

COLONIZING EAST TIMOR

Indonesia & Australia's Oil Drilling Plans

By Allan Nairn

SINCE 1975, INDONESIA has openly defied two calls by the United Nations Security Council to withdraw its troops from East Timor.

During the course of its invasion and occupation of the small, agricultural island-nation, Indonesian troops have tortured and assassinated many tens of thousands of Timorese. Now, in spite of the standing Security Council requirement that Indonesia withdraw "without delay," Australia has launched a joint project with Indonesia to garner the invasion's economic spoils.

Starting in early 1992, leading multinationals under license from the Australian and Indonesian governments are due to begin exploring for oil and gas in East Timor's offshore waters. The ruling Indonesian regime led by President Suharto considers East Timor to be an Indonesian province. The UN does not recognize this claim — and sees the occupation as illegal — but Australia and Indonesia have taken East Timor's seabed and divided it between themselves along lines specified in the Timor Gap Treaty, which they signed in 1989.

Australian oil technicians say that the Timor seabed could yield some of the world's most productive oil fields. British Petroleum (BP), Shell and Chevron are among the companies that are said to have expressed

interest in placing bids for the drilling rights by the October 7 deadline this year.

But representatives of the East Timorese living under occupation say the seabeds are not Indonesia's or Australia's to exploit. And Portugal, which the UN recognizes as East Timor's administering power, has brought suit before the International Court of Justice (World Court) to block the Timor Gap exploration.

Jose Ramos Horta, an exiled leader of the Timorese independence movement, calls the Timor Gap Treaty "daylight train robbery." He points out that as Australia was making its deal with Indonesia, it was also joining the war against Iraq. Australia "sent warships to a conflict 20,000 miles away in the name of international law, but says that international law allows Indonesia to invade and annex East Timor."

Australian Foreign Minister Gareth Evans says that "there is no binding legal obligation not to recognize acquisition of territory that was acquired by force."

International law, however, includes clear prohibitions against aggressive armed seizures of foreign territory. The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States — a 1970 measure which Australia sponsored and supported when it passed the UN

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General Assembly — says: "the territory of a state shall not be the object of acquisition by another state resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal."

But, as is often the case in international (and domestic) affairs, events are turning less on what the law says, than on whether those with power choose to obey it or whether they allow it to be enforced.

The legal standing of the Declaration, for example, was affirmed by the World Court in 1986. In a case brought by Nicaragua against the United States for its *contra* war, the Court ruled that by invading Nicaraguan territory, the United States had violated the Declaration. It ordered the United States to halt its attacks on Nicaragua and pay damages.

Washington, however, announced that it would not accept the World Court's jurisdiction. It refused to pay the damages, continued with the attacks and later held back aid from the U.S.-sponsored Chamorro government when it at first declined to withdraw the case. The United States has, in other cases, accepted the Court's authority and brought cases before it (as, for example, when it sued Iran for holding the U.S. Embassy hostages), but in the Nicaraguan case Washington simply refused to obey — and the UN took no steps to make it comply.

Reaction to the attack on East Timor has followed a similar course. Though the Security Council passed two resolutions deploring the Indonesia invasion, the United States successfully lobbied to prevent the UN from taking any action to enforce them.

At the time of the invasion, the U.S. State Department later reported, 90 percent of the weapons of the Indonesian armed forces were provided by the United States. The attack was launched less than 48 hours after President Gerald Ford and Henry Kissinger conferred in the Indonesian capital of Jakarta with Indonesia's Suharto. The Ford-Suharto meeting was followed, after the invasion, by an increase in U.S. military aid.

Australian officials have said that, in Foreign Minister Evans' words, the invasion involved "unhappy circumstances and indeed, possible illegality." Yet Australia has responded by pursuing a policy which holds that, as Evans puts it, "Indonesian sovereignty over the territory [of East Timor] should be accepted not only on a *de facto* but on a *de jure* basis."

In 1974, Australia had begun trying to negotiate a Timor seabed deal with Portugal. East Timor, at the time, was a Portuguese colony. But the talks broke down.

After evidence began surfacing, in mid-1975, that Indonesia was preparing to invade East Timor, Dick Woolcott, the Australian ambassador to Indonesia, sent a cable to Canberra: "We are all aware of the Australian Defense interest in the Portuguese Timor situation, but I wonder whether the Department has ascertained the

interest of the Department of Minerals and Energy in the Timor situation. It would seem to me that this Department might well have an interest in closing the present gap in the agreed sea border and this could be much more readily negotiated with Indonesia than with Portugal or independent Portuguese Timor. I know I am recommending a pragmatic rather than a principled stand but that is what national interest and foreign policy is all about."

According to the Australian Council on Overseas Aid, oil company research in the early 1970s had estimated that the Kelp (a geological structure submerged beneath the disputed waters between Australia and Timor) could hold 500 million to 5 billion barrels of oil and 50,000 billion cubic feet of natural gas.

After the invasion, in October 1976, Australia began informal talks with Indonesia. This began a process that lasted 13 years and sparked occasional controversy among the Indonesian elite. Dr. Mochtar Kasumaatmadja, then the Foreign Minister, warned that Indonesia had been "taken to the cleaners" by Australia in earlier seabed negotiations and asserted that Indonesia had to take a tougher stance. Yet, though some Indonesians claimed that Jakarta ended up giving away too many of the fruits of the invasion, Indonesia, in turn, won legitimacy and recognition for its annexation of East Timor. The negotiations did not formally begin until 1979, when Australia extended *de jure* recognition. In 1985, after negotiations had stalled, Australia, in a departure from normal diplomatic practice, made a point of reiterating its *de jure* recognition. The final Timor Gap Treaty is the first international agreement that formally legitimizes the Indonesian annexation.

Portugal's suit in the World Court charges that Australia has caused "serious legal and moral damage to the people of East Timor and Portugal which will then become material damage if the exploitation of hydrocarbon resources begins." The suit, which could only be filed against Australia, since Indonesia does not recognize World Court jurisdiction, asks the Court to affirm "the rights of the people of East Timor to self-determination, to territorial integrity and unity, and to permanent sovereignty over its wealth and natural resources," and asserts that Australia "owes reparation" to both Portugal and the people of East Timor.

Resolution III of the Third UN Convention on the Law of the Sea, ratified in 1982, and supported and signed by Australia, states that the seas off non-self-governing territories — which is how East Timor is legally classified by the United Nations — are to be developed for the benefit of the people who live within those territories. Australia has said, however, that the Convention has "no bearing" on the Timor Gap accord.

At no point were representatives of the East Timorese consulted in the Timor Gap negotiations. There are no

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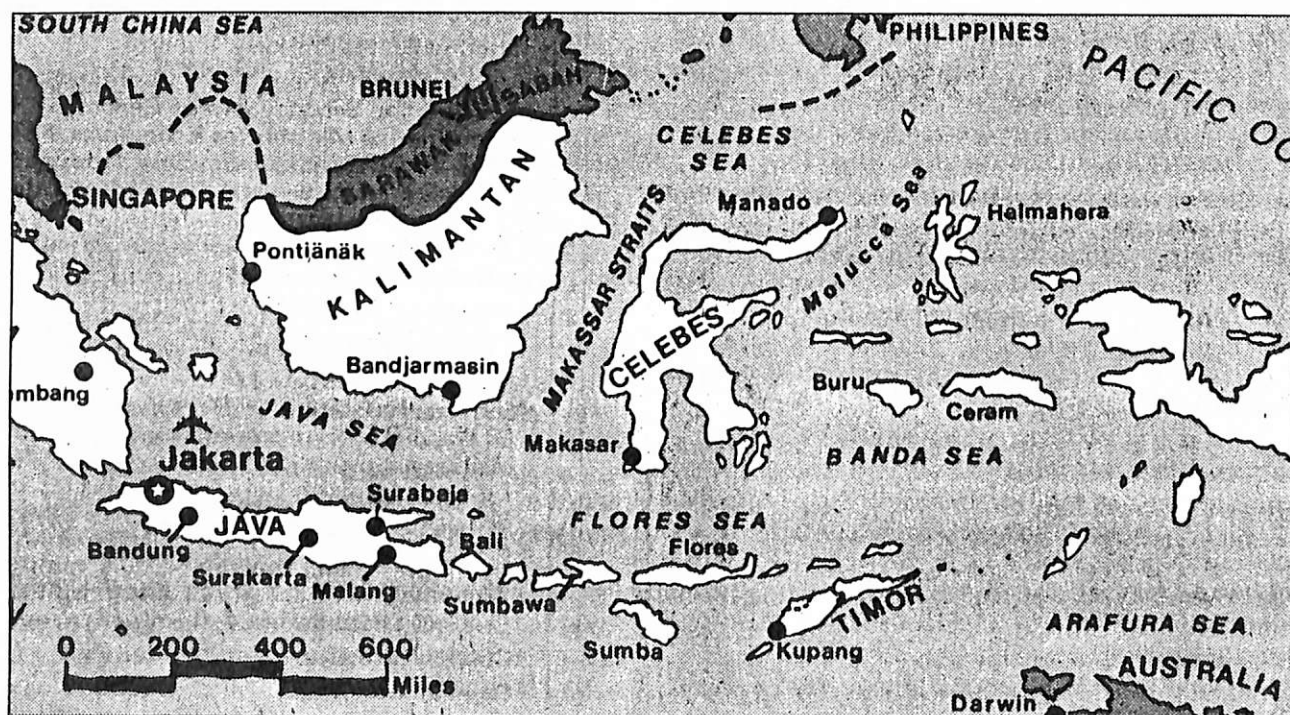
provisions in the accord to give them a share of the revenues. East Timor is now governed as a *de facto* police state under control of the occupying troops. After the signing of the Timor Gap treaty, Jose Ramos Horta commented to the *Sydney Morning Herald* that though Foreign Minister Evans and Prime Minister Bob Hawke "have previously said that East Timor is too poor to achieve self-determination, ... they are exploiting its natural resources which, according to the Law of the Sea Convention, are in East Timor's exclusive economic zone."

The Security Council recognized, in its resolutions deploring the invasion (Resolution 384 of December 22, 1975, and 389 of April 22, 1976), "the inalienable right of the people of East Timor to self-determination and independence."

East Timor had been a Portuguese colony since the sixteenth century. After its dictatorship fell in 1974,

dence movement (which is now a coalition that includes UDT, the conservative party that once opposed Fretilin in a brief civil war) on the question of the island's political status. They both, like the UN, see East Timor as an occupied, non-self-governing territory. The Timorese independence forces want negotiations with Indonesia and have called for free elections, under UN sponsorship, to determine East Timor's future status.

Indonesia has been talking with Portugal for years at the behest of the United Nations. But the discussions have not succeeded in prodding Indonesia to comply with the Security Council resolutions. Neither has Indonesia consulted with Portugal on the question of the Timor Gap. The discussions, instead, have focused on the issue of whether and how a delegation from Portugal would be allowed to visit East Timor. The two sides are said to have agreed on some terms, but no visit has yet been announced. Indonesian Foreign Minister Ali Alatas



Portugal began to pull back, and in November 1975, East Timor declared independence. Ten days later, Indonesia invaded and sacked Dili, the Timorese capital. Survivors from the short-lived government and Fretilin, the pro-independence party, retreated to the hills and began a guerilla resistance which continues today. Indonesia eventually captured most of the Timorese countryside through a strategy of massacre and starvation. Estimates of the death toll range as high as one-third of the Timorese population.

Though Portugal never recognized East Timor as an independent state, it agrees with the Timorese indepen-

has complained that he is "sick of people misrepresenting the situation. It [East Timor] is not paradise but neither is it a hellhole." He said last year that if too much criticism came from Portugal, Indonesia might cut off the talks: "You need two hands to clap ... if this goes on we will reach a point where we'll have to review our position."

Australia and Indonesia are, in the meantime, moving ahead quickly to exploit the Timor Gap oil. They have set up a Joint Authority, responsible to both governments, which is running the project in that part of the seabeds — known as Area A — which the two

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governments have agreed to administer jointly and from which the revenues will be divided 50-50. In the part claimed exclusively by Indonesia (Area C, the section closest to the shoreline of East Timor), Australia will get 10 percent of the revenues. In the part claimed exclusively by Australia (Area B, the section closest to the shoreline of Australia), Indonesia will get 16 percent.

Companies are now preparing to bid for the 14 drilling blocks which have been laid out in the largest sector, Area A. Stuart Cave, an Executive Director of the Joint Authority (each country appoints one; Cave is the Australian choice), says the bids are "something that we're all waiting for with great interest. I think we'll get many bids. ... There is some interest from all the majors and we have sent information out to about 50 companies." Cave says there has been "interest from all over the world: Japan, the U.S., the UK, European companies and Australian companies."

Australia's *Financial Review* has reported that major Japanese firms, including Nippon Mining and Indonesia Oil, are preparing bids. Cave confirms that Japanese firms "have shown a lot of interest. The Japanese have an interest in secure supplies of oil, and just how great that interest is we'll know when the bids come back."

Several groups of companies — including EIS Aquitaine, Petroz-NL Western Mining, and the Woodside group, which includes BP, Shell and BHP — had spent a total of \$50 million on exploration in the Timor Gap before the rights were frozen in 1979. The Joint Authority has allowed those groups to choose their preferred blocks, and, in the event that they do not turn out to be the highest bidder, they will have the right to match the highest bid.

Other firms said to have shown an interest in the Gap include Chevron and Petrofina.

An internal Elf Aquitaine study done in 1977, said that the Kelp, which is located in Area A, could hold "an extremely large discovery." In 1979, the Australian Department of Foreign Affairs estimated the Gap's potential reserves at a billion barrels of oil. Other estimates range up to six billion, a figure that Nick Kyranis, a senior technical director at the Joint Authority, finds "plausible." "The question," he says, "is what sort of risk factor shall we put on it?"

Kyranis says that "the source volume and the volume of potential hydrocarbon generation source is such that there's room for major fields in there if all the other ingredients come together properly."

Kyranis estimates that "the chance of a discovery in Area A are probably quite high, probably better than 50-50, but the chances of several discoveries are obviously reduced and the chances of major commercial discoveries are reduced farther. If you do get major commercial discoveries I think it would probably be in the world's top 25, but you've got to apply a risk factor

to that."

According to Stuart Cave, "the worst case is there's maybe four to five years exploration and nothing's found. I think that's very unlikely because of what's happening all around." Cave points out that the Timor Gap "has oil and gas all around it, but the area tends to be a little fragmented, geologically." He says that an optimistic scenario would be "maybe two or three fields of the order of Chellis and Jabaru [two nearby fields] which are producing about 80 to 100 thousand barrels a day." Chellis and Jabaru between them account for about a fifth of Australia's oil production. Cave says the oil industry's attitude toward the Timor Gap is one of "guarded optimism."

In June 1990, Brian Loton, the head of BHP, was quoted as saying that "Exploration of the Timor Gap ... might be delayed until the late 1990s by a host of legal problems." But when asked about the impact of the Portuguese World Court suit, Cave says, "We believe the Portuguese haven't got a case. Our government will defend the case very vigorously, and we're extremely confident there's no basis for the claim." Cave says he recently attended a meeting with senior oil executives who said that the case was not a problem, and added that a high official of Petroz had "said that he was not concerned in the least about the Portuguese case."

He also says the case would have no effect on the pace of exploration. "The Portuguese briefs will be presented to the Court in November of this year, and we anticipate Australia will respond sometime after that. The reward of the blocks will probably occur toward the end of the year. We're shooting for a December meeting of the Ministerial Council [the joint body which represents the Indonesian and Australian governments] with the possible commencement of activities in 1992, and of course after that it will take some time for companies to get mobilized."

Asked if there were any contingency plans in the event that the World Court issued an injunction, Cave says "No, no, not at all. Based on the advice of our Foreign Affairs Department, we are proceeding full steam ahead to get some work going in the area."

Nick Kyranis says he could not foresee any circumstances that could bring the exploitation to a halt. "I can't see it happening," he says. "There's a treaty in existence here that has a directive in it to explore or exploit as quickly as possible, and the framework's already been set up. And unless somebody marches in and stops us, there's no reason for us to hold off exploration."

The Joint Authority's technical offices are located in Darwin, Australia, the home of many Timorese refugees. Asked if he had heard anything about the human rights situation in East Timor, Cave replied, "Oh, I just have no comment on that. That's a situation I just don't want to get involved in." ■