

Australian government secures new East Timor oil treaty

By Mike Head
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In a little reported ceremony, UN and Australian government representatives signed a new Timor Gap Treaty in Dili last Thursday, securing control over the substantial oil and natural gas reserves under the Timor Sea. The UN Transitional Administration in East Timor (UNTAET) has now officially replaced Indonesia as Australia's partner in exploiting these reserves, valued at between \$11 billion and \$19 billion.

The UN's East Timor administrator Sergio Vierra de Miello initialled the treaty representing the people of East Timor. Australia's resident consul in Dili, James Batley signed on behalf of the Howard government. Briefing reporters, Batley noted that the terms of the 1989 Timor Gap Treaty, signed by Indonesia and Australia, would continue to apply. Effectively, UNTAET and the Australian government will share control over mining in the Timor Sea, with the lucrative royalties split between them.

Another UNTAET spokesman, Manuel de Almeida told reporters that the UN's share of the royalties would be backdated to October 25, 1999, when Indonesia formally relinquished its claim to East Timor, but the use of the money had not been determined. UNTAET's royalties would go into a trust fund for the duration of its administration, with no decision made yet on whether to use them to defray the costs of running the administration.

Council for East Timorese Resistance (CNRT) leaders and UN officials are still negotiating the dispersion of the hundreds of millions of dollars in revenue expected over the next three years.

There was virtually no coverage of the signing ceremony in the Australian media, yet the fate of the 1989 treaty has been central to the Australian intervention in East Timor. Media attention has been focused on the Australian-led INTERFET military occupation—presenting it as an entirely humanitarian operation. Behind the scenes, however, the Howard government has been pushing on with the treaty negotiations.

The first public announcement that a new treaty was about to be signed came at an international workshop held in Dili from January 15 to 18 to discuss the exploitation of the seabed between Timor and Australia. About 50 geologists, lawyers, engineers, economists, oil executives and officials from Australia, the UN, Portugal, Mozambique and East Timor gathered in a UN-leased hotel. CNRT leaders were also on hand, including vice president Jose Ramos-Horta, Timor Gap spokesman Mari Alkateri and members of the UN administration's appointed National Consultative Council.

Company representatives declined to give the workshop detailed estimates of the oil and gas reserves at stake. But one told Lusa, a Portuguese news agency, that East Timor would be “one of the great exploration zones in the world”. The CNRT's Alkateri declared that

East Timor and Australia stood to share \$800 million in royalties over the next 20 years.

At a January 19 press briefing, UNTAET's principal legal advisor Hansjoerg Strohmeier gave some indication of the intensive diplomacy behind the new treaty. He said the Dili workshop was the final point in a series of four meetings initiated by Australia and the CNRT leaders. He emphasised that the treaty was a fresh legal instrument between UNTAET and Australia. The practical arrangements would remain the same—with UNTAET replacing Indonesia as a party—but it was not a revised version of the 1989 treaty. This was necessary, he declared, to avoid giving any retrospective legitimacy to the 1989 document.

The manoeuvres and negotiations over the new treaty began well before Australian troops moved into Timor last September. In August 1998, CNRT president Xanana Gusmao, then still jailed in Jakarta, held secret discussions in his prison cell with Peter Cockroft, an executive of BHP, an Australian mining company with significant holdings in the Timor Sea. Gusmao reportedly assured BHP that an East Timorese government would protect Australian and other international investments in the Timor Sea.

The talks followed a July 1998 CNRT statement pledging that a Timorese administration would provide international oil companies with “a more secure and productive environment”. Just days after the Gusmao-Cockroft meeting, Australian Foreign Minister Alexander Downer called on Indonesia to release Gusmao. It was the first shift in Canberra's 25-year policy of supporting the Suharto regime's annexation of the former Portuguese colony in 1975.

Timor's potential oil wealth has been a crucial consideration in Australian policy since the early 1970s, when exploration began to show promising results. In one revealing diplomatic cable, the Australian ambassador to Indonesia, Richard Woolcott advised the Whitlam Labor government that a Timor Gap Treaty “could be much more readily negotiated with Indonesia than with Portugal or independent Portuguese Timor”.

In two summit meetings in September 1974 and April 1975, Whitlam made it clear to General Suharto that Australia would offer no more than a ritual protest if Indonesia invaded East Timor. In January 1978 Whitlam's successor as Prime Minister, Malcolm Fraser, gave legal recognition to East Timor's incorporation as the 27th Indonesian province in order to meet Indonesian pre-conditions for negotiations on the Timor Gap.

After protracted negotiations, the Timor Gap Treaty was ultimately signed in December 1989 by the foreign ministers of Australia and Indonesia, in a champagne glass-clinking ceremony on board a Royal Australian Air Force VIP plane flying over the Timor Sea.

One of the major problems facing Canberra with regard to the treaty, however, was its illegality in international law. Australia was the only Western country to formally recognise the Indonesian takeover. Portugal had acquiesced in the Indonesian invasion but kept its colonial interests alive by sponsoring various UN resolutions that recognised East Timor as a “non-self-governing territory,” with Portugal designated the “administrative power”.

In 1991, following new major discoveries in the Timor Sea, Portugal revived its formal claim to sovereignty. It launched proceedings against Australia in the World Court, charging that the Timor Gap Treaty was illegal, damaged the material interests of both Portugal and the people of East Timor, and abrogated the right of the East Timorese people to self-determination.

In June 1995, the World Court ruled that it could not make a decision on the legality of the Indonesian annexation because Indonesia did not recognise the court's authority. However, in its judgement the court found that Portugal's claims were “irreproachable”. While the Australian government claimed to have survived the court challenge, it had legal opinion that, in the event of East Timor becoming independent, the treaty would have to be renegotiated.

By controlling the military situation in East Timor from last September, the Howard government sought to strengthen its argument that the arrangements made under the 1989 treaty should be maintained and not reopened for the benefit of Portugal. For now at least, the Australian position appears to have prevailed within the UN.

In a joint statement, Downer and Industry, Science and Resources Minister Nick Minchin placed on record the Howard government's appreciation for the “constructive approach” taken by Indonesia during talks in Jakarta the previous week. Before the treaty could be signed, Indonesian representatives had to agree that the area covered by the Treaty was outside Indonesian jurisdiction. According to some earlier reports, however, Indonesia's oil company Pertamina may still argue that some of the oil and gas reserves fall within the territorial waters of West Timor, which remains part of Indonesia.

The Portuguese government has yet to issue a statement but is unlikely to be pleased. Only months ago, the CNRT's Alkateri was in Lisbon for talks on the Timor Gap. Portugal has recently expressed disappointment with the conduct of the UN administration. Last week its Defence Minister Julio Castro Caldos also accused unnamed Western intelligence services of causing repeated delays in the departure of Portuguese troops to join the UN force in East Timor.

As for the CNRT leaders, UN officials said they had been consulted, and appreciated the requirements of foreign investors. Strohmeyer said the extension of the old arrangements reflected “the declared opinion of the CNRT to give the investors the planning security that they need”. In Australia, Downer told reporters: “These arrangements are important to politically convince investors already making investments in the context of the Timor Gap Cooperation Zone.”

The CNRT leaders have sought to justify their stance by declaring that the income generated would assist the Timorese people. In a radio interview after the Dili workshop, Alkateri said royalties could provide “substantial economic and social benefits” to East Timor. Experience from elsewhere, including other oil-rich parts of the Indonesian archipelago such as Sumatra, demonstrates that the revenues will flow into the pockets of the transnationals and their local partners, not to the oppressed masses.

Major oil companies from the US, Australia, Japan, Britain and the Netherlands have much at stake in the Timor Sea. Last year Robert

Mollah, the Australian executive director of the Australia-Indonesia joint authority for the Timor Gap, said 27 companies had spent more than half a billion dollars on exploration and development in the zone.

Revenues are currently small by world standards, but are expected to rise dramatically in 2004, when the large Bayu-Undan oil field comes on stream. Last October, following written assurances of support from Gusmao and Ramos-Horta, Phillips Petroleum, the sixth-largest US oil company, announced that it would proceed with the \$1.4 billion project.

Phillips has a 50.3 percent stake in the Bayu-Undan project. Santos, an Australian oil and gas producer, holds 11.8 percent, as does Japan's Inpex. Kerr-McGee Corp of the US has 11.2 percent, followed by Australia's Petroz (8.3) and British Borneo Oil & Gas (6.7). Phillips also operates the smaller Eland and Kakatua fields in the Timor Gap, having bought Australian company BHP's 42 percent stake last April.

Another Australian oil and gas company, Woodside Petroleum, underscored the potential value of the Timor Sea when, on January 20, it announced higher-than-expected oil production from its new half-owned Laminaria/Corallina oil project, which lies in Australian-claimed waters just outside the Timor Gap Treaty's Zone of Cooperation. Royal Dutch/Shell owns 34 percent of Woodside, and has its own 25 percent share in the Laminaria/Corallina project, as does BHP.

In recent months rising world oil prices have increased the potential profits from the Timor Gap. Phillips, for example, announced last month that higher crude oil prices boosted its global revenue in the final quarter of 1999 by about 60 percent to \$4.3 billion. The known reserves in the Timor Gap are in the treaty area's Zone A, which is now jointly operated by Australia and UNTAET. Higher prices will encourage test drilling in two zones that have not been extensively explored—Area B, controlled exclusively by Canberra, and Area C, now under UNTAET jurisdiction.

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