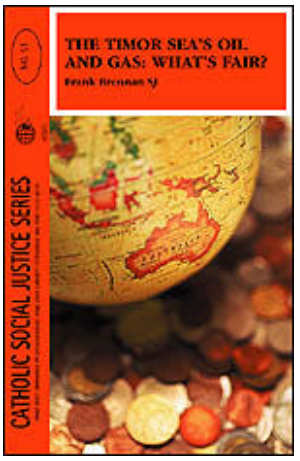
Closing the Timor Gap Fairly and in a Timely Manner

By Frank Brennan SJ
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Timor Sea Maps below

On September 20, Australian and Timorese officials will meet in Canberra for their second round of negotiations about maritime boundaries in the resource rich Timor Sea. While the officials have been working in the backrooms, the politicians have been active on the public stage. Back in July, Mark Latham said, "If we come into government, I think we will have to start again because there's been a lot of bad blood across the negotiating table". A month later, Jose Ramos Horta came to Canberra and held a joint press conference of Foreign Ministers with Alexander Downer who announced, "It's doable by the end of the year. And it would be good if we could do that, if we can have a Christmas present for everybody".

The politicians and the officials have different jobs to do, and with very different time frames. The politicians need to sign off on the agreement which will allow the Greater Sunrise natural gas project to proceed. This can happen only if the East Timorese parliament ratifies the agreement by the end of the year. The Australian parliament gave its approval back in March. The joint venturers led by Woodside have said that they could not proceed with the project if the agreement is not finalised by the end of the year.

Under the agreement, Australia will receive 82% of the annual government share from the project and Timor Leste will receive 18%. Mr. Downer now has Cabinet approval to offer some additional payments to Timor Leste. The Timorese parliamentarians have been unwilling to ratify the agreement until now because they are concerned about Australia's continuing exploitation of other oil and gas fields (such as Corallina and Laminaria) which are claimed by both Australia and Timor Leste. They have also been questioning the fairness of a deal that returns only 18% of the revenue from a project which is located twice as close to Timor Leste than it is to Australia. No doubt Timor Leste could do with more revenue at this time. The Timorese politicians may face the invidious choice between a bird in the hand and two in the bush.

While the politicians make their decision by Christmas, the officials, painstakingly, have to negotiate maritime boundaries in the Timor Gap which is the gap left in 1972 by Australia and Indonesia when they set boundaries for their respective continental shelves. The gap is the seabed opposite East Timor which was under the jurisdiction of Portugal prior to 1976. The delineating of the continental shelf determines which government has sovereignty to exploit oil and gas reserves.

Australia and Portugal never reached agreement about a boundary. From 1953 to 1976, consistent and opposed positions had been adopted by the governments of Australia and Portugal. Mining companies had conducted exploration activities consistent with the licences they were granted by either government. Throughout, Portugal was consistent, insisting that it had control of the resources on its side of the median line between Australia and Timor. Australia was consistent, insisting that it had control of the resources on the continental shelf up to the Timor Trough. Australia argued that this 3,000 metre deep trough was a natural geological feature marking the end of the Australian continental shelf

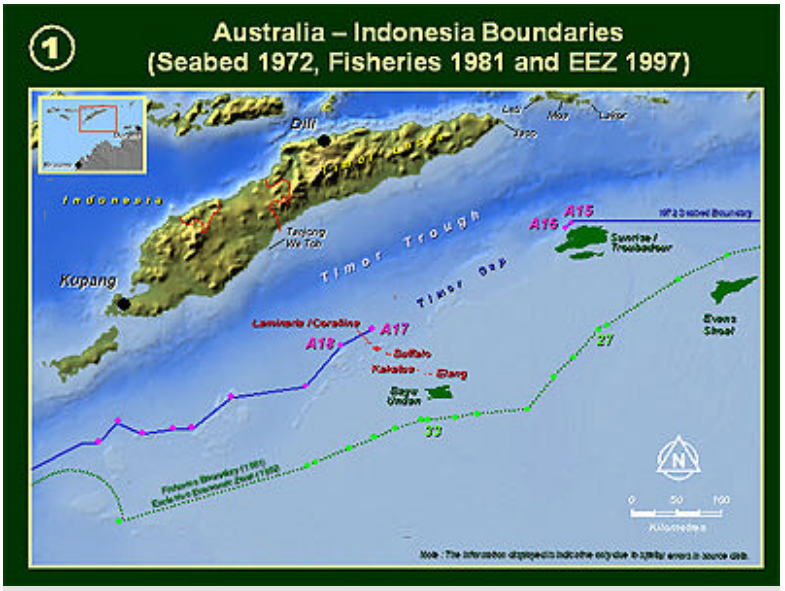
on one side and the end of the narrower and steeper Timor continental shelf on the other side.

By 1989, Australia and Indonesia were unable to reach agreement on a seabed boundary in the Timor Gap even though Indonesia's national interest would have been well served by a maritime boundary finalisation that recognized Indonesia's sovereignty over East Timor and its adjacent seabed. Back in 1972, Indonesia had conceded Australia the entire continental shelf under waters less than 200 metres in depth. But international law moved on. By 1989, Indonesia would have been more likely to succeed in a claim for continental shelf up to a median line drawn midway between Australia and Indonesia. Given these complexities, Australia and Indonesia decided to leave boundary agreements well alone, and to finalise a treaty providing a sharing in the government revenues from mining projects in the Timor Gap.

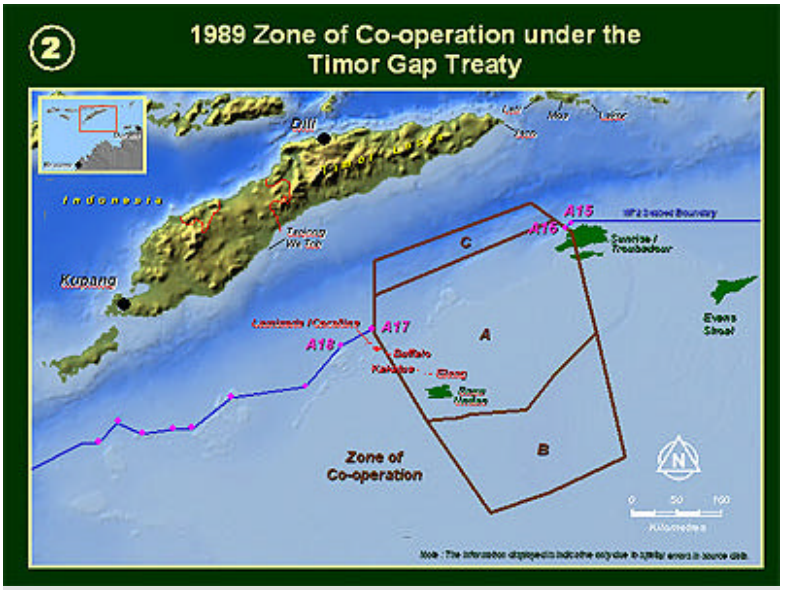
Australia still claims its entire continental shelf under waters less than 200 metres in depth. Timor Leste repeats the claims made by Portugal for a half share in the continental shelf between Australia and Timor Leste. Just as Australia could not convince Indonesia in 1989, it has even less chance of convincing Timor Leste and the international community in 2004. It is this development in international law that colours Australia's 2002 decision to withdraw maritime boundary delimitation from the compulsory jurisdiction of the International Court of Justice (ICJ). In November 2000, UN officials had been warned by Australian officials that opting out of the compulsory jurisdiction of the ICJ was "Australia's get out of jail card". The option had already been put to the Howard Cabinet and no minister had objected. The UN officials were warned: "The more ambitious East Timor's claim, the easier it would be for the Government to pursue this approach in terms of living down domestic controversy."

The negotiation of equitable maritime boundaries in the Timor Gap is likely to take some years, involving not only Australia and Timor Leste, but also Indonesia. In the process, there is a need to settle the northern boundary of Australia's continental shelf, determining how much of the Bayu Undan revenues in future would go to Australia and Timor Leste. There is a need for an eastern boundary that could deliver much more than 18% of the Greater Sunrise revenues to Timor Leste. There is a need for a western boundary determining whether existing projects such as Laminaria and Corallina belong exclusively to Australia. These boundary negotiations over sovereignty should not be rushed or clouded by a federal election or by the politicians needing to strike a fair financial deal allowing the Greater Sunrise project to proceed by Christmas. The challenge is to find a solution that is both equitable in its consideration of the border issues and supportive of the development of Greater Sunrise.

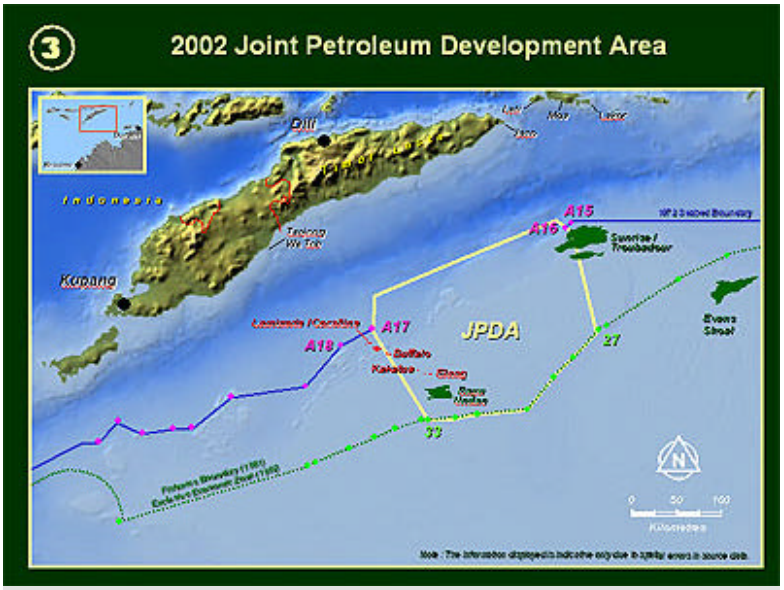
Maps



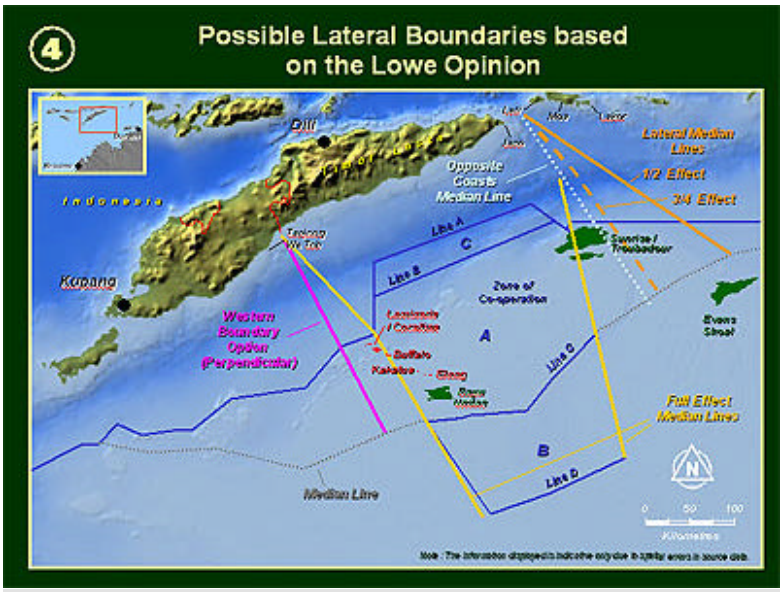
Australia-Indonesia Boundaries - click map 1 for larger image



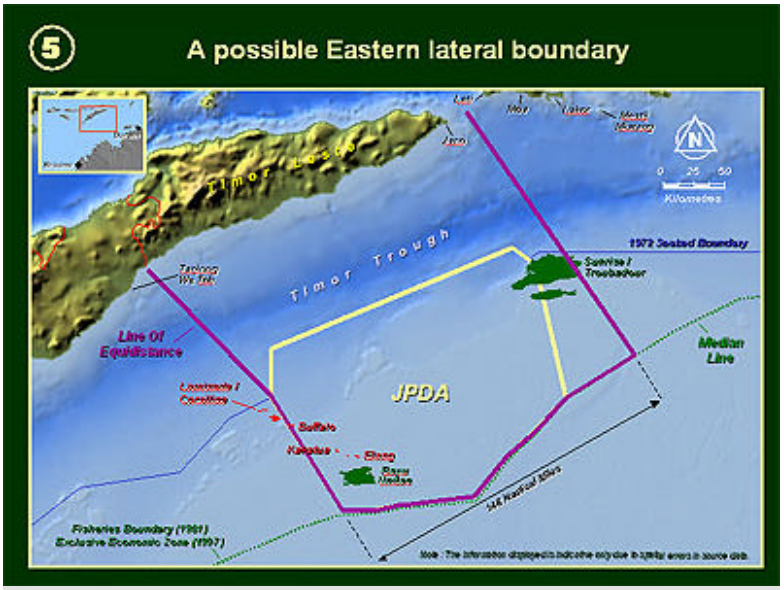
1989 Zone of Cooperation - click map 2 for larger image



2002 JPDA - click map 3 for larger image



Lowe opinion lateral boundaries - click map 4 for larger image



Possible Eastern lateral boundary - click map 5 for larger image