

# Plain facts about Australia and East Timor's Maritime Boundary

## March 2005

After 400 years of colonization and a quarter-century of military occupation, East Timor became independent in 2002. However, the world's newest nation has yet to establish boundaries with its neighbors, Indonesia and Australia. Tens of billions of dollars worth of oil and gas lie under the Timor Sea between East Timor and Australia (see map on next page), and resolving that maritime boundary is essential to East Timor's ability to provide for its people. So far, Australia has been unwilling to negotiate respectfully with East Timor according to international legal principles.

Although it is a sovereign nation, East Timor has limited capability to persuade Australia to negotiate fairly. In fact, Australian officials often try to bully East Timorese negotiators, using their superior size, wealth, experience and options to pressure East Timor to surrender its legal rights. Support from officials and citizens in the United States can make a difference, just as it did in helping to end Indonesia's 24-year occupation.

In response to initiatives by the U.S. Congress and others, the Australian government is distributing inaccurate and incomplete information about the Timor Sea boundary dispute. ETAN is publishing this fact sheet to help people understand the truth.

### Australia says

*They are offended by criticism of Australia's role in East Timor.*

### But in reality

Although Australia did contribute significantly to East Timor's independence in 1999, the international goodwill they earned is now at risk. Many East Timorese feel that their struggle for independence is not complete without boundaries accepted by their neighbors, and Australia's refusal to negotiate a fair permanent maritime boundary is seen as obstructing that goal.

Moreover, as the Congressional letter (see page 5) sent to Australia's prime minister said, the billion dollars taken by Australia since 1999 from oil fields claimed by East Timor dwarfs the cost of Australia's assistance to East Timor. This makes East Timor the largest (albeit unwilling) donor of foreign aid to the Australian treasury. Finally, the Australian government supported Indonesia from 1975 to 1998, during that country's illegal and brutal military occupation of East Timor. Australia gave *de jure* recognition to the occupation in 1978 in order to access Timor Sea resources, the only democratic country to do so.

---

*Putting revenue from disputed areas in escrow is ridiculous.*

On the contrary, placing the funds in escrow is the only fair way to manage the temporary situation until a boundary settlement is reached, and will motivate both sides to resolve the boundary dispute expeditiously. It Australia's continuing unilateral issuance of licenses to petroleum companies in these areas violates international law and has been protested by East Timor's government.

**East Timor Action Network (ETAN)**

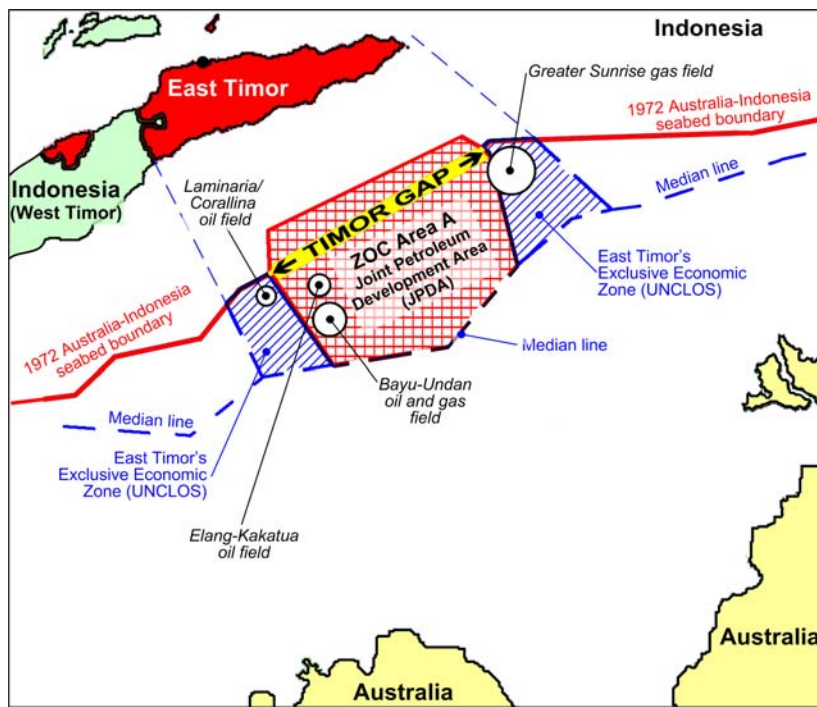
PO Box 15774, Washington, DC 20003. 202-544-6911 etan@etan.org www.etan.org

## The Timor Sea and Contested Areas Between Australia and East Timor

The cross-hatched area is the Joint Petroleum Development Area (JPDA), defined by Indonesia and Australia in 1989 during the illegal Indonesian occupation. The JPDA includes some oil and gas fields on East Timor's side of the median line, but less than half of the total reserves. This area was legitimized by the interim 2002 Australia-East Timor Timor Sea Treaty, which establishes a temporary division (90% East Timor, 10% Australia) for revenues from the JPDA, but expires when permanent boundaries are established.

East Timor continues to claim additional area north of the median line which Indonesia had earlier ceded to Australia, but Australia does not acknowledge that that area is up for discussion.

The striped areas are likely to belong to East Timor under a fair legal settlement.



### Australia says

*Australia has been very generous in agreeing to a 90/10 split of the JPDA in East Timor's favor, when compared to the 50/50 split that applied under Indonesia.*

### But in reality

The 50/50 split divided the spoils of illegal occupation – neither Indonesia nor Australia owned this territory. Indonesia “gave” Australia a large share as payment for Australia’s complicity in Indonesia’s brutal occupation.

Firstly, the new nation has no maritime boundaries, as its former colonial power (Portugal) never negotiated any with its neighbors, nor did the transitional UN administration. Even the agreements Indonesia and Australia made during Indonesia’s illegal occupation of East Timor did not establish a boundary. In any case, agreements made then are invalid and cannot be applied to the new nation. Secondly, the majority of what should be East Timor’s petroleum resources are outside the JPDA, and the 90/10 split does not apply to them. These include 80% of the Greater Sunrise field and all of the nearly-depleted Laminaria-Corallina fields. Australia has taken possession of the resources outside the JPDA, although both countries claim them and they would belong to East Timor under UNCLOS principles.

*East Timor is making a grab for the lateral boundaries of the JPDA.*

This is not a “grab” but a justified claim. Although the precise location of the east and west lateral boundaries would have to be determined by negotiations or arbitration, current principles of international law would place them significantly wider than the current lateral edges of the JPDA, encompassing all of Laminaria-Corallina and most or all of Greater Sunrise.

*Australia's unilateral exploitation of the Laminaria-Corallina fields, as well as its claim to nearly all of the Greater Sunrise field, are consistent with international law.*

Under principles of international law widely established since the 1982 United Nations Convention on the Law of the Sea, maritime boundaries between facing countries should follow the median line, half-way between their coastlines, without regard to the topography of the sea floor. Until a boundary is established, both nations are obliged to exercise restraint.

## Australia says

*The problem in East Timor is capacity to use money effectively, especially in the health area, not a shortage of money from offshore oil and gas development. More money won't improve health in East Timor.*

## But in reality

Since 1999, Australia has taken in more than a billion dollars (approximately two billion Australian dollars) from petroleum fields outside the Joint Petroleum Development Area but twice as close to Timor as they are to Australia, or about one million dollars each day. East Timor has not received a single cent from these fields. At the same time, East Timor has an extremely meager budget – compared to Australia, East Timor's per capita expenditures on health care, agriculture, and education are tiny. (See below.) According to the 2004 UNDP Human Development Report, 126 of every 1,000 children born in East Timor die before their fifth birthday, compared to six in Australia. In Australia, health care professionals attend virtually every birth; in East Timor, more than three out of four babies are born with no health care personnel. Life expectancy is only 49 years in Timor, compared with 79 in Australia.

To argue that more funds would not enable East Timor to more effectively address chronic food shortages and a health care crisis is disingenuous. If East Timor had had a billion dollars more since 1999, they could have done much to provide health care services and develop their capacity and infrastructure. Moreover, arguing that more money will not improve health ignores many other factors that affect public health – better education, improved nutrition, access to medication, clean water, sanitation, improved roads and other infrastructure, electrification, and other areas that remain seriously underdeveloped in East Timor due to a lack of funds.

### East Timor's expenditures and expected oil revenues

East Timor's government budget is \$83 million dollars, less than \$100 for each of its 940,000 citizens. Bilateral and multilateral aid, which will diminish sharply over the next few years, adds \$120 million, mostly for capital and infrastructure projects. This table shows how East Timor spends this money.

By comparison, Australia's government budget is \$193 billion. With a population of 20.2 million, Australia's per capita government expenditure is 108 times East Timor's. From another perspective, ten million dollars of additional petroleum revenue would increase East Timor's per capita government expenditure by 12%. The same amount would increase Australia's per capita government expenditure by 0.0052%, one two-thousandth as much.

The Australian brochure on maritime boundaries claims that East Timor will earn "well in excess of US\$6 billion in revenues from the Bayu-Undan project alone", but the East Timor government estimates the revenues at \$3.1 billion.

East Timor's government plans to manage its petroleum income with a Petroleum Fund, trying to avoid the "resource curse" which afflicts many similar oil-dependent countries. According to their calculations, Bayu-Undan will provide about \$93 million per year sustainably, less than East Timor currently receives in foreign aid. This amount would more than triple if East Timor received its entitlement from Greater Sunrise and other contested fields.

#### East Timor 2004-2005 Combined Sources Budget (\$'000)

Ministry	CFET	TFET	Aid	UN	Total
Office of the President	380	0	0	240	620
National Parliament	930	0	0	240	1,170
Government Structures	1,004	770	5,162	480	7,416
Sec. Council of Ministers	380	0	0	240	620
Secretariat Defense	5,994	0	113	120	6,227
Min. State Admin.	2,722	0	3,009	240	5,971
Min. of Interior	9,296	0	6,482	360	16,138
Min. of Justice	1,782	0	1,010	720	3,512
Min. Develop. & Environ.	480	4,190	470	120	5,260
Sec. Trade & Industry	177	0	0	120	297
Min. of Agriculture	1,573	2,358	13,979	0	17,910
Min. of Education	16,488	8,498	5,155	240	30,381
Min. of Health	9,725	2,654	12,345	120	24,844
Sec. Labor & Solidarity	490	0	3,667	0	4,157
Min. of Foreign Affairs	2,436	0	64	120	2,620
Min. of Finance	3,675	278	10,292	2,040	16,285
Min. Transport, Comm.	16,235	4,901	26,854	0	47,990
Judiciary	360	0	35	1,080	1,475
Banking & Pmt. Authority	620	0	0	240	860
Public Broadcasting	350	0	234	0	584
<b>Bdgt Funded Agencies</b>	<b>75,097</b>	<b>23,649</b>	<b>88,871</b>	<b>6,720</b>	<b>194,337</b>
Self Funded Agencies	8,268	800	0	240	9,308
<b>Total all sources</b>	<b>83,365</b>	<b>24,449</b>	<b>88,871</b>	<b>6,960</b>	<b>203,645</b>

## Background on the Timor Sea Boundary Dispute

The Timor Sea between Australia and East Timor contains significant seabed deposits of oil and natural gas, which constitute East Timor's principal exportable natural resource. The 2002 interim *Timor Sea Treaty* provides the basis for the development of an area in the Timor Sea known as the Joint Petroleum Development Area (JPDA). This arrangement allows East Timor to receive approximately 41% of the revenues in the Timor Sea that it would be entitled to under international law. The Timor Sea Treaty is without prejudice to a permanent boundary settlement, and will lapse when a permanent maritime boundary is set. East Timor signed the treaty because it desperately needs revenue from the Bayu-Undan oil and gas field within the JPDA. Those funds are needed to fund basic services, since there is very little other taxable economic activity.

Australia has taken possession of some 59% of the oil and gas reserves that should legally belong to East Timor. Australia continues to extract oil from this area, receive revenue, and sign new exploration contracts, while stalling agreement on a permanent boundary. The single biggest resource in the Timor Sea is the Greater Sunrise gas field (yet to be developed). Under interim arrangements not yet ratified, Timor will receive only 18% of upstream Sunrise revenue, and no downstream revenue. Under international legal principles, most or all of Sunrise would be in East Timor's territory, and the new nation could decide how to sell and process its oil and gas.

East Timor currently receives no revenue from oil and gas fields just outside the JPDA (Buffalo and Laminaria-Coralina), although they are twice as close to Timor as to Australia. Australia has taken in two billion Australian dollars in revenue from these fields since 1999. Because these fields lie in an area of overlapping claims, Australia's continued issuance of licenses to petroleum companies violates international law. The East Timor government has asked the Australian government to stop unilaterally exploiting these resources. A boundary drawn according to international law would give East Timor a significantly wider area than the JPDA, probably encompassing the entire Laminaria-Coralina field and most or all of Greater Sunrise field.

Australia has rejected international legal processes for settling maritime boundary disputes. Two months before East Timor's independence, Australia unilaterally withdrew from maritime boundary dispute resolution mechanisms of the International Court of Justice and the International Tribunal for the Law of the Sea. This withdrawal leaves East Timor without legal recourse if Australia refuses to negotiate expeditiously and in good faith, as has been the case so far.

When both sides approach negotiating a permanent maritime boundary in good faith, an agreement usually takes only a few years to negotiate. When Australia and Indonesia agreed on a seabed boundary in 1972, it took less than three years to negotiate two treaties covering a much larger area than the Australia-East Timor border. Australia and the U.S. completed negotiations of their complex Free Trade

Agreement (passed last July) in under a year.

At the first substantive meeting between Timor and Australia in April 2004, Australia refused to discuss areas outside of the JPDA. Further talks before and just after Australia's October 2004 election floated the idea of a "creative solution," whereby East Timor would suspend its boundary claim for decades in return for financial compensation. The discussions collapsed when it became clear that Australia did not intend to consider East Timor's views about development options, and that the financial package offered was far less than the value of the disputed resources. Another round of talks was held in early March 2005. While the outcome of those talks has not been made public, it is clear that Australia still refuses to negotiate boundaries. As time elapses, Australia's hard-line position and East Timor's poverty may be coercing the new nation's government to surrender some of its rights.

Australia claims "sole Australian seabed jurisdiction" outside the JPDA because "Australia has exercised exclusive sovereign rights over this area for an extended period of time." This assertion is based on the 1989 Timor Gap Treaty between Indonesia and Australia, which was never valid.

According to East Timorese President Xanana Gusmão, the boundary dispute "is a question of life or death, a question of being continually poor, continually begging, or to be self-sufficient." Australia is affluent, with a strong infrastructure and social system, while East Timor is not. Maternal mortality is 83 times higher in East Timor than in Australia. Malaria and tuberculosis are widespread. Education is desperately needed for future development. Today, 41% of East Timor's people survive on less than 55 cents per day, the national poverty line.

### Australia should

- ✓ Rejoin international dispute resolution mechanisms for maritime boundaries.
- ✓ Refrain from offering disputed areas for new petroleum exploration contracts.
- ✓ Place all revenues from disputed areas in escrow until a permanent maritime boundary is agreed.
- ✓ Expeditiously negotiate a permanent maritime boundary in the Timor Sea in good faith, according to principles of international law and respect for the sovereignty of both countries.
- ✓ Accept East Timor as an equal partner in making revenue-sharing and development decisions for projects in contested areas.

# Congress of the United States

Washington, DC 20515

March 4, 2005

The Honorable John Howard  
Office of the Australian Prime Minister  
3-5 National Circuit  
Barton, ACT 2600  
AUSTRALIA

Dear Mr. Prime Minister,

As members of the United States Senate and House of Representatives who have long supported independence and development for the Democratic Republic of Timor-Leste, we would like to share our concerns regarding the upcoming negotiations between your country and Timor-Leste on economic and territorial rights in the Timor Sea.

We urge Australia to move quickly and seriously to establish a fair, permanent maritime boundary with Timor-Leste, based on the rule of law and respect for the sovereignty of both nations. Until such a settlement is reached, we would urge that any revenue from disputed areas on Timor-Leste's side of the median line but outside the Joint Petroleum Development Area be held in escrow. We hope that the temporary suspension of the development of the Greater Sunrise field, which has eased pressure from oil companies for a quick fix, will serve as a catalyst for a more thorough, deliberate and empathetic resolution of the territorial dispute.

Although Timor-Leste has been free of Indonesian military occupation since 1999, its citizens continue to struggle against illiteracy, poverty, preventable disease and a lack of basic services. We are especially concerned by reports of scores of recent preventable deaths in Timor-Leste that have resulted from chronic food shortages and outbreaks of dengue hemorrhagic fever. An equitable sharing of oil and gas revenues would enable Timor-Leste to provide better health care and other essential services to its citizens. Such equitable sharing of revenue is not a question of charity; rather it is a matter of self-determination, sovereignty and Timor-Leste's future.

We applaud the fact that Australia has helped Timor-Leste achieve independence and also provided significant humanitarian and reconstruction aid. However, the approximately two billion Australian dollars your government has received in revenues since 1999 from Laminaria-Corallina, fields located twice as close to Timor-Leste, is much larger than the total cost of your generous assistance. We are aware that many East Timorese believe these fields and the revenue generated -- equivalent to about four years of Timor Leste's GDP or one day of Australia's -- as well as most or all of Greater Sunrise should belong to Timor-Leste. We urge your government to participate in international legal mechanisms for arbitration of maritime boundary disputes, which should include the issue of control of resource development outside the interim Joint Petroleum Development Area.

PRINTED ON RECYCLED PAPER

We admire your country's leadership in 1999 in helping to free the people of Timor-Leste from the political oppression under which they suffered for so long. We hope these maritime boundary negotiations will move fairly and expeditiously, and that your country will once again play a leading role in helping the people of Timor-Leste to be free, this time from the oppression of poverty that is preventing them from progressing as one of the world's newest democracies.

Thank you for your consideration.

With best regards,

  
SENATOR JACK REED

  
SENATOR JAMES M. JEFFORDS

  
SENATOR PATRICK J. LEAHY

  
SENATOR EDWARD M. KENNEDY

  
SENATOR TOM HARKIN

  
SENATOR RON WIDEN

  
REP. NANCY PELOSI

  
REP. CHRISTOPHER H. SMITH

  
REP. TOM LANTOS

  
REP. BARNEY FRANK

  
REP. NITA M. LOWEY

  
REP. ENI F. H. FALEOMAVAEGA

  
REP. JAMES P. MCGOVERN

  
REP. PATRICK J. KENNEDY

  
REP. FORTNEY PETE STARK

  
REP. LANE EVANS

  
REP. JIM McDERMOTT