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EAST TIMOR OIL

Canberra's Sea of Troubles

A dispute between Australia and East Timor over oil-and-gas wealth in the Timor Sea has cast doubts on Canberra's interpretation of the Law of the Sea as well as its sense of fairness

By John McBeth/DILI, EAST TIMOR
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PETER GALBRAITH IS NOT popular with Australia's Department of Foreign Affairs and Trade. Sharp-minded, egotistical and as combative as East Timor Prime Minister Mari Alkatiri, the ethnic Yemeni Muslim who hired him, the former American diplomat is the hired gun for the fledgling nation in its David-and-Goliath struggle with Australia over a share of the oil-and-gas riches in the Timor Sea.

A FIELD OF CONTENTION

- Australia and East Timor signed the Timor Sea Treaty in 2002
- They agreed to share undersea oil and gas
- Australia has sought to corner the lion's share
- The resulting dispute could threaten their maritime boundary

It was the late respected United Nations administrator Sergio de Mello, killed in the bombing of the UN headquarters in Baghdad, who brought him on board in 2000, first as director of external affairs and later as minister of external affairs in a new transitional administration. The way Galbraith puts it, de Mello "smelt a rat" over Canberra's rush to negotiate a new agreement to replace the controversial Timor Gap Treaty it had signed with Indonesia in 1989--seen as a quasi-recognition of Jakarta's 1975 anne xation of the former Portuguese colony.

Whatever firepower Galbraith, 53, brings to his job as East Timor's head negotiator, the spectacle of a large country seemingly strong-arming a small, impoverished neighbouring state barely two years old is not going down well with the international community. Nor, for that matter, with a lot of ordinary folk in Australia, where the concept of a "fair go" is ingrained in its egalitarian culture and where Timorese are regarded with affection for helping Australian troops in World War II.

In separate interviews with the REVIEW, Alkatiri and Galbraith sought to play down the importance of the court of public opinion, clearly their most potent weapon in talks that are expected to drag on for at least five more years. Instead, they plug away at the merits of their case under the 1982 Law of the Sea Convention, whose interpretation, they argue, has evolved far beyond what lies at the heart of Australia's claim: the extension of its continental shelf.

At stake are $12 billion in revenues from Greater Sunrise, an underwater zone containing 9 trillion cubic feet of gas and straddling the northeast fringe of the Timor Gap, now known as the Joint Petroleum Development Area (JPDA) under the new Timor Sea Treaty signed in May 2002. While Australia agreed to increase East Timor's share of the Bayu-Undan field, a 3 trillion-4 trillion-cubic-feet gas resource in the southwest corner of the JPDA, from 50% to 90%, it grabbed 82% of Sunrise for itself--along with the oil from two producing fields close to Bayu-Undan.

Crucially, however, it had little choice under international law than to agree to enter into further talks to establish a maritime boundary between the two neighbours. Much to Canberra's chagrin, after ensuring a cash flow of up to $300 million a year from Bayu-Undan to help underwrite Dili's national budget, Galbraith is now using that concession to push for a median line. That would put Sunrise, which lies 144 kilometres from the Timor coast and fully 270 kilometres from Australia, well inside the seabed claimed by East Timor.

Employing the argument it used in securing an immensely favourable boundary settlement with Indonesia in the early 1970s, Australia's case is based on Article 76 of the Law of the Sea. This recognizes "natural prolongation"--that the seaward extension of its land territory continues uninterrupted until it disappears into the 3,000-metre-deep Timor Trench, just 50 kilometres off the East Timor coast. To agree to anything less than that would call into question the legal validity of Australia's seabed boundaries with Indonesia, something Foreign Minister Alexander Downer has said would be "a deeply unsettling development."

However, in situations where neighbouring states are less than 400 nautical miles (740 kilometres) apart, as in the case of Australia and East Timor, a separate Law of the Sea article requires parties to negotiate an "equitable solution." Retired Portuguese naval officer Nuno Sergio Marques Antunes, a British-educated maritime-law expert and member of East Timor's multinational negotiating team, points to more than 60 cases during the past 20 years in which disputing nations have adopted a median line where continental-shelf claims overlap. "Whatever the circumstances," he asserts, "the midpoint is the starting point for negotiations."

Galbraith and Alkatiri say Australia's decision last year to rule out adjudication by the International Court of Justice underscores the strength of East Timor's case. "We want 100% [of the Sunrise field]," Alkatiri insists. But he also adds: "When you decide to negotiate, it means you are ready to compromise." Galbraith, a former United States ambassador to Croatia who played a leading role in the Balkans peace process, makes it

clear Dili will only go so far: "There's not a slightest doubt, the line should be in the middle. Any compromise would have to involve a substantial shift of resources."

Australian officials won't talk publicly about the talks, describing them as confidential. But Canberra's position took a body blow recently when it was disclosed that a key member of the Australian negotiating team, lawyer Dean Bialek, in written and verbal submissions to an Australian parliamentary committee two years ago, questioned whether Australia had the legal right to insist on the prolongation of its continental shelf. He was then a lecturer in international law at the University of Melbourne.

WAITING GAME

East Timor is even reopening the debate on Australia's contention that the Timor Trench is a subduction zone--where one tectonic plate (in this case Australia's) slides under another (the Banda Arc plate). It is not a new theory. Senior Indonesian diplomat Hashim Djalal, who participated in the seabed boundary talks with Australia 30 years ago, says his delegation sought to argue for a median line under the then 1958 UN Continental Shelf Convention because of its contention that the meeting point of the two plates was actually north of Timor.

Portugal subsequently rejected Australia's position and the resulting space between the two points agreed on by Australia and Indonesia became known as the Timor Gap. But why Indonesia relented is still the subject of debate. Djalal explains that Jakarta, a signatory to the 1958 convention, couldn't produce sufficient evidence to prove its theory, while Australia was able to bombard the Indonesians with a mass of data collected by oceanographic-research vessels and navy submarines to back its claim.

Djalal says the Indonesians were unaware of the Timor Sea's oil-and-gas potential at that time. But he also acknowledges that regional politics could have been one reason why Jakarta spurned Portugal's suggestion to form a united front against the Australians. "Indonesia wanted to be a good neighbour after *konfrontasi* [the armed confrontation in the early 1960s between Indonesia and Malaysia, in which Malaysia was supported by Britain, Australia and New Zealand]," he says.

Since then, however, a number of experts have given new credence to Indonesia's--and now East Timor's--case. Some describe the Timor Trench as merely a foreland basin, pointing to the absence of volcanoes on Timor island, compared to the Banda Arc islands of Sumbawa and Flores further to the north. They also note the general lack of seismic activity in the Timor Sea--activity that would be expected if the trough were a tectonic collision point.

The real debate, however, centres on the Law of the Sea Convention and how long each side is willing to wait out the other. Don Rothwell, a professor of international law at Sydney University, says that by agreeing to the huge difference in the division of royalties for the Bayu-Undan field and the rest of the JPDA, Australia was apparently hoping East Timor would be satisfied. Now that Dili has decided to hang tough, he says, "Australia could continue to negotiate until the cows come home. It is difficult to see

whether they could be forced into a forum where the issue could be resolved by a third party."

Alkatiri is prepared to be patient. "Five years is okay," he says. "I'm not prepared to leave my grandchildren to resolve this problem. We're not in a hurry." Both he and Galbraith make it clear that they were in a hurry to secure revenues from Bayu-Undan, where ConocoPhilips has so far only begun extracting condensate from the gas for sale in mostly regional oil markets. That, says Energy Secretary Jose Taxeira, will provide East Timor with fiscal stability for much of the length of the project. According to Dili's estimates, revenues from Bayu-Undan will rise from $24.5 million this year to $47 million in 2006, when a gas pipeline to Darwin will be complete, to as much as $350 million a year by 2013.

Australia may not be in the mood at this point, but in the end the most expedient solution may be to set aside the issue of a maritime boundary and simply give a larger share of the Sunrise field to East Timor. As Galbraith puts it, "All we need is the benefits as if there was a boundary."

On June 7, in what may foreshadow a possible shift in Canberra's position, Northern Territory Chief Minister Claire Martin urged the two sides to go back to the "royalties-negotiating table" and look for a more favourable revenue split for East Timor. Her advice: De-link the very valid maritime boundary issue from revenue and make a one-off agreement.

Responding, Alkatiri told the Southeast Asia Australia Offshore Conference: "We're open for creative solutions to get Greater Sunrise developed." There is reason for pragmatism in Dili as well. The Indonesian Foreign Ministry has so far stayed well out of the dispute, but Djalal contends that if a median line is established, the Timorese might well find themselves in a new dispute, this time with Jakarta, over the ownership of the Sunrise field.

Woodside Energy, the operator of the field, has told the two governments it will need legislative, fiscal and regulatory certainty before it can begin the search for the markets necessary to get the Sunrise project off the ground. In other words, the project will remain on hold.

Australian Prime Minister John Howard's government has shown no such restraint. In the past eight months Canberra has put up three new exploration licences for auction in disputed areas adjacent to Sunrise and Bayu-Undan. It also continues to pocket the $1 million in tax revenue from the small Laminaria and Corallina oilfields.

Lauded in 1999 for sending in troops to rescue the territory from marauding Indonesian-backed militias, Australia now finds itself cast in the role of villain. That makes Australian Sen. Bob Brown squirm. "They're our good neighbour," says the Greens Party member, as anti-Australian protesters kept a vigil outside the Dili hotel where the negotiators were huddled. "We can't just jump the fence and invade their garden."

Mark Dodd in Darwin contributed to this article

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