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Timor-Leste-Australia Maritime Boundary Treaty: Victory for Dili?

By Viji Menon

Synopsis

The recently-concluded treaty between Timor-Leste and Australia on maritime boundaries is a victory for Timor-Leste which will get a larger share of the revenue from the Greater Sunrise field in the Timor Sea. However, it will take many years before the field is developed, and the location of the pipeline remains to be resolved.

Commentary

TIMOR-LESTE and Australia signed a historic treaty in New York on 6 March 2018, witnessed by the UN Secretary-General, establishing permanent maritime boundaries between them. The Treaty was the culmination of several rounds of negotiations since January 2017 between the two countries, and was facilitated by the Conciliation Commission established under the UN Convention on the Law of the Sea.

In a joint press release with Australia, Timor-Leste's main negotiator in the talks, former Prime Minister Xanana Gusmao, declared that the treaty "establishes for the first time, a fair border between our two countries, based on international law". Australian Foreign Minister Julie Bishop described the signing of the treaty as a "milestone" and stated that "It reinforces our respect for, and the importance of, the international rules-based order in resolving disputes".

Transitioning to Fairness

The boundary issue has long been linked by Timor-Leste to the issue of sovereignty and therefore is hugely symbolic for it. Australia had sought a boundary that was aligned with its continental shelf, but Timor-Leste's position was that the border should be the median line between it and Australia. In January 2017, Timor-Leste

terminated the 2006 Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS) with Australia as it was not happy with this treaty.

It provided that revenues from the Greater Sunrise field would be shared 50:50 between the two countries. The CMATS also put on hold any claim to sovereign rights and did not establish any local seabed boundary, the final definition of which was postponed until the treaty's expiration in 50 years.

Under the new treaty, oil and gas fields currently shared between Australia and Timor-Leste in the Joint Petroleum Development Area will transition to Timor-Leste's exclusive jurisdiction. While they have agreed to maintain the existing fiscal and regulatory arrangements for the Bayu Undan and Kitan fields, Timor-Leste will derive 100 percent of future upstream revenue from these fields. However, as oil resources in these fields are drying up, this may not amount to much revenue for Timor-Leste.

On the Greater Sunrise field, the Treaty recognises Australia's and Timor-Leste's shared sovereign rights over the resources there. The Treaty establishes the Greater Sunrise Special Regime to jointly manage and develop this resource and to share revenue. Australia and Timor-Leste will establish a Designated Authority and a Governance Board to oversee Greater Sunrise.

Rushing Against Time

The two countries have agreed to share upstream revenue:

- In the ratio of 30 per cent to Australia and 70 per cent to Timor-Leste in the event that the Greater Sunrise fields are developed by means of a pipeline to an LNG processing plant in Timor-Leste.
- In the ratio of 20 per cent to Australia and 80 per cent to Timor-Leste in the event that the Greater Sunrise fields are developed by means of a pipeline to an LNG processing plant in Australia.

This formula, regardless of what is agreed upon finally, represents an improvement for Timor-Leste on the 50:50 split outlined in the previous CMATS Treaty. The reaction to the Treaty in Timor-Leste has been overwhelmingly positive, while expressing the expectation that the pipeline will bring the gas to Timor-Leste.

It is uncertain, however, as to how long it will take before oil and gas resources in the Greater Sunrise field are exploited and provide revenues for Timor-Leste, regardless of the location of the pipeline. Some experts estimate that it could take as long as 10-15 years. Time is of the essence for Timor-Leste as the existing fields are drying up, as revenues in the Petroleum Fund are diminishing, and as there are few other sources of non-oil income.

Too Costly, Too Risky?

As the critical issue of the location of the pipeline to transport the gas from Greater Sunrise remains to be resolved, discussions are continuing between the joint venture (the oil companies) and Timor-Leste. Woodside, the main partner in the joint venture,

has expressed its preference for a pipeline to Darwin in Australia, as opposed to the option preferred by Timor-Leste, which is a pipeline from Greater Sunrise to an onshore processing facility in Timor-Leste (Tase Mane project).

Then Prime Minister Xanana Gusmao explained in a speech in 2013 that the plan was to develop the south coast as a sub-regional centre for the petroleum industry, providing direct economic dividends for the country.

The Tase Mane project includes three operational clusters along the country's south coast facing the Timor Sea: a supply base in Suai, where logistics and service works will be undertaken and sourced for the petroleum industry; a refinery and a petrochemical industry to be established to the east; and further to the east the government has designated a sizeable area for the development of LNG projects. This will be the location at which the natural gas pipeline reaches Timor-Leste.

The joint venture has claimed that the Timorese proposal is too costly, too risky and not commercially viable. It is uncertain as to what will happen to the Tase Mane project if there is no agreement on bringing the gas to Timor-Leste, or if this will be a deal-breaker. Timor-Leste will still get 80% of the revenues if the pipeline goes to Australia.

Complicated Negotiations with Indonesia?

Another complication for Timor-Leste is that the lateral lines of the new agreement join with the existing 1972 continental shelf boundary between Australia and Indonesia. This means that Australia's and Timor-Leste's new boundary arrangements do not affect Indonesia's rights or change Australia's existing boundaries with Indonesia.

Timor-Leste has also yet to reach an agreement on its maritime boundaries with Indonesia, and although bilateral boundary negotiations were initiated in late 2015, agreements have yet to be concluded.

Following the signing of the Treaty, Prime Minister Mari Alkatiri was quoted in the Timor media as stating: "If we do not have agreement with Indonesia... it has not yet been completed, therefore it is necessary for us to negotiate with Indonesia." Hernani Coelho, Timor-Leste's Petroleum Minister, said recently that the negotiations with Indonesia on the maritime boundaries could be "complicated."

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