

Ramiro V. Paris

February 2001, Dili, East Timor.

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ETTA
Dili, East Timor

Companero Ministro,

I am honoured to enclose my findings on the subject of the Timor Gap Treaty and maritime boundaries of East Timor.

**The Timor Gap Treaty versus an East Timor Exclusive Economic Zone:
Economic Independence for East Timor**

The topic of international maritime boundaries is technically complex and always subject to shifting political conditions. Nevertheless, I believe it is of prime importance in drawing a believable design of the economy of East Timor. On various occasions you have publicly stated that the "Timor Gap" is an issue of maritime boundaries. Because of this, I have researched a variety of specialized documents and consulted with leading authorities on the matter in order to have a clear picture of oil and gas reserves for the future sovereign government of East Timor. It has not been easy, for even a detailed reading of UNCLOS, shows gray areas subject to bi-lateral agreements and further clarification in specific cases. UNCLOS requires states to negotiate "equitable" boundaries; generally it is impossible to predict which limit will eventually be selected as "equitable" by any two negotiating teams.

In spite of this, before leaving the service of UNTAET, at the end of March, I believe it is my duty to inform you of my findings. I am all too aware that you, having followed the negotiation process for years, will find nothing new in my proposal, which is as follows:

The basic premise for my line of thinking is that the Timor Gap Treaty entered into under the provisions of Paragraph 3 of Article 83 of UNCLOS and other maritime boundary agreements subscribed between Australia and Indonesia, are not binding to the new state of East Timor. Therefore, such instruments as the Timor Gap Treaty should have no relevance for the bi-lateral negotiations to be pursued in the search for territorial sovereignty and the exploitation of natural resources. **If such be the case, the line of argument that proposes varying arrangements for the division of royalties from oil production in the Timor Gap is completely out of order.**

Should the above be a valid assumption, then the oil companies operating in the area will face a legal vacuum when the sovereign state of East Timor comes into being at the end of 2001. Given the magnitude of investment (\$800 million USD – excluding Australian investment in the NT) the situation will become critical unless some advance work is done to delineate the territorial sea between East Timor, Indonesia and Australia – on the Timor Sea.

The 1982 UNCLOS entitles every state with a coastline to claim;

- A 12 nautical mile territorial sea measured from baselines (lines drawn along the general direction of the coast following the Convention's rules)
- A further 12 nautical miles contiguous zone in which nations can "prevent and punish infringement" of their customs, fiscal, immigration or environmental laws and regulations within their territory or territorial sea.
- A continental shelf – the seabed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of a state's land territory – to a maximum of 300 nautical miles;
- **An Exclusive Economic Zone (EEZ) extending 200 nm from baselines and in which states have sovereign rights over resources and all related activities, as well as jurisdiction over "artificial" structures, marine scientific research and the conservation of the marine environment.**

Of specific relevance to East Timor is Article 15 of UNCLOS, which stipulates the following as regards to the delineation of the territorial sea:

"Where the coast of the two states are opposite or adjacent to each other, neither of the two states is entitled, failing agreement to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the basis from which the breadth of the territorial sea of each two states is measured."

Therefore, the first step before a country enters into negotiations to define boundaries is the establishment of the line of equidistance, which is located at the same distance from the nearest point of the baselines of each state. Having done this the negotiating countries determine whether there are sound arguments of why the line of equidistance is inequitable and should be adjusted in favour of one or the other state. In the particular case of East Timor there are three areas to be enclosed by equidistance lines:

- The Timor Sea with Australia and Indonesia
- The Straits of Wetar and Ombai with Indonesia
- The Oecussi Enclave in the Savu Sea with Indonesia

The main concern to ETTA and to the sovereign government should be the establishment of an **Exclusive Economic Zone (EEZ)** in the Timor Sea to replace the transitional agreement as set by the Timor Gap Treaty between Australia and Indonesia. The

important issue to keep in mind is that such a zone would be enclosed by three equidistant lines – two lateral (east and west) with Indonesia and the third (in the south) with Australia. The definition of such an EEZ (or part of) is vital, for only then can the sovereign state of East Timor be able to award legally binding contracts for the exploitation of natural resources (oil, gas, minerals, fisheries etc). Only then will East Timor be able to exercise sovereignty over its maritime territory. The above points to the fact that time is of the essence and that the matter of maritime boundaries can no longer be neglected by ETTA. As you well pointed out conflicting issues with the other coastal states is not an issue of the Timor Gap Treaty; it is a matter of international maritime boundaries.

International maritime boundary institutions and experts have devoted time and interest to East Timor's three equidistant lines in the Timor Sea. The reason is obvious: the hydrocarbon resources proven to be present there. If you should require some of the most recent detailed proposals, I can try to secure them. Not being an expert in the matter, I would not venture to comment or guarantee their validity. Nevertheless, I can point out that my informal consultations with geological and legal experts have lead me to believe that: **if the three equidistant lines of the Timor Sea boundaries are drawn according to the technical requirements stipulated in UNCLOS three major oil fields now situated in the ill defined (and probably illegal) Australian seabed, would fall into East Timor's newly defined EEZ.** This should quintuple East Timor's expected revenues and is the whole point of sovereignty: vast oil and gas production and reserves, will guarantee the political and economic independence of East Timor. Moreover, anything else would mean the creation of a formal nation-state, dependent on new and "modern" waves of colonialism.

Let me be more specific, in January, I posed the following question to a knowledgeable analyst of legal issues related to maritime boundaries:

"Does the establishment of East Timor's lateral maritime boundaries in the Timor Sea mean that Greater Sunrise Field in the East and Laminaria/Corralima and Buffalo Fields in the West, will fall into East Timor's EEX according to UNCLOS drawn lines of equidistance?"

The source, which has asked to remain anonymous, has stated the following on contentious issues:

"The Australian Government has thus far argues for the preservation of the status quo – to the extent that the issue of lateral EEZ has been raised, and I emphasise that it has not in any substantive detail. The Australian position, compendiously stated, is that the lateral boundaries (closing lines) of the present Timor Gap Treaty Zone of Cooperation must prevail, based as they are on application of geographic factors, and of course, the interior terminal points A16 and A17, of the 1972 Australian – Indonesia Continental Shelf Treaty. It all sounds tidy, but are neither spatially nor legally correct.

East Timor can and should argue for a greater EEZ jurisdiction in the Timor Sea. The Timor Gap between points A16 and A17 is too narrow, being only 130 nautical miles across when the state's coastal projection is about 160 nautical miles in width. Moreover, East Timor is neither bound by the 1972 bi-lateral treaty nor the Timor Gap Treaty."

On the lateral lines and the establishment of East Timor's EEZ:

"The eastern "lateral" boundary should not necessarily follow the lateral closing line of the Timor Gap Treaty Zone of Cooperation, but should be adjusted or shifted further to the east, to account for the fact that the Timor Gap Treaty areas are not based on a notional (seabed/continental shelf) boundary which should properly extend from a median point between Jaco Island and Leti. The eastern lateral line should proceed southeast through point A15 of the 1972 Australia – Indonesia Continental Shelf Treaty boundary, and not point A16, which lies 4.8 nautical miles southwest of Point A15. Thus to determine which state has the soundest claim to jurisdiction over the above oil and gas field, one needs to determine East Timor's eventual EEZ east and west, or lateral boundaries."

On the lateral boundaries and the oil and gas fields:

"The jurisdiction over the oil and gas fields will only be determined by a delineation of the so-called lateral boundaries of East Timor's EEZ, which will project away from the new state, roughly to the south (but slightly east) into the Timor Sea. Here the question of the western lateral boundary will extend from the mouth (thalweg) of the Masin River at the southern frontier of East and West Timor along a line roughly 160-170 degrees relative to the north.

The eastern lateral boundary will extend from a median line in the Wetar Strait between the East Timorese island of Jaco and Indonesia's Leti Islets, again along a line between 160-170 degrees relative to the north. It can be argued that the eastern lateral EEZ boundary should be adjusted to follow a corrected path further to the southeast given the very limited coastal front or projection into the Timor Sea of Indonesia's small well spaced Sermate Islands group."

On oil fields that would fall into East Timor's EEZ the source added:

"The following oil and gas fields presently lie within a median line EEZ boundary between East Timor and Australia, and within the current lateral "boundaries" (closing lines) of the Zone of Cooperation: Sunset West 1, Sunset 1 and Jahal 1 (sic). I add that I am reluctant to state an opinion over the jurisdiction over the well referred to as "Bard 1". I simply do not have an accurate position for the well in its permit block. The following oil and gas fields lie within a median line EEZ boundary, but are currently outside the eastern lateral "boundary" of the Zone of Cooperation: Troubador 1, Sunrise 1 and 2 and Loxton Shoals 1.

At least the Troubador and Sunrise wells would properly lie within an ordinarily delineated East Timorese EEZ. One can make the argument that Loxton Shoals should lie within the EEZ, because East Timor has the most significant land mass in the north Timor Sea to project into the area otherwise "occupied" by the relatively limited Indonesian coastal front emanating from the Sermata group.

To the east, I conclude that the following oil and gas wells/fields would lie within a median line and a corrected or expanded lateral EEZ boundary west of the present ZOC: Corallina and Laminaria (both in block AC/LC-5), and Buffalo 1 and 2.

You ask about possible jurisdiction over "Buang 1", which I assume to be "Buller 1". Buller 1 lies about 3 nm just west of the ZOC closing line, in block WA-260-P and will readily fall within a proper EEZ delineation establishing East Timor's jurisdiction in the area. A final issue; in the analysis, East Timor's EEZ should properly project south from the Masin River along an azimuth of about 165 degrees, which – at minimum - will result in the western lateral boundary of the EEZ projecting through Point A18 of the 1972 treaty. This point is considerably to the west of the wells/fields at paragraph as above. In other words, the widening of the Timor Gap to account for East Timor's full coastal projection will occur most in the west."

Conclusion:

The Australian Senate's report on East Timor (December 2000), in its Chapter Four on the Timor Gap Treaty, recommends that " the Australian Government should take into account international law in relation to seabed boundaries". This can be interpreted to be a cornerstone for more generous public opinion/attitude towards the establishment of the southern equidistant line of an East Timorese EEZ in the Timor Sea. It would, of course, mean that the Bayu-Undang field would be situated in East Timorese sovereign territory. Thus, the revenues, of such would accrue 100% to the new modern state. It also means that no further discussion should follow on the varying percentages of the division of royalties.

The above information and analysis should be construed as one of many actions leading to the establishment of an East Timor Exclusive Economic Zone in the Timor Sea. Thus your country will have rights to the revenues generated by exploitation of the full spectrum of resources (not simply oil and gas) to be found in and below the Timor Sea. This will ensure that East Timor does not become dependent on foreign powers and interests, but rather that future generations of East Timorese will be able to choose their own path in life.

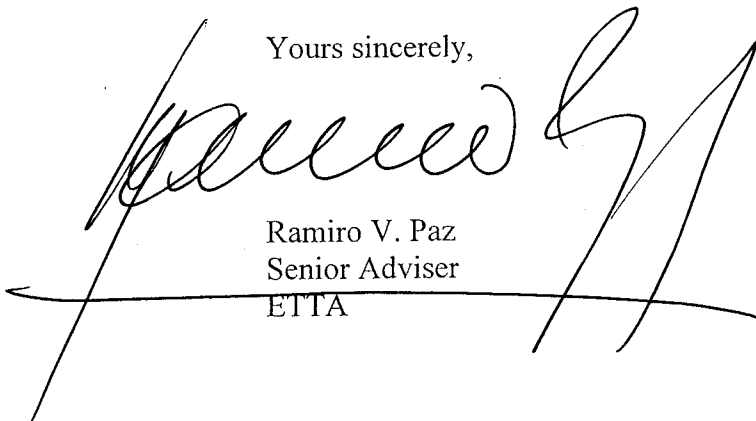
If ETTA/UNTAET would finally accept to enter into a solid programme of boundary delineation (while international public opinion favours East Timor), it would be advisable that it start with tentative negotiations with Indonesia on the establishment of the lateral line. This I believe it should be done in strict confidentiality, and exclusively by East

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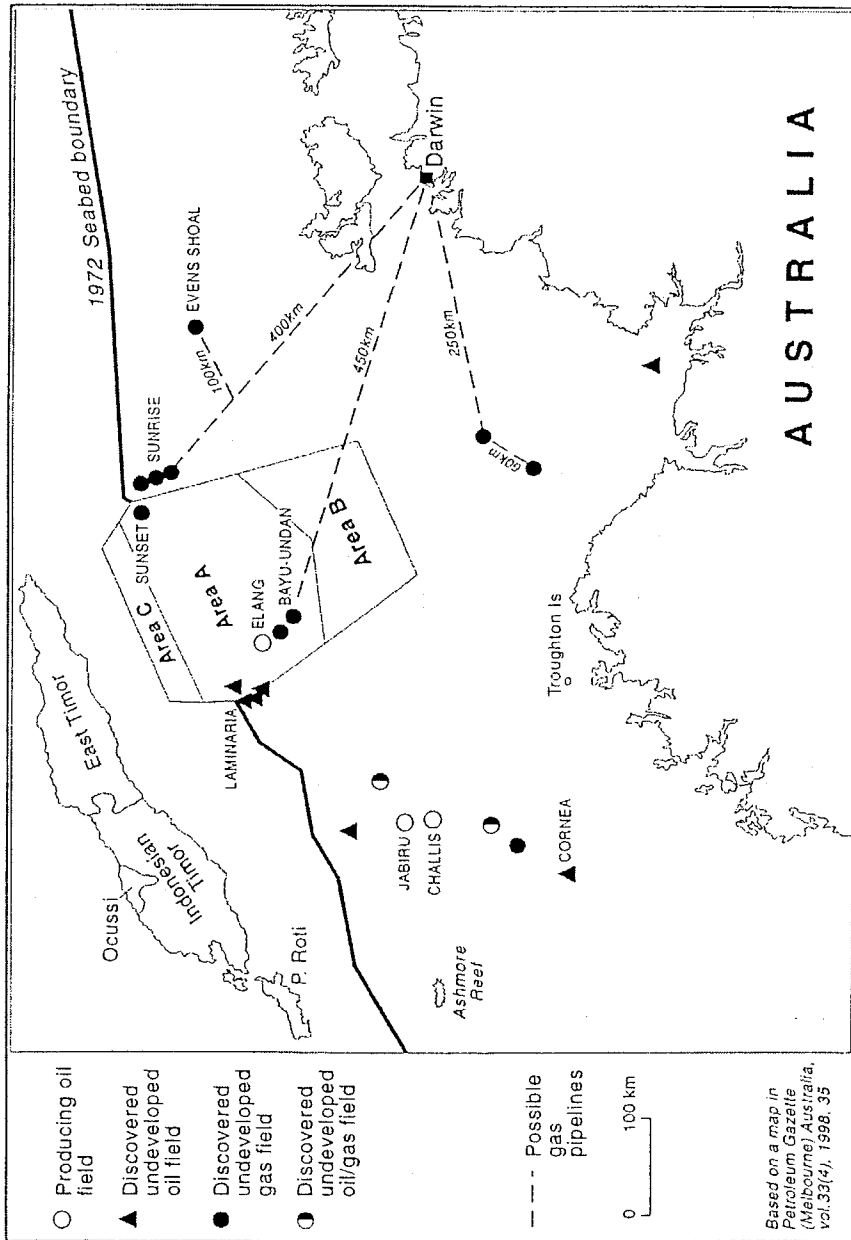
Timorese representatives. In case foreign technical expertise is required, it should be sought on a private basis and under a confidentiality agreement. I am currently working on the financial implications of the above. I will give them to you before my departure.

Finally, I want to thank you and your East Timorese colleagues for the generous hospitality and courtesy bestowed on me. It has been an honour to work for you and the East Timorese people.

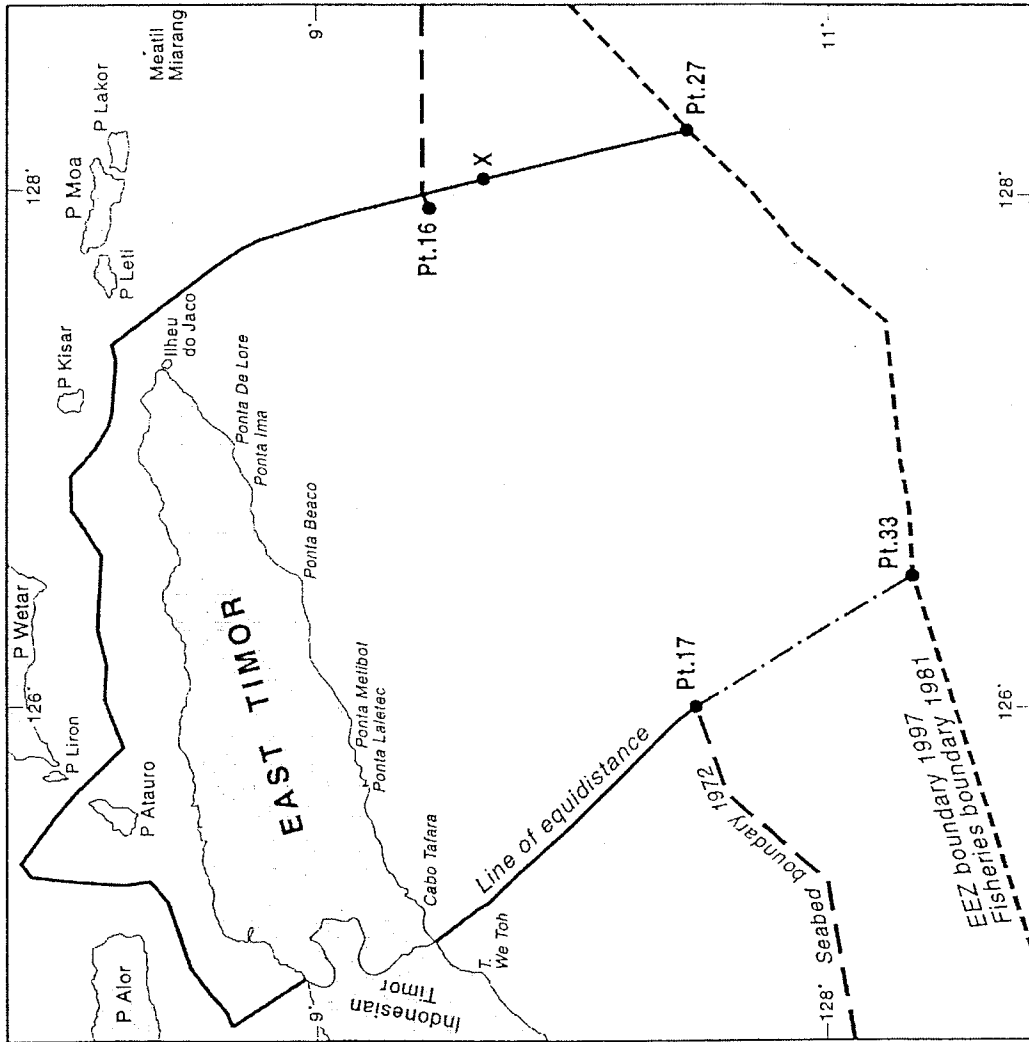
Yours sincerely,

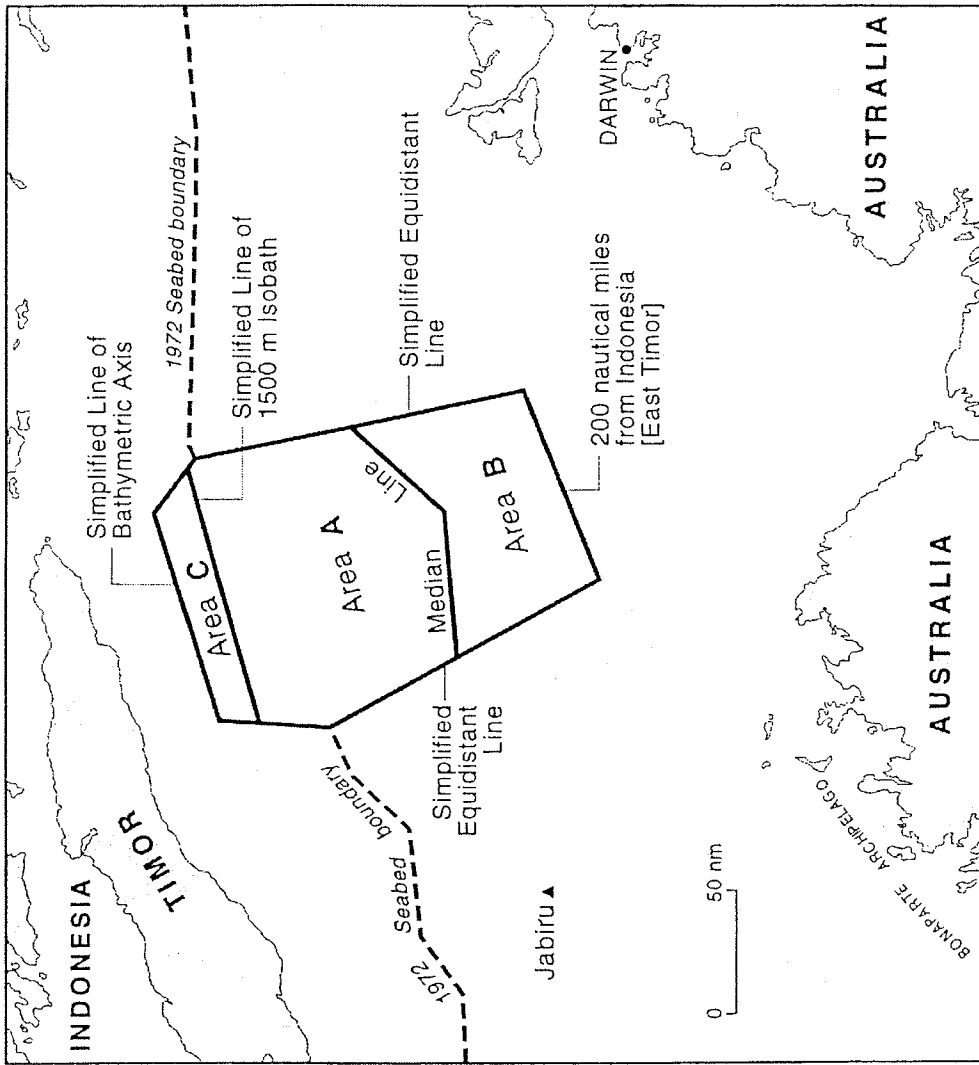


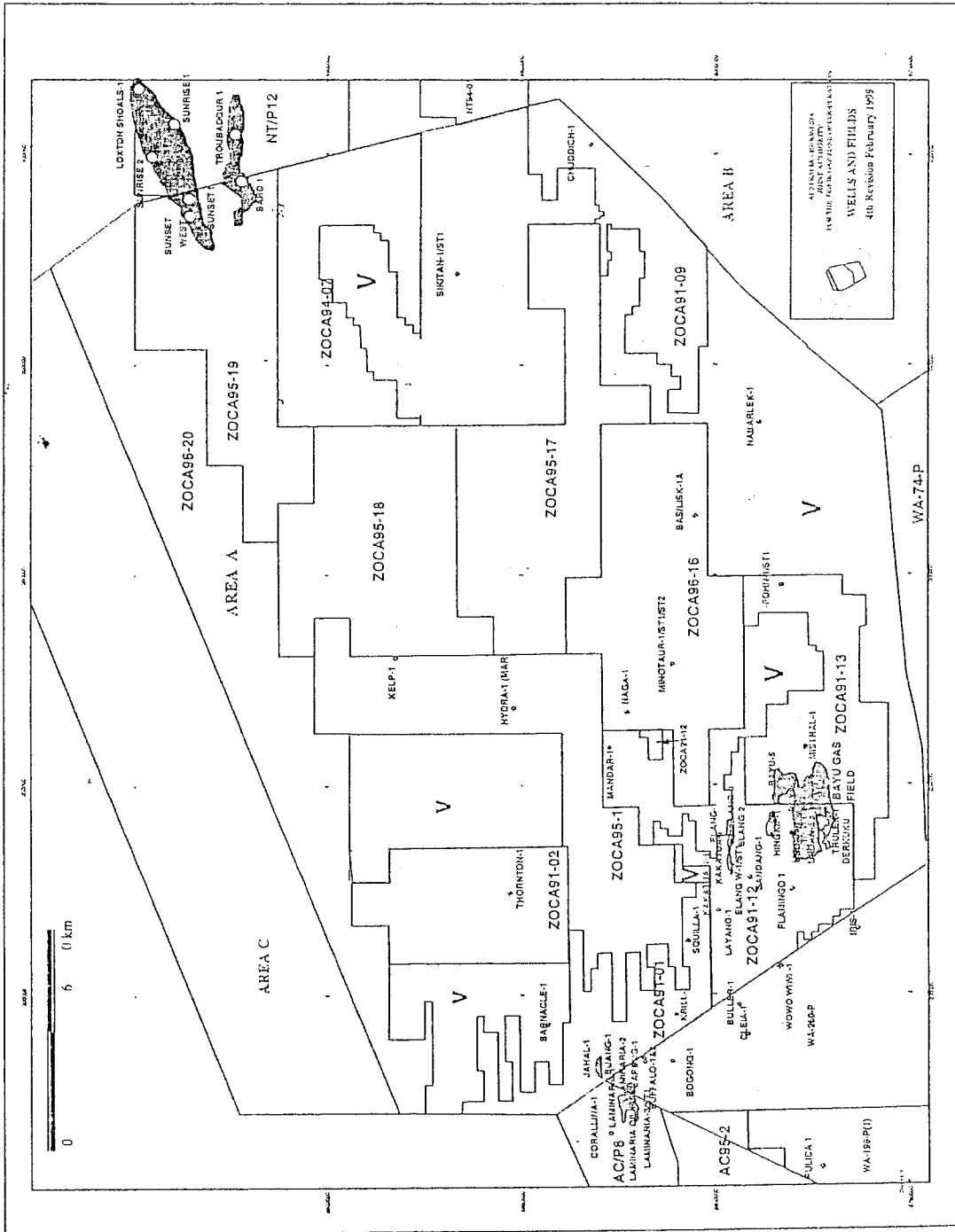
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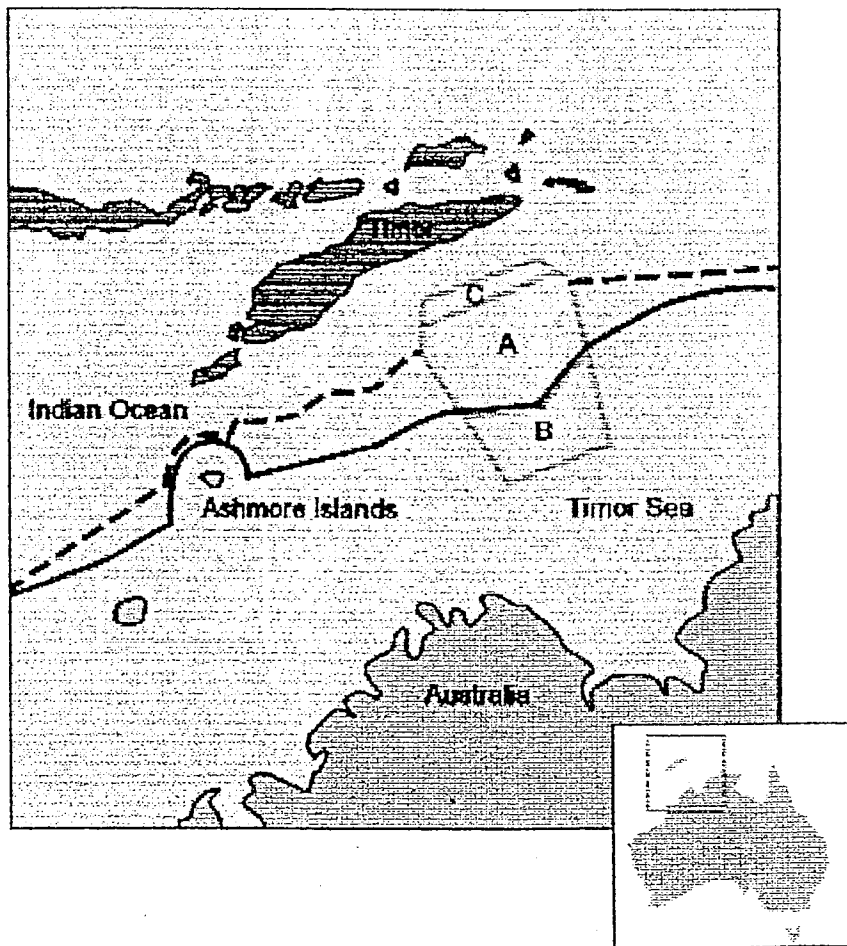


Based on a map in
 Petroleum Gazette
 (Melbourne) Australia,
 vol. 33(4), 1998, 35









MAP 2 - TIMOR GAP SHOWING EXPLORATION ZONES A, B, AND C.
RED - ESTABLISHED BOUNDARY. BLACK - DISPUTED BOUNDARY.
(RECOGNIZED BY AUSTRALIA AND INDONESIA).