

# **Borderlands E-journal**

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## **Australia's Relations with East Timor: People's Loyalty, Government's Betrayal**

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1. When an open society is no longer critical of its own historical roots and development, and when it stops engaging in dialogue with outsiders, it becomes a closed society and its values turn fundamental and assume the posture of being 'superior'. These fundamentalist and superior values are then imposed on others whose values are in turn considered inferior. D'Cruz and Steele's book, *Australia's Ambivalence towards Asia* (2003), is a reflexive examination of Australia's liberal-democratic values which, in the authors' analysis, have become unquestionable and hence fundamentalist—a liberal-democratic fundamentalism. D'Cruz and Steele's book is an invitation to a dialogical engagement with neighbouring outsiders, particularly Asians. It needs humility and courage to critically examine oneself, individually and collectively, and to genuinely engage in critical dialogue with outsiders. A mutual learning and unlearning occur whenever there is a genuine dialogue and critical self-understanding of all parties involved. On the other hand, criticism is always annoying and disturbing for fundamentalists, whether they are religious, market or liberal-democratic fundamentalists.

2. D'Cruz and Steele's perceptive critique—both its positive and negative aspects—is driven simply by a deep love towards their country, Australia, and towards neighbouring countries in the Asian region. And in the region, their first commitment is to the immediate needs of the poorest, whether in Australia or in the Asia-Pacific region. It is a critique by two true friends of Australia who, for their courageous candour, risk the wrath of at least some fellow Australians. Theirs is not an uncritical and self-flattering patriotism or patriotic self-adulation which would be dangerous and destructive not only for their own country but also for other countries, especially the less robust ones. A real patriot is one who has a great love towards his/her country, but whose very love demands him/her to take an independent and critical stand towards his/her country and government for the sake of improvement. D'Cruz and Steele (2003:19) appeal to the consistency and congruence between rhetoric and practice of liberal-democratic values, human rights and Australia's moral principle of a fair go for all.

3. In *Australia's Ambivalence Towards Asia* (2003, 304-316), D'Cruz and Steele offer a critical discussion on Australia's relationship with East Timor from September 1999 to 2003, a relationship that has evolved from love, respect and gratitude to one of ambivalence, suspicion, contempt and betrayal arising from the dispute over Timor Sea boundaries and over rights to associated oil and gas fields. In this paper I want to amplify D'Cruz and Steele's discussion of Australia's relationship with East Timor.

The focus of my discussion is Australia's bullying tactics and unfair dealings with East Timor concerning Timor Sea and its natural riches.

4. East Timor's 'deeply tragic episode in Australian foreign policy', Rodney Tiffen rightly states in his book *Diplomatic Deceits* 'is especially poignant because in many ways East Timor is the first and biggest disaster in the modern era of Australians' relations with Asia' (2001, 5). East Timor's tragedy, Mark Aaroms and Robert Domm (1992) argue, is 'a Western made tragedy'— for which 'Australia shares some responsibility' including for the 1999 massacre and destruction (Jolliffe 2004). Sixty thousand East Timorese (Levy 1998), 13% of the total population, would have not been killed by the Japanese during World War II, had not Australia violated Portuguese Timor's neutrality in 1942 by sending troops into that country. Two hundred thousand East Timorese, one-third of the total population, would have not perished, had not the Suharto's regime brutally invaded and occupied East Timor. Suharto's invasion of East Timor could have been prevented had not Australia tacitly urged and facilitated it. Suharto's brutal occupation might have been discontinued had not Australia gone against the UN resolution by recognizing as de facto and de jure the sovereignty of Indonesia over East Timor. The 1999 atrocities could have been prevented had not Australia influenced the UN negotiators during the May meeting in New York to accept the Indonesia's demand that the whole responsibility of keeping law and order in East Timor should be in the hands of Indonesian security forces and that UN troops should be kept out of East Timor before the August referendum.

5. Canberra's intervention to liberate East Timor in 1999 was a turning point in its 24-year relations of betrayal with East Timor, although this was not an act of goodwill on Canberra's part. The Australian troops, as Clinton Fernandes' recent study shows, 'were not sent in because of the goodwill of the Australian government, but because of the massive protest that increased rapidly in both size and fury' (2004,113). Credit should go to the Australian public's swelling solidarity and to many people in the Australian media. This time around, in 1999, unlike in 1975, the government of Australia could not afford to ignore the mounting pressure of the public outrage. By its act of intervention Australia won the hearts and minds of the East Timorese. Unlike the American, British and Australian troops in Iraq, Australian troops in East Timor were welcomed with tears of joy, relief and gratitude, and a mutual warm relationship developed. Australia also won recognition and respect from the international community.

6. However, in the past two years the government of Australia has been steadily losing the respect and love it won between 1999 and 2002 because of its bullying tactics and unfair dealings in Timor Sea. There are many reasons why Australia is seen as bullying and unfair. Australia stubbornly maintains the maritime boundaries it agreed in 1972 with Indonesia, East Timor's illegal occupier, although they are based on the no longer valid 1958 U.N. Convention on the Continental Shelf. In the 1989 Treaty, Australia was given a lion share of the resources as a trade-off from Jakarta for Australia's de facto and de jure recognition. The government of Australia knew all along, as Professor Roger Clark, a world authority on international law, pointed out, that the mineral deposits in Timor Sea were robbed from the East Timorese by Suharto's regime, and knew how it was robbed from its owners. But without scruple the government of Australia was happy enough to share that stolen property with the

thief (Clark 1992; 1995). 'It [was] engaged with an aggressor in sharing somebody else's' resources 'obtained by aggression' (Clark 1995, 83).

7. The gas and oil fields at issue (the Greater Sunrise, Laminaria/Coralina, Buffalo, Elang-Kakatua and Bayu-Undan) are much closer to East Timor than they are to Australia. For example, Greater Sunrise, the biggest gas field, is 140 km from East Timor and 270 km from Australia. If the boundary is drawn along the median line according to the current legal principles of the United Nations Convention on the Law of the Sea, all gas and oil fields mentioned above would legally belong to East Timor. Knowing that its case is legally weak in terms of recent international law, wishing to avoid the possibility of litigation, aware that it has an unmatched bargaining power in negotiation and that East Timor is vulnerable and deeply in need of money for its survival and smartly arguing that it 'prefer[s] negotiation to litigation' (Dusevic 2004:1; Brennan 2004a: 36), Australia very quietly pulled out of the International Court of Justice (ICJ) and the International Tribunal on the Law of the Sea (ITLOS), two independent adjudicators on disputed maritime boundaries, just two months before East Timor's independence. With this withdrawal Australia put East Timor into a vulnerable position where it can be easily intimidated and bullied by the former's unmatched bargaining power in the negotiation process with no recourse to international law. This withdrawal was an act that denied international justice for East Timor. To be fair in its relation with East Timor, Australia only has to return to the ICJ and ITLOS and to abide by whatever decision they made.

8. International law has developed since the 1972 maritime boundary agreement between Indonesia and Australia. Frank Bennan SJ, a prominent international lawyer, points out Australia's legally weak position as follows: 'Just as Australia could not convince Indonesia in 1989, it has even less chance of convincing Timor Leste and the international community in 2004 [with its continental shelf argument]. This development in international law colours Australia's 2002 decision to withdraw maritime boundary delimitation from the compulsory jurisdiction of the ICJ' as "'Australia's get out of jail card'" (2004b). If the Australian government really believes in its lofty moral principle of a fair-go-for-all and in the rule of law, and wants to set a good example for a tiny new democratic nation, why did it withdraw from the two international arbitrations above? Most Australians (77%, according to the Newspoll survey in early October [Michelmores 2004]), supported the view that the ICJ should determine the maritime boundary between East Timor and Australia, the boundary that would fairly divide up oil and gas reserves in the Timor Sea, if negotiations do not work. East Timor does not ask for patronizing charity or generosity: 'All East Timor seeks is a fair go', wrote Prime Minister Mari Alkatiri (2004). But a fair go can only be secured by the ICJ and the ITLOS from which Australia, a self-announced champion of a fair-go moral principle and international law, has pulled out.

9. Although it claims to 'prefer negotiation to litigation', Australia has refused East Timor's request to speed up the negotiations through monthly meetings and insists on meeting only twice a year. The reason it gives is that it has many things to do and that its administrative system is quite complex; also that, more importantly, it has no need to rush for a solution because the maritime boundaries are permanent and unchallenged based on its 1972 and 1989 agreements with Indonesia. Canberra fears that litigation would challenge the 1972 and 1989 treaties. Thus negotiation for

Canberra means the status quo of those treaties. Does Canberra have a right to impose on East Timor, a sovereign state, decisions it made with Jakarta, East Timor's illegal occupier? Disturbed and shamed by the way the Government of Australia cunningly manipulated and pulled wool over the eyes of the poor and weak East Timorese in the negotiations over the maritime boundary and riches, Tim Colebatch, economic editor of *The Age*, writes in a tone of lamentation: 'They fooled me. Perhaps they fooled you too. These the spin doctors are everywhere, and they know how to pull the wool over our eyes...East Timor may negotiate for changes, but we will decide, and there will be no appeal. We have looked after our interests well. It's a pity about theirs' (2003:13).

10. Australia has unilaterally explored and exploited the oil and gas in the disputed resources (the Laminaria-Corallina fields) and since 1999 has received US\$1 million per day (totalling nearly US\$2 billion) in oil and gas revenues, while East Timor has received not a cent. So East Timor is subsidizing Australia at the rate of US\$1 million per day. By the time (after several decades) both parties reach a solution on the maritime boundaries, there will be no gas or oil left for East Timor and Australia will be happy then to generously hand over the exploited and empty fields to East Timor as its entitlement. Reacting to Australia's unilateral exploration and exploitation and to its withdrawal from the ICJ and the ITLOS, Prime Minister Arkatiri angrily said: 'Australia is acting unfairly and unlawfully. They think they can do anything they like...They come here to tell us that we should have a country with a rule of law, but there is no law for them' (Guardian 28 December 2004).

#### A Fake Generosity

11. In addition to this gap between rhetoric and practice when it comes to international law, East Timorese are dismayed by the fake generosity on the part of the Australian government. The provisional agreement with East Timor signed on 20 May 2002 gives East Timor 90% and Australia 10% of taxes and royalties from the petroleum fields (Bayu-Undan, Elang-Kakatua, Buffalo and 20% of Greater Sunrise) lying within Joint Petroleum Development Area (JPDA), in addition to the onshore processing in Darwin. The JPDA was decided by Australia and Indonesia in their 1989 Treaty and was then called Zone of Co-operation Area (ZOCA). The deal with Indonesia was on a 50:50 basis, while 80% of the Greater Sunrise, the biggest gas field, lying outside ZOCA on the east, much closer to East Timor than it is to Australia, and Laminaria-Corallina oil field on the west outside ZOCA, which is also closer to East Timor, belong to Australia. In temporary dealings with East Timor Australia wants to maintain the resources outside ZOCA (now JPDA) based on the continental shelf approach which was agreed to with Indonesia in 1972 and 1989. But if the seabed boundaries are drawn (East Timor's claim) along the median line between East Timor and Australia, then all the fields within and outside the JPDA aforementioned would belong to East Timor. So it makes no sense that Australia is proud of its generosity for having given 90% of the JPDA to East Timor. In fact it is East Timor that is generous for giving 10% of its resources to Australia.

12. A second form of fake generosity relates to the often repeated claim that the Howard government committed ground troops to East Timor to liberate East Timor in 1999. Since then Australia has helped rebuild East Timor in the form of AusAID programs that have amounted to more than US\$100 million in addition to costs for the

soldiers (who are doing a very good job and were loved and respected by the locals). Forgetting and forgiving Australia's past culpability and betrayal, the East Timorese were deeply grateful to the Australian government. But lately, when they found out that the Australian government was calculating in its help, that it had an eye on the multibillion dollar riches in Timor Sea, and when they learned that, between 1999 and 2004, the Australian government has pocketed nearly US\$2 billion, and that they themselves have received nothing of the taxes and royalties from the disputed reserves, they began feel cheated and betrayed again. Old wounds were reopened. Protests began. Resistance against the occupation of their sea and exploitation of its riches started and the relationship between East Timor and Australia turned sour. 'We are protesting loudly so the world will learn what is going on', President Xanana Gusmao commented indignantly, 'This is not right. The country which steals from us and then organizes conferences regarding transparency [and] anti-corruption', (The Guardian 28 April 2004; Agence- France Presse 2004).

13. But at the same time the East Timorese are aware of, and remain very grateful to, many Australians of good heart and fair minds, who genuinely have helped the East Timorese over the years and who also made them aware of their being ripped off by the Australian government and who now, once again, fight along with them. What these Australians have exhibited is a genuine generosity, for which the East Timorese are deeply thankful. What East Timorese need from the government of Australia, however, is not generosity but a recognition and acknowledgement of their basic rights according to international law. Without that, generosity is fake or just disguised selfishness and greed. Generosity and benevolence are meaningless when legal claims are not recognized and respected. They can be used as means to deny the legal claim-rights of others, to dominate them and hurt their dignity. Denying the claim-rights of the East Timorese, Canberra acts as virtuous benefactors to whom the East Timorese should be grateful. In reaction to 'the accusation of greed and ill faith and so on', Mr. Downer said, It 'is a big surprise to us after all we've done for East Timor' (ABC Four Corners 2004). That expectation of gratitude should be more on the part of the East Timorese than it is from the Australian government. After all they had done for Australia during World War II, successive governments of Australia betrayed them by tacitly siding with the oppressors and mass murderers. Having given little to the East Timorese with one hand and taken more from them with another, the Australian government expects them to be grateful. These charges of bullying, greed and bad faith are made not only by the East Timorese but also by many Australians and people in the international community. These charges are not baseless.

#### The Creative (But Not Equitable) Solution

14. And then Canberra offered a creative solution. Talks on the creative solution was held in Canberra and Darwin in September before the Australian Federal election and then in Dili in October 2004 after the election. Before the 2004 elections Canberra was kind enough to meet the East Timorese twice in September. Talks after the election had a different tone and ended in failure. As 'a creative solution' Canberra offered East Timor US\$ 3 billion in tax revenue from the Greater Sunrise in exchange for either a 100-year freeze on sea boundary negotiations or 1972-agreed boundaries as binding permanent boundaries. The 'creative solution' also included onshore processing of the gas from Greater Sunrise field in Darwin, not on East Timorese soil. In Woodside's estimation, according to Mr. Arkatiri (2004), the distance from the

Greater Sunrise to East Timor is more than three times closer than to Darwin (150km: 500km) and there is no technological impossibility of processing in East Timor.

15. The 'creative solution' continues to deny East Timor international justice. It is justice, not money, that East Timor seeks. To accept the 'creative solution' offered by Canberra means to submit to injustice. To have gas and oil processed in Australia is to exclude the East Timorese from creative and constructive participation in developing their own natural resources, a form of self-development. The idea of a 100-year freeze on maritime boundary negotiations is a very clever idea. After 100 years there would be no gas left in the Greater Sunrise. Australia would have benefited well from the reserves and from the onshore processing on Australian soil. Within one century other gas and oil fields could be found and exploited for Australia's benefits. After one century Darwin would have been a prosperous mega-city partly because of gas and oil from Timor Sea and because of gas and oil processing in Darwin. After 100 years East Timor could have been a failed state like Haiti. After 100 years Australia would be able to put into practice its moral principle of a fair go for all and would be willing to submit to the ICJ and the ITLOS. After 100 years Australia would be happy to finalize the maritime boundaries with East Timor along the median line. After 100 years Australia would be very happy to see East Timor have all exploited fields empty of oil and gas on which to build a failed State.

#### Bullying Tactics

16. In 2003, according to a leaked transcript of the meeting between Australia's Foreign Minister, Alexander Downer and East Timor's Prime Minister, Mari Alkatiri, Mr. Downer resorted to bullying Mr. Alkatiri: 'Your claims go almost to Alice Springs. You can demand that for ever for all I care...but if you want to make money you should conclude an agreement quickly.' Then he added: 'We are very tough. We don't care if you give information to the media. Let me give you a tutorial in politics—there is not a chance [of you getting your wish]' (Economist 2003). Several months before this intimidating statement was made, Peter Galbraith, former UN negotiator for Timor Sea, said, during an interview with SBS TV, that 'the Australians knew they had a weak case and sometimes when people have a weak case, they use other tactics. They try to threaten, they try to be tough, they try to be obstinate, and I think Australia tried all those tactics'. Many efforts were made to put East Timor in a very vulnerable and weak bargaining position. According to Mr. Galbraith, Canberra even tried to put the pressure on the UN not to get involved in the Timor Sea problems. It tried to lobby other governments, including the US government (Galbraith's own government) to put pressure on the UN, on Mr. Galbraith and on the East Timorese (SBS Insight 2002). Galbraith is seen by Mr. Downer as being 'obstinate and threatening.' When Mr. Alkatiri invited Peter Galbraith as the chief Timor Sea negotiator after the end of his term with the UNTAET, Mr. Downer described this as an unfriendly act by East Timor.

17. In April 2004 during the dispute, Mr. Downer said: 'Timor could lose its closest international friend' if it persisted in disagreeing with Australia (Carty 2004:10). But no genuine friendship is built on an asymmetrical power relation between two parties, a relation in which the weak party is manipulated, bullied or conditioned to obey the will of the more powerful party. On another occasion Mr. Downer commented, after being described as a bully not only by the East Timorese but also by many Australians

and others in the international community: 'To call us a big bully is a grotesque simplification of Australia. We had a cosy economic arrangement with Indonesia, we bailed East Timor out with no economic benefit. Our relationship is crucially important, particularly for you, East Timor' (Seneviratne 2003; D'Cruz and Steele 2003, 308). The last sentences affirm what the first denies, reveal the truth of the relationship: Australia betrayed the East Timorese and traded them off (their right to life, right to self-determination, right to property, right to freedom) so that it could have a 'cosy' economic relation with Suharto's corrupt and brutal regime and the two larger countries together could divide up East Timor's gas and oil reserves. Australia bailed East Timor out so that it could maintain the boundaries and resources in Timor Sea which it had arranged with Suharto's regime. East Timor would have had no need to be bailed out by Australia in 1999 had Canberra not supported Suharto's invasion and occupation of East Timor.

18. The interactions detailed above emphasise D'Cruz and Steele powerful mirroring of Australia's relations with its neighbours (2003, 19-20), and especially East Timor, its closest and weakest neighbour. To preach human rights, egalitarianism, freedom and democracy at home and abroad, and at the same time to keep ignoring the human rights of the indigenous Australians, to violate the human rights of asylum-seekers, to discriminate against women, to appease vicious regimes, such as that of Suharto which benefited Australia economically at the cost of human rights abuses in Indonesia and East Timor, to bully the poor and vulnerable East Timorese, to nourish the doctrine of pre-emptive strike on neighbouring countries and to act as the deputy sheriff of the superpower in the region, are to make a mockery of the meaning of human rights, egalitarianism, freedom and democracy. These actions condition Australia to be distrusted and disliked, even hated, by people of our neighbouring countries, and they make Australia's criticism of human rights abuses and corruption in the region (such as in Burma, Vietnam and Indonesia) morally weightless.

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