1. Introduction
The maritime boundary between Australia and East Timor has been a matter of contention since Australia first attempted to negotiate a seabed boundary with Portugal and later with Indonesia. East Timor is now an independent nation and there is still no permanent maritime boundary between Australia and East Timor.

Australia maintains the view that a continental shelf boundary ought to be drawn through the bathymetric axis of the Timor Trough, which is located 40 to 60 nm off the coast of Timor. Portugal, Indonesia, UNTAET and East Timor have argued that the boundary should be drawn along the median line. The Timor Sea contains several oil and gas deposits including Laminaria, Bayu-Undan and Greater Sunrise and the resolution of the boundary dispute between Australia and East Timor will determine who has title to those deposits.

East Timor and Australia have entered into a provisional arrangement whereby petroleum resources in an area of the Timor Sea known as the Joint Petroleum Development Zone (“JPDA”) are shared on a 90:10 apportionment in East Timor’s favour. Figure 1 depicts the JPDA and the location of the oil and gas deposits. However, East Timor is still anxious to delimit the maritime boundaries in the Timor Sea as it has been advised by experts in international law that it is entitled to all the oil and gas deposits in the JPDA as well as the adjacent deposits including Greater Sunrise.

This paper will consider the merits of the respective claims of Australia and East Timor and attempt to determine where the maritime boundaries should be drawn. This will require an examination of the geological and geographical characteristics of the Timor Sea and its economic importance, the historical circumstances and legal regimes that have governed the Timor Sea, the applicable rules of delimitation and how an international court or tribunal might apply those rules to the Timor Sea. However, it is not within the scope of the paper to discuss the jurisdiction of the International Court of Justice (“ICJ”) or International Tribunal for the Law of the Sea (“ITLOS”) or the dispute resolution procedures that apply if Australia and East Timor are unable to agree on a maritime boundary.

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2. Characteristics and Economic Importance of the Timor Sea

A. Geographical and Geological Aspects of the Timor Sea

East Timor and Indonesia are States with adjacent coastlines and they both lie opposite to the coast of North Western Australia. The distance between Australia and Timor is less than 400 nm. Australia’s continental shelf is a broad one, extending to the Timor Trough, a major geological feature separating the continental shelves of the Australian and Asian landmasses. The Timor Trough is up to 3,400 m deep with the greater part being 2,000 m deep and is located 40 to 60 nm from the Timor coast.


5 Willheim, n3 at 821; Cook, n3 at 132; Lumb, R.D., “The Delimitation of the Maritime Boundaries in the Timor Sea” (1981) 7 Australian Yearbook of International Law 72; Kaye, n3 at 46.

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B. Economic Importance of the Timor Sea

The Timor Sea contains notable hydrocarbon deposits including Laminaria, Greater Sunrise and Bayu-Undan.6 Laminaria is Australia’s biggest oilfield and provided $81M to the Australian economy in 2001.7 The Sunrise and Troubadour (“Greater Sunrise”) gas fields contain 321 million barrels of condensate and 9 trillion cubic feet (TCF) of natural gas.8 The Northern Territory Government has shown particular interest in Greater Sunrise and had unsuccessfully campaigned to have the gas piped to Darwin to be processed onshore to generate 4,400 jobs and $15B in revenues over the next 20 years.9 Bayu-Undan has proven reserves of 3.4 TCF of natural gas and 400 million barrels of condensate and LNG.10 Bayu-Undan is set to provide $AUS7B for East Timor and $2B for Australia over the next 20 years.11

The Timor Sea oil and gas fields are important to the Australian economy. Australia is a net exporter of energy with LNG and LPG exports are expected to continue with 2 million tonnes of natural gas predicted to come from a new LNG industry in the Northern Territory between 2009-2015.12 Australia recently won the right to supply 3 million tonnes of LNG, worth $700M-$1B, per year to China, one of the world’s largest LNG importers, for the next 25 years from 2005.13

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6 Those deposits and others are depicted in Figure 1 above.
In addition, Australia’s existing oil and gas fields in Bass Strait and other places are being depleted and Australian oil self sufficiency is expected to drop from 80% to 40% of national demand. Australian crude oil output was 633,500 barrels per day in 2001 and will fall 33% by 2005 and 50% by 2010. It is predicted that without Greater Sunrise, South Australia and the East Coast of Australia will not have enough gas to meet a moderate increase in commercial and industrial demand from 2008.

3. Historical and Legal Background
A. Seabed Boundary Negotiations
Between 1971 and 1997, Australia entered into several treaties and arrangements with respect to maritime boundaries with Indonesia. A 1971 Agreement delimited a seabed boundary along the median line in the Arafura Sea north of Arnhem Land to south of Tanimbar Island. That boundary was extended in 1972 from the west in two segments from a point south of Tanimbar Island to a point referred to as A16 opposite the tip of East Timor and the second segment from the point referred to as A17 opposite West Timor to a point lying north of Ashmore and Cartier Island, leaving a gap (known as the “Timor Gap”) between the two segments being referable to the coast of Portuguese East Timor.

The boundary does not follow the median line but reflects a compromise over different opinions held by Australia and Indonesia over the correct method of delimitation. Australia favoured delimiting the boundary at the bathymetric axis of the Timor Trough claiming that a State was entitled to a continental shelf that constitutes a natural prolongation of its land territory under the sea by virtue of its sovereignty over the land whilst Indonesia favoured equidistance.
Agreement.25 Accordingly, the boundary was placed approximately one third of the way down the southern side of the Trough following the 200 m isobath.26

Australia attempted to negotiate a boundary with Portugal in the Timor Gap between 1972 and 1974. Portugal was only prepared to negotiate on the basis that the median line should be the appropriate boundary.27 Despite Indonesia’s previous statements to the United Nations in the 1950’s and 1960’s disavowing any territorial claims to East Timor and its repeated assurances to Fretilin,28 Indonesia invaded East Timor on 7 December 1975 and claimed it as its 27th province on 17 July 1976.29 The Australian Government gave recognition of Indonesian Sovereignty in 1979 as “a legal move” so that negotiations with Indonesia to close the Timor Gap could commence.30 Despite the Australian Labor Party’s objections to the recognition of Indonesian Sovereignty over East Timor while it was in opposition, it maintained the Fraser Government’s position of recognising Indonesian Sovereignty when it took office in 1983 and continued the negotiations with the Indonesian Government.31

Again, the Indonesian and Australian Governments disagreed on the method of delimitation.32 The Australian Government argued that the Timor Trough constituted a geomorphological feature that separates the Australian shelf from the East Timor shelf. It relied on the North Sea Continental Shelf Case33 in which the ICJ recognized the continental shelf of a coastal state as the “natural prolongation of its land territory.”34 The Indonesian Government argued that the 200 nm limit is the relevant criterion for demarcating the seabed as well as the water column resource jurisdiction between opposite States (at least where the distance between the countries involved does not exceed 400 nm), and therefore, the median line constituted the equitable line of demarcation.35 Indonesia placed reliance on the 1982 United Nations Convention on the Law of the Sea (UNCLOS).36

To resolve the stalemate, Australia and Indonesia proceeded, pursuant to UNCLOS, article 83, to negotiate a provisional arrangement. Article 83 requires States to reach an equitable agreement as to the delimitation of the continental shelf between those States and to make “provisional arrangements of a practical nature” pending the finalisation of

25 Campbell, n19 at 62; Willheim, n3 at 822; Kaye, n3 at 46-47.
26 Cook, n3 at 134; Lumb, n5 at 73; Kaye, n3 at 47.
29 Reid, n27 at 249; Kaye, n3 at 50.
30 Kaye, n3 at 50; (1983) 8 Australian Yearbook of International Law 272 at 281; Wilde, D., & Stepan, S., “Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an area between the Indonesian Province of East Timor and Northern Australia” (1990) 18 Melanesian Law Journal 18 at 26; Reid, n27 at 256, Appendix B.
32 Campbell, n19 at 62; Wilde, n30; Reid, n27; Burmester, H., “The Timor Gap Treaty” [1990] AMPLA Yearbook 223; Willheim, n3 at 825; (1983) 8 Australian Yearbook of International Law 272 at 281-282; Kaye, n3 at 52.
35 Campbell, n19 at 62; Wilde, n30; Burmester, n32; Willheim, n3 at 827; Lumb, n5 at 74; Suter, K., “Timor Gap Treaty” (1993) 17 Marine Policy 294 at 300.
36 Willheim, n3 at 822.
a permanent agreement on the seabed boundary and such provisional arrangements are to be “without prejudice” to the final boundary negotiations.\(^37\) This led to the signing of the Timor Gap Treaty (“TGT”) on 11 December 1989, which entered into force on 9 February 1991.\(^38\)

The TGT was a provisional agreement for the joint development of petroleum resources in the Timor Gap.\(^39\) The TGT designates a Zone of Cooperation (“ZOC”) that is divided into Areas “A”, “B” and “C” as depicted in figure 2.\(^40\) The TGT consists of the main text and four annexes\(^41\) being the designation and description including maps and coordinates of the ZOC,\(^42\) Petroleum Mining Code for Area A,\(^43\) Model Production Sharing Contract\(^44\) and the Taxation Code.\(^45\)

The eastern and western limits of Areas “A” and “B” lying south of the points A16 and A17 are lines of equidistance drawn from the Portuguese and Indonesian territory as it existed in 1974 while the remaining parts of the eastern and western limits were established from points on the Australian coastline.\(^46\) The northernmost boundary is the simplified line of bathymetric axis of the Timor Trough being the maximum extent of the Australian claim and the southernmost boundary is 200 nm from the East Timor coastline representing the maximum extent of the Indonesian claim. The boundary separating Areas “A” and “C” is the simplified line of 1,500 m isobath and the boundary separating Areas “A” and “B” is the simplified median line between Australia and East Timor.\(^47\)

Areas “B” and “C” are under the jurisdictions of Australia and Indonesia respectively and their domestic laws apply subject to certain provisions of the TGT.\(^48\) In Area B, Australia is to pay 10% of any gross tax collected and notify Indonesia of certain matters including any licences, permits or leases granted, renewed, surrendered, expired, cancelled and Indonesia is to do likewise with respect to Area C.\(^49\)

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\(^{38}\) Evans, G., Minister for Foreign Affairs and Trade, “Australia-Indonesia ties: Timor Gap Zone of Cooperation” (1991) 62 Australian Foreign Affairs and Trade 45; Campbell, n19 at 63; Herron, n37 at 5; Reid, n27 at 256, Appendix B; Kaye, n3 at 53; Prescott, n2 at 1247. The Agreement was given effect in domestic legislation in Australia in the Petroleum (Australia-Indonesia Zone of Co-operation) Act 1990 (Cth) and the Petroleum (Australia-Indonesia Zone of Co-operation) (Consequential provisions) Act 1990 (Cth): White, M.W.D., Marine Pollution Laws of the Australasian Region, Federation Press, Sydney, 1994 at 259.

\(^{39}\) White, n38 at 258; Moloney, n37 at 129.

\(^{40}\) TGT, article 2(1); Nicolson, S.A.B., “Role of the Timor Gap Treaty in Establishing the Timor Gap Zone of Co-operation as a New Petroleum Province” [1997] AMPLA Yearbook 91 at 92; Moloney, n37 at 129; White, n38 at 258.

\(^{41}\) TGT, article 1(1)(c); Moloney, n37 at 129.

\(^{42}\) Annex A.

\(^{43}\) Annex B.

\(^{44}\) Annex C.

\(^{45}\) Annex D.

\(^{46}\) Campbell, n19 at 63.

\(^{47}\) Willheim, n3 at 843; Campbell, n19 at 63; Kaye, n3 at 54.

\(^{48}\) TGT, article 4; Moloney, n37 at 130-131; Campbell, n19 at 63; Nicolson, S.A.B., “Role of the Timor Gap Treaty in Establishing the Timor Gap Zone of Co-Operation as a new Petroleum Province” [1997] AMPLA Yearbook 91 at 92 at 93; Burmester, n2 at 234; Prescott, n2 at 1247-1248.

\(^{49}\) TGT, articles 2(b), (c), 4; White, n38 at 258-259; Moloney, n37 at 130-131; Campbell, n19 at 63; Nicolson, n48 at 93; Burmester, n32 at 234.
Figure 2

Area A is subject to the joint control of Australia and Indonesia for the purposes of exploring and exploiting petroleum resources at optimum utilisation and on an equal sharing basis. 51

The regime under the TGT is to be “sovereignty neutral”. Therefore, activities should not prejudice either Indonesia or Australia on a permanent continental shelf boundary while the TGT is in force. 52 The TGT remains in force for a minimum of 40 years with extensions of 20-year terms occurring automatically unless a final agreement of the seabed boundary is reached. 53 The Contracting States undertake to continue in their efforts to reach agreement on a permanent continental shelf delimitation in the ZOC. 54

50 Willheim, n3 at 842.
51 TGT, article 2(2)(a); McCorquodale, “The Law Smooths a Path for Petroleum Politics” (1993) 31(2) Law Society Journal 32 at 33; Willheim, n3 at 842.
52 Campbell, n19 at 63; Cave, S., “Timor Gap Joint Authority [1997] AMPLA Yearbook 78 at 81; Burmester, n32 at 236.
53 Burmester, n32 at 234; Campbell, n19 at 63; Moloney, n37 at 136-137; Herron, n37 at 13.
54 TGT, article 2(4); Burmester, n32 at 235.
Should a permanent boundary agreement be reached, the laws of the country in which a contract area has fallen will automatically be applicable to any current production sharing contracts provided that those laws are no more onerous than those set out in the TGT and the country in question will assume the role of the Joint Authority in the production sharing contract or nominate some other legal person to do so. 55

In 1981, Australia and Indonesia entered into a Memorandum of Understanding (“1981 MOU”) concerning the implementation of a Provisional Fisheries Surveillance and Enforcement Line (“PFSEL”). 56 The 1981 MOU was necessary due to Australia’s and Indonesia’s overlapping claims to fisheries jurisdiction. 57 The 1981 MOU provides that Australia will not take enforcement action against Indonesian licensed fishermen north of the PFSEL and Indonesia will not take enforcement action against Australian licensed fishermen south of the PFSEL. 58 The PFSEL follows the line of equidistance and coincides with the dividing line between Areas A and B in the ZOC. 59 The PFSEL probably reflects the growing strength of the Indonesian position and the decline of natural prolongation and its irrelevance to fisheries jurisdiction delimitation. 60

On 14 March 1997, the Australian and Indonesian Governments signed an agreement completing the delimitation of the continental shelf (except with respect to the Timor Gap) and the EEZ. 61 The EEZ boundary coincides with the boundary between Areas “A” and “B” of the ZOC 62 and follows the PFSEL boundary except the EEZ has been extended from 12 nm to 24 nm around Ashmore Island and now extends in a north-westerly direction to join up with the intersection of the Australian and Indonesian EEZ with the high seas. 63 The 1997 Agreement created a complex maritime boundary system of overlapping jurisdiction on either side of the Timor Gap. 64 In the areas of overlap, article 7 provides that EEZ sovereign rights and jurisdiction are limited to the water column, and that continental shelf sovereign rights and jurisdiction are limited to the seabed. 65 The 1997 Agreement has not yet entered into force 66 and figure 3 depicts the consolidated boundaries once the Treaty enters into force.

55 TGT article 34; Moloney, n37 at 136-137; Herron, n37 at 13.
56 Campbell, n19 at 65; Willheim, n3 at 822 and 825; Bateman, S., “East Timor and its Maritime Dimensions” (2001) 114 Maritime Studies 23.
57 Campbell, n19 at 65.
58 Campbell, n19 at 65.
59 Campbell, n19 at 65, 66.
60 Kaye, n3 at 49.
62 Campbell, n19 at 66.
64 Bateman, n56.
65 Kaye, n61 at 68.

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B. Creation of Independent East Timor

(i) East Timorese Vote of Independence

Following the 1997 Agreement, a series of events lead to the withdrawal of Indonesia from East Timor in 1999 in preparation of the creation of an independent East Timor. The United Nations Transition Administration in East Timor (UNTAET) took over administration of East Timor on 28 February 2000. The TGT ceased to be in force when Indonesian Authority over East Timor was transferred to the United Nations and it was also agreed between Australia and Indonesia that consequential adjustments would need to be made to the 1997 Agreement before it entered into force.

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67 Department of Foreign Affairs and Trade, Map 5 – Consolidated depiction of all Australian-Indonesian maritime boundaries after entry into force of the Treaty, Press Briefing – 11 March 1997, Australia-Indonesia Maritime Delimitation Treaty.


(ii) Implications of East Timor’s Independence

It became necessary for Australia to negotiate a new maritime boundary agreement with East Timor.70 During the transition period, UNTAET had sufficient authority to enter into negotiations on behalf of East Timor pending its independence.71 While East Timorese officials recognised the need for a stable legal basis for ongoing petroleum activities in the ZOC72, neither they nor UNTAET would accept succession of the TGT, which they regarded as illegal.73

Rather than continue the actual TGT itself, UNTAET and Australia entered into an agreement to continue the terms of the TGT on 10 February 2001 by way of Exchange of Notes74 and a Memorandum of Understanding.75 The agreement was made without prejudice to position of the future government of East Timor and would end when East Timor became independent.76 Therefore, Australia had to renegotiate a further treaty in time for East Timor’s independence.77

(iii) Timor Sea Treaty

Negotiations between Australia, UNTAET and the East Timor Transition Authority (“ETTA) lead to the endorsement of the “Timor Sea Arrangement” on 5 July 2002, which outlined the framework for a treaty to cover the joint development of the Timor Sea resources.78 East Timor achieved independence on 20 May 2002 and the Australian and East Timorese Governments signed the Timor Sea Treaty79 (“TST”), which was based on the Timor Sea Arrangement.80

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70 French, n68; Bateman, n56.
71 Campbell, n19 at 64; French, n68.
72 Campbell, n19 at 64.
73 Ibid.
76 Campbell, n19 at 65.
The TST gives effect to UNCLOS, article 83, and is entered into without prejudice to Australia’s and East Timor’s position and rights with respect to any future seabed delimitation.81 The ZOC under the TGT has been abandoned and replaced with the JPDA, as depicted in figure 4, which was previously Area A of the ZOC.82 Australia and East Timor are to jointly control, manage, and facilitate the exploration, development and exploitation of petroleum resources of the JPDA for the benefit of their peoples.83 Existing contract holders under the TGT shall be offered new contracts on the same terms but modified to take into account the administrative structure under the TST.84 East Timor is entitled to 90% of the petroleum produced in the JPDA while Australia is entitled to 10%.85

Figure 4

81 TST, article 2.
82 TST, article 3(a) and Annex A; Triggs, n77 at 44.
83 TST, article 3(b).
84 TST, Annex F; Triggs, n77 at 43.
85 TST, article 4(a).
86 Produced by National Mapping Division, Geoscience Australia, February 2002, for the Attorney-General’s Department.
With respect to unitisation of straddling petroleum resources, the resource in question is to be treated as a single entity for management and development purposes and Australia and East Timor shall work expeditiously and in good faith to reach agreement on the manner in which the resource will be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation. One such straddling resource is the Greater Sunrise field and Annex E of the TST provides that it is to be unitised on a 20.1:79.9 basis in Australia’s favour without prejudice to the rights of East Timor and Australia with respect to a permanent seabed delimitation. Australia and East Timor have undertaken to conclude the Unitisation Agreement by 31 December 2002.

The TST will enter into force when both countries notify each other that their respective requirements for the entry into force of the Treaty are complied with and the TST will be taken to apply as of 20 May 2002. The TST may be amended at anytime by written agreement of Australia and East Timor and shall remain in force for a period of 30 years or until a permanent seabed boundary is established, whichever is sooner.

Australia and East Timor entered into an agreement by way of Exchange of Notes on 20 May 2002, which shall govern the exploration and exploitation of petroleum resources in the JPDA until the TST enters into force. The Exchange of Notes 2002 provides for the continuation of the exploration and exploitation arrangements in force on 19 May 2002. When the TST enters into force, its provisions shall be deemed to take effect on 20 May 2002 including the 90:10 sharing of petroleum production in East Timor’s favour. Accordingly, monies collected by Australia from petroleum activities which would have been payable to East Timor had the TST been in force shall be paid into a US dollar denominated interest bearing escrow account and the monies in that...

87 TST, article 9.
88 TST, Annex E, article (a).
89 TST, Annex E, article (c).
92 TST, article 24. This includes the production sharing formula for Greater Sunrise: TST, Annex E, article (b).
93 TST, article 25.
96 Exchange of Notes 2002, article 3.
97 Exchange of Notes 2002, article 4(a) and 5.
account will be paid to East Timor on entry into force of the TST. Like the TST, the Exchange of Notes 2002 shall not prejudice the rights of Australia and East Timor on a future permanent seabed delimitation.

The TST has not yet entered into force, as Australia will not ratify the TST until an unitisation agreement for Greater Sunrise has been reached. The Australian Government is more interested in protecting its interests in Greater Sunrise than in the JPDA while the East Timorese Government is reluctant to sign an unitisation agreement because it disputes the existing maritime boundaries, stating it had no say in the 1972 Agreement.

C. Negotiations of the Permanent Maritime Boundaries between Australia and East Timor

Unlike the TGT, the TST does not contain an express obligation on the parties to undertake to continue in their efforts to reach agreement on a permanent maritime boundary delimitation in the JPDA. Nevertheless, it is submitted that such an obligation arises by implication from the provisional nature of the TST. In any event, the TST is without prejudice to the rights of the parties with respect to seabed delimitation and, accordingly, East Timor is entitled to push for delimitation of the maritime boundaries with Australia.

Indeed, members of the East Timorese Government have expressed their determination to negotiate the maritime boundaries. This has been motivated in part by advice from international lawyers to the effect that East Timor could be entitled to 100% of Greater Sunrise, Laminaria, Buffalo and Bayu-Undan fields.

An American oil company, Petrotimor, offered to sponsor a legal challenge in the ICJ by East Timor over the maritime boundaries. As Australia was potentially

98 Exchange of Notes 2002, article 4.
99 Exchange of Notes 2002, article 7.

A revised draft of the International Unitisation Agreement has been presented to East Timor: Raby, n69 at 248.
103 TST, article 2.

106 McDonald, n105. Petrotimor and its parent company, Oceanic Exploration Company, were granted a concession to explore and exploit the area that lie mostly within the Zone of Cooperation by the Portuguese Government in 1974. Its attempts to explore and exploit the Timor Gap were frustrated by the Indonesian invasion of East Timor in 1975. In return for relinquishing its rights under the 1974 Concession and ensuring the uninterrupted continuation of present operations in the Timor Gap, those companies have offered to fund East Timor’s application to the ICJ to a limit of US$5 million. In return, Petrotimor and Oceanic Exploration Company expect to participate in the additional government revenues attributed to Australia which result from the extension of East Timor’s boundaries: Letter from Charles Haas, President, Petrotimor Companhia De Petroleos SARL and Oceanic Exploration Company, to the Members of the Legislative Assembly, Republic of East Timor, undated, <http://www.gat.com/Timor_Site/letter/Letter.pdf> (12 January 2003); letter from Charles Haas, President, Petrotimor Companhia De Petroleos SARL and Oceanic Exploration Company,
vulnerable to such legal proceedings, the Australian Government lodged a declaration in both the ICJ and ITLOS excluding the compulsory jurisdictions of those bodies with respect to disputes concerning or relating to the delimitation of maritime zones.

The Australian Government claimed that the lodging of the declarations in the ICJ and ITLOS was unrelated to the Timor Sea issues and that “Australia’s strong view is that any maritime dispute is best settled by negotiations rather than litigation.” However, the Australian Government has refused to enter into negotiations with East Timor over the delimitation of the maritime boundaries because it does not want to start “renegotiating” its maritime boundaries. Whilst the Australian Government may wish to avoid disturbing current maritime boundaries with Indonesia, it is submitted that the Australian Government is overlooking the fact that there is still no maritime boundary in the Timor Gap and, hence, nothing to “renegotiate” there.

The situation at present is that there is still no maritime boundary between Australia and East Timor, Australia is refusing to negotiate and East Timor is unable to have the matter adjudicated before the ICJ or ITLOS. Australia maintains its position that it is entitled to a continental shelf as far as the Timor Trough while East Timor argues for a median line.

4. Delimiting the maritime boundaries in the Timor Sea
A. Applicable laws and geographic scope of dispute
It is submitted that any delimitation of the maritime boundaries should be done in accordance with UNCLOS. Both Indonesia and Australia are parties to UNCLOS but East Timor has not formally acceded to UNCLOS. However, UNCLOS continues to apply in East Timor pursuant to UNTAET Regulation No. 1 of 1999.


111 However, Australia’s withdrawal of consent to jurisdiction in the ICJ and ITLOS with respect to maritime boundary delimitations will not prevent East Timor from bringing a claim against Australia if it were determined to use the Court for its own diplomatic purposes. For example, Canada had amended its declaration to avoid being brought before the ICJ over a possible fisheries dispute with Spain. Nevertheless, Spain still considered it worthwhile to commence proceedings and force Canada to argue the jurisdiction point: Burmester, n107 at 34; Fisheries Jurisdiction (Spain v Canada), Order of 2 May 1995 [1995] ICJ Rep 87.


113 On the Authority of the Transitional Administration in East Timor, Regulation No. 1999/1, 27 November 1999, <http://www.un.org/peace/etimor/untaet/etreg1.htm> (10 July 2000). In any event, it is submitted that the result under customary international law is likely to be similar due to the fact that the EEZ and articles 56

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Under UNCLOS, coastal States are entitled to claim a 200 nm EEZ. The continental shelf of a coastal State extends through out the natural prolongation of its landmass subject to the outer limits of the continental margin or to a distance of 200 nm where the outer edge of the continental margin does not extend beyond that distance.

Australia’s continental margin extends beyond 200 nm from the baseline and ends at the Timor Trough. Accordingly, the maximum extent of Australia’s continental shelf claim is the bathymetric axis of the Timor Trough. Both East Timor and Indonesia are entitled to claim a continental shelf to a maximum distance of 200 nm from their baselines as the natural prolongation of their shelf ends at the Timor Trough. As shown in figure 5, the EEZ and continental shelf claims of the three countries overlap each other.

There is a distinction between the entitlement of a State to a continental shelf or EEZ and the fixing of the actual boundary between the legitimate and overlapping claims of two or more States. The delimitation provisions in UNCLOS for the EEZ and the continental shelf are identical. Delimitation of the EEZ or continental shelf between adjacent or opposite States shall be effected by agreement on the basis of international law as referred to in article 38 of the Statute of the International Court of Justice in order to achieve an equitable solution. Where no agreement can be reached, the States concerned shall have resort to the dispute resolution procedures in Part XV of UNCLOS and States shall make efforts to enter into provisional arrangements of a practical nature pending the resolution of the dispute.

and 58 have been assimilated into customary international law: Libyan Arab Jamahiriya v Malta [1985] ICJ Rep 13 at 33; Amaratunga, D., “Maritime Boundary Delimitation: Building and Preparing a Negotiating Team” (1998) 21 Commonwealth Law Bulletin 517 at 521; Churchill, R.R., & Lowe, A.V., The Law of the Sea, 3rd ed., Manchester University Press, Manchester, 1999 at 161. In the Jan Mayen Case, the ICJ found that "there is an equitable tendency towards assimilation between the special circumstances of article 6 of the 1958 Convention and the relevant circumstances under customary international law, and this is only because they are both intended to enable the achievement of an equitable result": Denmark/Norway Jan Mayen Case [1993] ICJ Rep 38 at para 56; Amaratunga, n113 at 523. The Court’s comments are equally applicable to UNCLOS as articles 74(1) and 83(1) require the EEZ and continental shelf respectively to be delimited by agreement in accordance with international law to achieve an equitable solution.

UNCLOS, article 76(1). The continental margin comprises the submerged prolongation of the landmass of the coastal State and consists if the seabed and subsoil thereof, the slope and the rise and does not include the deep ocean floor with its oceanic ridges or subsoil thereof: UNCLOS, article 73(3). Where the outer edge of the continental margin extends beyond 200 nm, the continental shelf claimed must not exceed more than 350 nm from the baseline or exceed 100 nm from the 2,500 m isobath: UNCLOS, article 76(4), (5) & (6); Amaratunga, n113 at 300.

UNCLOS, articles 76(1).

Campbell, n19 at 67.

Article 38 provides that the ICJ is to decide matters in accordance with international law and shall apply international conventions, whether general or in particular, establishing rules expressly recognised by the contesting States, international custom, as evidence of a general practice accepted as law, the general principles of law recognised by civilised nations, and judicial decisions and the teachings of the most highly qualified publicists of the various nations, as a subsidiary means for the determination of rules of law. Statute of the International Court of Justice, <http://www.icj-cij.org/icjwweb1/hbasicdocuments/ibasiclexhtml/ibasiclexhtml.htm> (24 November 2002).

UNCLOS, articles 74(1), 83(1).

UNCLOS, articles 74(2), 83(2). As mentioned earlier, it is not within the scope of this paper to discuss the dispute resolution procedures available to East Timor.

UNCLOS, articles 74(3), 83(3). In this case, the TST and Exchange of Notes between Australia and East Timor were made pursuant to article 83(3).
Apart from the requirement of equity, UNCLOS provides little guidance on the delimitation of the EEZ and continental shelf and the principles of delimitation laid down by the courts have been formulated with a high degree of generality making it difficult to precisely determine where the boundaries in the Timor Sea may be drawn. Instead, one can only look at the factors likely to be taken into account and the approach that an international court or tribunal might adopt.

B. The Timor Trough and the Median Line

Australia maintains its claim to a continental shelf boundary at the bathymetric axis in reliance of the natural prolongation principle in the *North Sea Continental Shelf Case*. 124 In that case, the ICJ held “…the rights of the coastal State in respect of the area of the continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist ipso jure and ab initio by virtue of its sovereignty over the land and

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122 Wilhelm, n3 at 829, figure 3.
123 Churchill, n113 at 182.

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as an extension of it as an exercise of sovereign rights for the purposes of exploring the seabed and exploiting its resources.”125

Whilst the concept of natural prolongation supports Australia’s claim, it is submitted that to rely on natural prolongation as the method of delimitation would take the ICJ’s decision out of context. The ICJ held that the continental shelf is to be delimited in accordance with “equitable principles, and taking into account all the relevant circumstances in such a way to leave as much as possible to each party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroaching on the natural prolongation of the land territory of the other.”126 In other words, natural prolongation is subordinate to equity. This was confirmed by the Court of Arbitration in the Anglo-French Channel Arbitration.127 The ICJ has ruled in later cases that both the principles of delimitation applied and the results of those principles must be equitable.128 Therefore, it is submitted that the North Sea Continental Shelf Case will not support a boundary through the Timor Trough unless the result is equitable. Lumb has previously suggested that such a result was equitable having regard to the length of the Trough, its position and it constitutes a natural dividing structure between the two shelves.129 However, Lumb’s comments were made before Australia had claimed an EEZ and UNCLOS had entered into force. In addition, the development of the EEZ and ICJ decisions since the North Sea Continental Shelf Case has limited the relevance of natural prolongation.

The distance between Australia and Timor is less than 400 nm. East Timor has indicated it will claim a 200 nm EEZ130 that will overlap with both an Australian 200 nm and a median line EEZ claim. Accordingly, it will be necessary to delimit both the EEZ and continental shelf boundaries.

The ICJ held in Libyan Arab Jamahiriya v Malta that the concept of natural prolongation was inapplicable within 200 nm of the coast and where the distance between opposite States is less than 400 nm.131 In addition, the development of the EEZ has created a debate over the relationship between the EEZ and continental shelf.132 Some commentators claim that the geographical and geophysical significance of the continental shelf has been reduced by the development of the EEZ given that the distance criterion governs the attribution of title to both.133

The Chamber of the ICJ in the Gulf of Maine Case,134 when asked by Canada and the United States of America to draw a single EEZ/continental shelf boundary, only considered the factors relevant to both regimes rather than attempting to take into account all relevant circumstances and factors. This approach was approved by the

129 Lumb, n5 at 84.
131 Libyan Arab Jamahiriya v Malta [1985] ICJ Rep 13 at paras 39 and 46.
133 Amaratunga, n113 at 524.
Court of Arbitration in Canada v France (St. Pierre and Michelon) Arbitration\(^{135}\) and it observed that the use of a joint line had the effect of precluding the relevance of natural prolongation which would only be of assistance in delimiting a continental shelf boundary.\(^{136}\) Accordingly, if the ICJ follows the approach in Libyan Arab Jamahiriya v Malta, Gulf of Maine Case and Canada v France (St. Pierre and Michelon) Arbitration, it will disregard the presence of the Timor Trough when delimiting the maritime boundaries in the Timor Sea.

Finally, State practice does not support Australia’s claim. In cases where geological factors were possibly relevant, the parties concerned took notice of them in only one third of those cases and the 1972 Agreement is the only case where maritime boundary delimitation was based squarely on geological factors.\(^{137}\)

The ICJ has consistently stated the median line is neither mandatory nor does it hold some privileged status over other methods of delimitation even between opposite States within 400 nm of each other.\(^{138}\) There is no clear rule as to when a median line will be appropriate between opposite or adjacent States.\(^{139}\) Nevertheless, a median line would be a viable starting point for negotiation\(^{140}\) and a court might find it practical to draw a median line as a provisional boundary and then consider the relevant circumstances to determine whether the line requires modification to reach an equitable solution.\(^{141}\) In addition, a court may consider it relevant that Australia accepted the use of a median line to delimit the PFSEL in the 1981 MOU and the EEZ boundaries in the Timor Sea in the 1997 Agreement.\(^{142}\)

C. The Lateral Boundaries of the JPDA

According to an opinion provided to Petrotimor by Lowe, Carleton and Ward (“the Lowe Opinion”),\(^{143}\) the eastern and western lateral boundaries of the JPDA are “indefensible” and East Timor would be entitled to Laminaria and Buffalo and most if not all of Greater Sunrise if the lateral boundaries were redrawn according to international law. The possible lateral boundaries are depicted in figure 6.

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\(^{136}\) Canada v France (St. Pierre and Michelon) Arbitration (1992) 31 ILM 1145 at 1165; Kaye, n61 at 60.
Figure 6

Lowe argues that the western boundary should proceed from the thalweg of the Moti Masin River resulting in the line moving westward.\textsuperscript{145} Given the concave nature of the Timor coast, an equidistance boundary would be distorted to East Timor’s detriment and, accordingly, a coastal sector bisecting line should be used instead.\textsuperscript{146}

In his critique of the Lowe Opinion, Brazil\textsuperscript{147} argues that the use of the term thalweg implies that the Moto Masin River is navigable. The river only runs during the wet season and, therefore, it is inappropriate to use the term thalweg unless it was specifically used in the colonial description of East Timor’s land borders.\textsuperscript{148} The term literally means the downstream route but there is no generally accepted definition of the term and its definitions include the line of deepest sounding, the median line of the navigable channel, the median line of the main navigable channel for downstream navigation, the middle of the main channel of the stream and so on.\textsuperscript{149} However, the border between East and West Timor was delimited under a Treaty between Portugal and the Netherlands in 1904 in which the thalweg of various rivers, including the Moto Masin, formed part of the border.\textsuperscript{150}

Brazil also argues that the direction of the western boundary drawn in the Lowe Opinion “totally ignores the impact that the changes of direction of the West and East Timor coasts will have on the location of a properly drawn western lateral line in a final delimitation.” However, criticism of the western boundary proposed in the Lowe Opinion appears to assume the correctness of the equidistance line and overlooks the fact that a State may be disadvantaged where an equidistance line is drawn between two adjacent States with a concave coastline thus highlighting the need for flexible delimitation rules and methods to produce equitable solutions in all the circumstances.\textsuperscript{151}

Therefore, any adjustment of the equidistance line in East Timor’s favour will turn on how a Court applies the principles of equity. The presence of Buffalo and Laminaria and can be a relevant consideration the Court would take into account\textsuperscript{152} although the natural resources of the seabed were disregarded in the Gulf of Maine Case and the

\textsuperscript{145} The Lowe Opinion, n143, 15 at para 38.
\textsuperscript{147} The Brazil Critique, n144.
\textsuperscript{148} The Brazil Critique, n144, 7, para 4.2.
\textsuperscript{152} North Sea Continental Shelf Case [1969] ICJ Rep 3 at 36, 54.

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Guinea and Guinea-Bissau Arbitration as the ICJ in the former and the Arbitral Tribunal in the latter were asked to delimit a single EEZ/Continental shelf boundary. In the circumstances, it is submitted that the use of the thalweg in the Lowe opinion was correct and it is open to a Court to reject the use of an equidistance line when delimiting the maritime boundary between East Timor and West Timor. Further, the use of the coastal sector bisecting line in the Lowe Opinion is not inconsistent with State Practice and previous decisions of the ICJ.

With respect to the eastern boundary, Lowe argues that the presence of Leti Island has the effect of distorting any boundary based on equidistance and therefore, full effect should not be given to Leti in drawing the maritime boundary between Indonesia and East Timor. Lowe cites the ICJ’s decisions in Tunisia v Libyan Arab Jamahiriya, Dubai v Sharjah and Qatar v Bahrain in support of this argument. The practical result of giving half to three quarters effect to Leti is to place most, if not all, of Greater Sunrise within East Timor’s jurisdiction.

In response, Brazil claims that the Lowe Opinion ignores the fact that Leti is populated and the East Timorese Island of Jaco is not, the other two islands of the Kepulauan Leti group are not considered at all and that those islands forms part of the archipelagic State of Indonesia. In answer to this response, the authors of the Lowe Opinion argues that the effect of Jaco on the median line solution is minor, all three islands of the Kepulauan Leti Group have a disproportionate or inequitable effect on the boundary and the archipelagic status of Indonesia does not require full effect be given to those islands.

While islands capable of sustaining human habitation or an economic life of their own are entitled to a full EEZ or Continental shelf, full entitlement can create inequity where an island lies close offshore to another State. To remedy the inequity, the ICJ and other international tribunals have reduced the effect of such islands, sometimes by half and sometimes by disregarding the presence of the island altogether. It is submitted that it is appropriate to give reduced effect to Kepulauan Leti given the

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153 Caflisch, n151 at 303. According to Chris Ward, a coastal sector bisecting line is “commonly used”: Ward, n146 at 190.
154 Such a line was applied by the Chamber of the ICJ in The Gulf of Maine Case [1984] ICJ Rep 246; see Caflisch, n151 at 303.
155 The Lowe Opinion, n143, 16 at para 40.
156 Ibid.
157 Ibid., 16-17 at para 41.
158 Ibid., 17 at para 42.
159 The Brazil Critique, n144, 8 at paras 4.5-4.8.
160 That is, the islands of Leti, Moa and Lakor.
161 The Lowe Response, n150, 1 at para 4, 5 at para 14.
162 UNCLOS, art 121(2) & (3); Kaye, n3 at 15.
163 For example, the Scilly Islands were only given half effect in Anglo-French Channel Arbitration (1979) 18 ILM 397 at 455, Seal Island was given half effect in The Gulf of Maine Case [1984] ICJ Rep 246 at 336-337; the Maltese Islands were given one quarter effect in Libyan Arab Jamahiriya v Malta [1985] ICJ Rep 13; the French Islands of St Pierre & Michelon were given a reduced effect in Canada v France (St. Pierre and Michelon) Arbitration (1992) 31 ILM 1145 and the Kerkennah Islands were not given any effect in Tunisia v Libyan Arab Jamahiriya [1982] ICJ Rep 18 at 88-90; Kaye, n3 at 15-16; Amaratunga, n113 at 525-526; Lumb, n5 at 77-78.

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disparity in the relative sizes of East Timor and Kepulauan Leti and the fact that the former is a sovereign State whilst the latter is not.

With respect to Jaco, it lies only 0.5 nm from mainland East Timor and it is open for a Court to give it full effect as if it were integrated with the mainland itself. However, even if Jaco was discounted altogether, it would only move the boundary westward to a maximum of 3.5 nm near the northern limits of the JPDA and the effect of Jaco on the median line boundary would soon disappear as the boundary progresses southwards. For that reason, the presence of Jaco does not “offset” or “balance” the disproportionate effect of Kepulauan Leti. If it did, it would have been appropriate to give full effect to Kepulauan Leti.

The question of whether the archipelagic status of a State has any impact on the extent to which an island is entitled to be given full effect in maritime delimitation has not come up before the ICJ nor does it appear to have been considered by any other international tribunal. The regime governing archipelagic States is set out in UNCLOS, Part IV. Subject to certain conditions and limits in article 47, an archipelagic State such as Indonesia may draw straight “archipelagic baselines” joining the outermost islands and drying reefs of the archipelago. Sovereignty is exercised subject to Part IV and extends to the waters enclosed by the archipelagic baselines (“archipelagic waters”) and the airspace over those waters as well as the seabed and subsoil underneath.

Although the territorial sea, contiguous zone, EEZ and continental shelf are measured from the archipelagic baselines, Part IV is otherwise silent with respect to the question of delimitation of maritime boundaries. Therefore, there is nothing on the face of Part IV or UNCLOS that requires a distinction to be drawn between islands that form part of an archipelagic State and those that do not. Part IV was the result of negotiations lead by Indonesia and the Philippines to create a special regime for archipelagic States and the United States and other maritime States were only prepared to accept the regime if its application was limited and precisely defined.

Therefore, it would be reasonable to assume that the archipelagic status of Indonesia does not in itself dictate that full effect must be given to Kepulauan Leti. In any event, the overriding requirement in articles 74(1) and 83(1) is that the delimitation of the

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166 The Lowe Response, n150 at 5, para 14.
168 The Lowe Response, n150 at 5, para 14.
169 Bowett, n167 at 137-138, citing the examples of Kandafuri Island (Maldives) and Minacoy Island (India), New Caledonia (France) and Middleton Reef (Australia), Cocos Islands (Costa Rica) and Islas de Malpelo (Colombia), Cocos Islands (Costa Rica) and Colon Archipelago (Ecuador) and the islands off the coasts of Corsica (France) and Sardinia (Italy).
170 Ward, n146 at 200.
171 UNCLOS, article 49.
172 UNCLOS, article 48.
eastern lateral boundary must be equitable. Accordingly, it is open to a Court to give reduced effect to Kepulauan Leti to arrive at an equitable solution. Brazil notes that the “half effect” lateral line in the Lowe Opinion extends increasingly closer to the Indonesian coastline than it does with the East Timorese coastline. In the circumstances, it is submitted that a Court is more likely to adopt the “three quarters effect” lateral line that does not encroach upon the Indonesian continental shelf to the same extent as the “half effect” lateral line. Nevertheless, it would appear that most if not all of Greater Sunrise would fall under East Timorese jurisdiction if the “three quarters effect” lateral line was adopted.

Finally, it is always open to East Timor to negotiate its lateral boundaries north of the 1972 Seabed Boundary with Indonesia. Indonesia may be prepared to give Kepulauan Leti less than full effect as it has previously done so with respect to islands off the coast of Borneo when it was negotiating its maritime boundaries between Borneo and Sarawak (Malaysia). According to Bialek, if East Timor were successful in negotiating a boundary with Indonesia that gave less than “full effect” to Kepulauan Leti, this would have the effect of invalidating the point A16 as an accurate reflection of the eastern extent of East Timor’s rightful maritime claim. It would then be incumbent upon Indonesia and Australia to “consult each other with a view to agreeing on such adjustment or adjustments as may be necessary” pursuant to article 3 of the 1972 Agreement. Accordingly, it would be in East Timor’s interests to commence negotiation of its maritime boundaries with Indonesia if it is to successfully receive its full maritime claim in the Timor Sea.

D. Multiple boundaries

If Australia is to succeed in its claim to have its continental shelf recognised as far as the bathymetric axis of the Timor Trough, it will need to convince a Court or tribunal that it should separate the EEZ boundary from the continental shelf boundary. The question of multiple or single boundaries is yet to be determined by the ICJ but it indicated in Tunisia v Libyan Arab Jamahiriya and Gulf of Maine Case that there is no rule of law that prevents the use of multiple boundaries. However, it later held in Libya Arab Jamahiriya v Malta that “although there can be a continental shelf where there is no exclusive economic zone, there cannot be an exclusive economic zone without a corresponding continental shelf.”

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174 The Brazil Critique, n144 at 8, para 4.7.
175 Bowett, n167 at 139-140. However, care should be taken not to attach too much weight to the Borneo/Sarawak Boundary as a precedent for State practice with respect to boundary delimitations involving archipelagic States given that the boundary was negotiated in 1969, well before the signing and subsequent ratification of UNCLOS. In addition, it appears that Indonesia may have conceded to Malaysia’s claim in order to enlist Malaysia’s support for its archipelagic claims: Park, C., “Indonesia-Malaysia (Continental Shelf)” in Charney, J.I., & Alexander, L.M., (eds), International Maritime Boundaries, vol I, Martinus Nijhoff Publishers, Boston, 1993, 1019 at 1022. Nevertheless, it is still significant as it provides evidence of a willingness on Indonesia’s part to accept partial effect for its islands: Bialek, D., “Submission to the Joint Standing Committee on Treaties: Review of Treaties, Timor Sea Treaty”, Submission 38 delivered to Submission (No. 38) Joint Standing Committee on Treaties on the Proposed Timor Sea Treaty between the Government of Australia and the Government of the Democratic Republic of East Timor, 4-5, <http://www.aph.gov.au/house/committee/jct/timor/subs/sub38.pdf> (15 January 2003).
176 Bialek, n175 at 5.
177 Kaye, n61 at 59.
178 Tunisia v Libyan Arab Jamahiriya [1982] ICJ Rep 18 at 115 per Judge Arechaga. On the other hand, Judge Oda expressed objection to the use of multiple boundaries at 232.
It is submitted that whilst it maybe open to a court to create multiple boundaries, the requirement of an equitable solution in articles 74(1) and 83(1) will only permit the use of multiple boundaries where a unified boundary would be inequitable and the use of multiple boundaries would result in an equitable solution.\(^{181}\) It is also submitted that the overwhelming State practice in favour of a unified boundary\(^{182}\) probably suggests that a court will not separate the EEZ and continental shelf boundaries unless there are compelling reasons to do so.

East Timor is one of the poorest countries in the region and suffered the destruction of much of its infrastructure following the post-ballot violence in 1999. Accordingly, East Timor has a very powerful argument that the use of separate EEZ and continental shelf boundaries is “radically inequitable” by which it is likely to entail catastrophic repercussions for the livelihood of and economic wellbeing of its population.\(^{183}\)

The continental shelf and EEZ boundaries between Indonesia and Australia have previously been effected by agreement as required by articles 74(1) and 83(1) respectively. Further, the 1972 and 1997 agreements can be regarded as relevant conduct by Australia and Indonesia. Therefore, a court ought not to interfere with those boundaries except to the extent necessary to provide for an equitable delimitation of East Timor’s boundaries.

**E. Closing the gap**

It is difficult to predict with any certainty where a court will draw the maritime boundaries in the Timor Sea and it is neither practical nor helpful to attempt to consider every possible computation and permutation a court may entertain in drawing those boundaries. The Australian Government appears to have dismissed or regarded the Lowe Opinion as incorrect.\(^{184}\) Nevertheless, it is submitted that having regard to the factors a court is likely to take into consideration and applying the approach of the courts in previous cases, it is open for a court to delimit the maritime boundaries within the limits depicted in figure 6.

For East Timor, it is vital that it engages both Australia and Indonesia in the maritime delimitation process if it is to attain the best possible outcome.\(^{185}\) For Australia, it is time to abandon any claim based on natural prolongation. Nevertheless, it need not abandon its claims to the oil and gas fields altogether. Laminaria, Buffalo and Greater Sunrise lie in close proximity of the lateral boundaries and rather than continuing to argue its claim on natural prolongation, the Australian Government should direct its energies towards identifying relevant factors that will persuade a court to ensure that any delimitation of the lateral boundaries does not completely deprive it of the Timor Sea petroleum resources.

\(^{181}\) Churchill, n113 at 196.

\(^{182}\) Kaye, n61 at 58-59, 61; Churchill, n113 at 196. It would appear that the 1997 Agreement and the Torres Strait Treaty between Australia and Papua New Guinea are the only treaties separating the continental shelf from the EEZ.


5. Conclusion
The Timor Sea is of economic importance to both Australia and East Timor. Whilst Australia will continue to be a net exporter of energy, its supplies are dwindling and there is evidence that it may be unable to meet a moderate increase in industrial and commercial demand. The impoverished nation of East Timor is still reeling from the destruction of its infrastructure caused by the post-election violence in 1999 and it is anxious to ensure it receives its fair share of the Timor Sea oil and gas revenues.

Having considered the principles of delimitation laid down by UNCLOS and the courts and examining the factors likely to be taken into account, it is submitted that it is highly unlikely that an international court or tribunal will adopt the bathymetric axis of the Timor Trough as a continental shelf boundary. It is likely that a court will draw a unified EEZ/continental shelf boundary between East Timor and Australia somewhere within the JPDA. It is also likely that the lateral boundaries between East Timor and Indonesia will be altered.

It is open to a court to adopt the median line between East Timor and Australia resulting in the loss of Bayu-Undan to East Timor. It is also open to a court to adopt the lateral boundaries proposed in the Lowe Opinion with the result that Australia loses its claims to Sunrise, Laminaria and Buffalo. If Australia is to avoid this outcome, it should direct its attention to identifying the relevant circumstances that will persuade a court to delimit the lateral boundaries so that it is not completely deprived of those oil and gas fields. If East Timor is to attain the best possible outcome in the delimitation process, it will need to ensure both Indonesia and Australia participate in the process.

Post Script
After this article was submitted for publication, the Australian and East Timorese Governments signed an International Unitisation Agreement (“IUA”) for Greater Sunrise and ratified the TST on 6 March 2003. The ratification was effected by the enactment of the Petroleum (Timor Sea Treaty) Act 2003 and Petroleum (Timor Sea Treaty) (Consequential Amendments) Act 2003 and Passenger Movement Charge (Timor Sea Treaty) Act 2003.

The ratification of the TST and signing of the IUA has not been without controversy. The Australian Government has been accused of pressuring the East Timorese Government after John Howard had telephoned Dr. Alkatiri on 5 March 2003 to ask whether the IUA could be concluded on 6 March 2003. On the other hand, Senator Natasha Stott Despoja reported that Dr. Alkatiri’s office telephoned her expressing strong support for the new legislation.

The signing of the IUA now opens the way for the development of Greater Sunrise. Marketing for the $5 billion Sunrise LNG Project has already commenced with the world’s largest steel company, Pohang Iron and Steel, being courted as the foundation customer. In addition, the ratification of the TST by 11 March 2003 was a key condition of a contract with ConocoPhillips with two Japanese customers to supply 3 million tonnes of LNG per year. The LNG from Bayu-Undan is to be processed at a $1.5 billion plant to be built at Darwin.

The recent development is a great step forward but Australia and East Timor are still yet to agree on a permanent maritime boundary. The TST and IUA are without prejudice to the rights of Australia and East Timor in this regard. Accordingly, East Timor is entitled to continue to push for maritime boundary negotiations with Australia should it wish to do so.