

Dr Michael White QC
Adjunct Professor
Centre for Marine Studies
University of Queensland

“Timor Sea Agreements”



T C BEIRNE SCHOOL OF LAW
Marine and Shipping Law Unit



Timor Sea Agreements

Australia & Timor-Leste

Incl. Indonesian Boundary background

Michael White

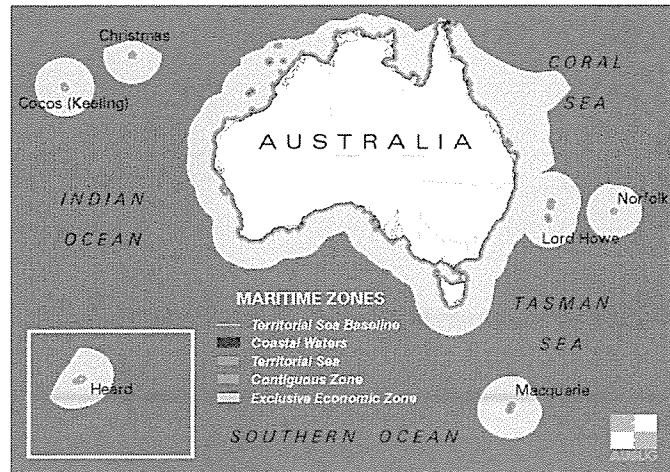
Introduction

- Australia & East Timor have a complex offshore boundary agreement
- Its principal focus is the development of the extensive undersea petroleum deposits
- The background lies in the history of the Australian and Indonesian maritime boundary agreements

Marine and Shipping Law Unit

T C Beirne School of Law, University of Queensland

Australia's Maritime Zones



Marine and Shipping Law Unit

T C Beirne School of Law, University of Queensland

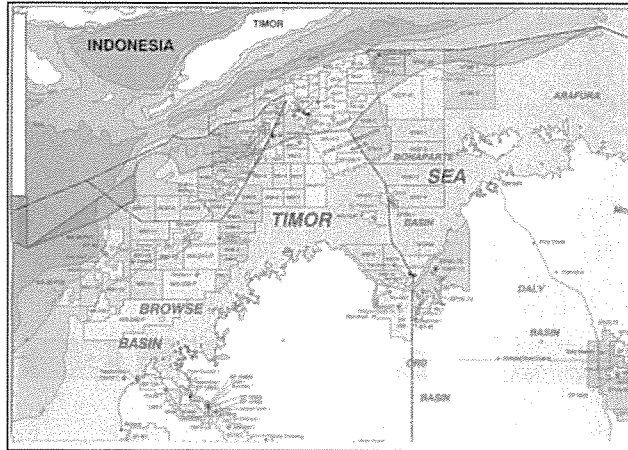
Maritime Boundary Negotiations

- Economic importance of the northern boundaries lie in exploration and development of fisheries & energy resources
- Energy exploration & production of NW shelf is central to Aust. Economy
- International conflicts with neighbouring states are avoided by agreements

Marine and Shipping Law Unit

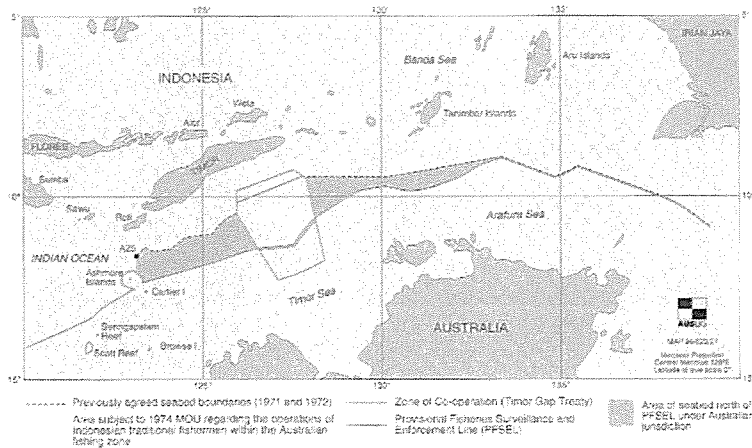
T C Beirne School of Law, University of Queensland

Northwest Shelf Petroleum Activity - Illustration



Source: Undated map c.1999

Australia-Indonesia Boundaries 1989-1999



Marine and Shipping Law Unit

T. C. Palmer School of Law, University of Queensland

Historical Background to the Australian and Timor-Leste JPDA and Maritime Boundary

- 1975 – East Timor annexed by Indonesia
- Attempts to negotiate with Portugal failed
- 1989 – Australia and Indonesia conclude Timor Gap Treaty
- Treaty recognised Australian claim to continental shelf up to Timor Trough
- 1990 – Enabling legislation for treaty passed: *Petroleum (Timor Gap Zone of Cooperation) Act*

Marine and Shipping Law Unit

T.C. Beirne School of Law, University of Queensland

cont.

- 1997 – New boundaries treaty with Indonesia; has not been ratified
- 1999 – Timor-Leste separated from Indonesia
- 2002 – Timor-Leste achieved independence
- Arrangements between 1999 and 2002 covered by agreement between Australia and UN Administration – continuation of status quo
- 20 May 2002 – Timor Sea Treaty agreed between Australia & Timor-Leste on JPDA
- 2003 – treaty enacted in Australian law: *Petroleum (Timor Sea Treaty) Act 2003*

Marine and Shipping Law Unit

T.C. Beirne School of Law, University of Queensland

Litigation over the Timor Gap

- 1994 – *Horta v Cth* (1994) 181 CLR 183 – HC held that the Indonesian Treaty 1989 not justiciable; also *Petroleum (Australia-Indonesia Zone of Cooperation) Act* 1990 is valid Act
- 1995 – *Portugal v Australia* (1995) ICJ Rep 90 – ICJ held that issue could not be decided as Indonesia not a party
- 1998 – *Cth v WMC Resources Ltd* (1998) 194 CLR 1 – HC held that WMC exploration permit blocks cancelled in the ZOC not 'property' under s.51(xxxi) of Constitution so no acquisition other than on just terms occurred

Marine and Shipping Law Unit

T.C. Beirne School of Law, University of Queensland

Timor Sea Treaty - Outline

Timor Sea Treaty 2002 Terms:

- JPDA jointly managed and controlled by Timor-Leste and Australia
- Regulatory structure composed of Designated Authority (day-to-day administration), Joint Commission (policy) and Ministerial Council (ultimate decision-making body)
- Production sharing: Timor-Leste 90% Aust. 10% (for taxing revenue)
- Joint obligation to protect the marine environment: Art. 10

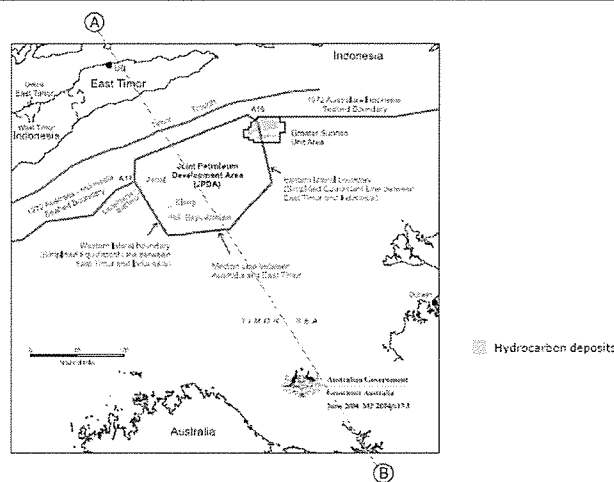
Marine and Shipping Law Unit

T.C. Beirne School of Law, University of Queensland

2002 Timor Sea Treaty

- Criminal jurisdiction – NT
- Civil Jurisdiction – all Cth, State & Territory courts
- Duration 30 years
- Pipelines & production platform issues
- Petroleum Mining Code (PSC) & Production Sharing Contract (PSC) agreed between the govts in 2006

The Australia-East Timor Boundary Issue

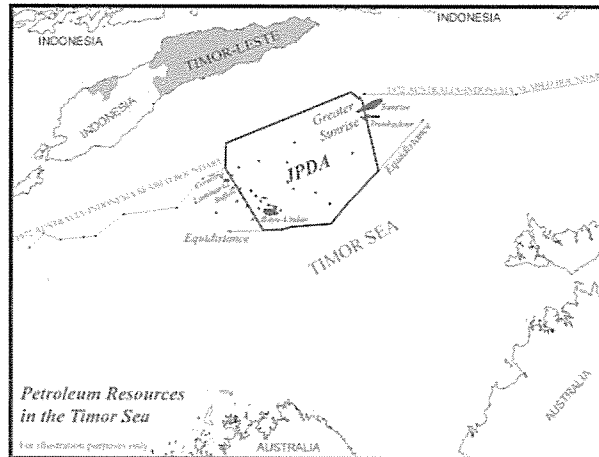


Marine and Shipping Law Unit

T. C. Bellin School of Law, University of Queensland

Map taken from Australian Department of Foreign Affairs and Trade, 'Australia-East Timor Maritime Boundaries: Finding an Equitable Solution' http://www.dfat.gov.au/gov/east_timor/ea_et_mv_bund.pdf at 7 December 2004

The JPDA & Lines of Equidistance



Source: Timor Sea Office, Timor-Leste Government. <http://www.timorseaoffice.gov.tl/sunrisemap.htm>

2002 Timor Sea Treaty

- Interim arrangement and did not prejudice future maritime boundary claims: Article 2
- Will remain in force until permanent boundaries agreed upon or for 30 years: Article 22
- Any petroleum reservoirs straddling the border of the JPDA to be subject to unitisation agreement: Article 9

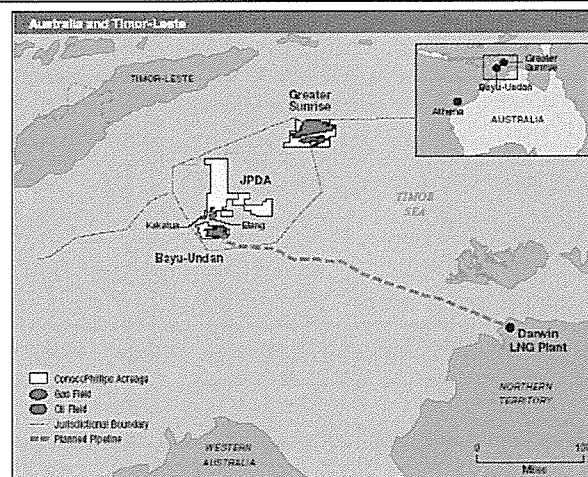
Greater Sunrise Unitisation Agreement

- Unitisation agreements allow for a single administrative arrangement to apply across whole reservoir area both inside and outside of JPDA
- Under Annex E agreed 20.1 % of Greater Sunrise lay within JPDA
- Terms of treaty applied to this area so East Timor entitled to 90 % of 20.1% of revenue (approx. 18 % of value of entire Greater Sunrise). Aust entitled to balance
- Aust. & Timor-Leste agreed on International Unitisation Agreement 2003
- *Greater Sunrise Unitisation Agreement Implementation Act (Cth)* passed 30 March 2004

Marine and Shipping Law Unit

T.C. Balme School of Law, University of Queensland

The Bayu-Undan Pipeline



Source: ConocoPhillips Exploration and Production Factbook.
<http://www.conocophillips.com/about/reports/factbook/e-p.pdf>

Negotiations on Permanent Maritime Boundaries

- Aust. – Timor-Leste Talks held over several years but no agreement reached
- UNCLOS provides 'delimitation of the exclusive economic zone ... shall be effected by agreement on the basis of international law': Article 74(1)
- BUT if no agreement reached within a reasonable period of time, States can resort to the dispute resolution procedures provided for in Part XV (e.g. ITLOS, ICJ, Arbitration): Article 74(2)

Marine and Shipping Law Unit

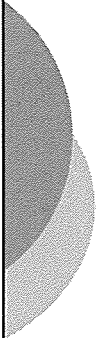
T. C. Beirne School of Law, University of Queensland

Australia opted out of independent decision

- BUT no option for independent determination as in March 2002 Australia lodged declaration under Article 298(1)(a) of UNCLOS withdrawing acceptance of compulsory dispute resolution procedures (e.g. ITLOS, ICJ) for disputes relating to maritime boundary delimitation
- Reason given was that 'another country may have been able ... commence proceedings against Australia prior to Australia's lodgment of the declaration'.


Marine and Shipping Law Unit

T. C. Beirne School of Law, University of Queensland




Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS) 2006

- 12 January 2006 both Foreign Ministers signed CMATS
 - Key terms
 - ◆ CMATS implemented concurrently with earlier treaties
 - ◆ Revenue sharing of 50:50 from Greater Sunrise field outside the JPDA
 - ◆ Neither country pursue maritime boundary claims for 50 years
 - ◆ Australia to regulate and authorise activities outside the JPDA to the south of the 1972 Australian-Indonesian sea-bed boundary & East Timor to the north
- 



Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS) 2006...cont

- Key terms cont...
 - ◆ Timor-Leste to exercise water-column (fisheries) jurisdiction as it does in with the JPDA
 - ◆ Organisational structures to be established for the management of the area
- 

Timor Sea Legislative Structure

- Offshore Petroleum Act 2006 (Cth) replaced the Petroleum (Submerged Lands) Act 1967 from 1.7.2008
- The OPA has been much amended, incl. by the Offshore Petroleum Amendment (Greater Sunrise) Act 2007
- Effect is that the Timor Sea areas adjacent to the Northern Territory are divided into: (a) Principal NT Offshore area; (b) Eastern Greater Sunrise offshore area; (c) Western Greater Sunrise area (not *offshore* area).
- The 'Joint Authority' for regulating the area is a combination of the Cth and NT Ministers (by their delegated persons)
- The Greater Sunrise Offshore Petroleum Joint Authority must consult with the Timor Sea Designated Authority

Conclusions

- ◆ Australia has now settled its maritime boundaries issues with Timor-Leste for 50 years from 2006
- ◆ The JPDA area should now proceed to development
- ◆ The Greater Sunrise field unitised development can proceed with a semblance of a stable legal structure
- ◆ It is the Oil Companies, not governments, that actually explore, develop and produce the petroleum product

THE END