

TIMOR-LESTE'S CONCILIATION WITH AUSTRALIA ON MARITIME BOUNDARIES

On 11 April 2016, the Timor-Leste Government initiated compulsory conciliation under the United Nations Convention on the Law of the Sea (**UNCLOS**) with the aim of concluding an agreement on permanent maritime boundaries with Australia.

What is compulsory conciliation?

Compulsory conciliation is a procedure under UNCLOS (Annex V, Section 2) in which a panel of conciliators assists State parties to try to reach an amicable settlement of their dispute.

This procedure can be used in circumstances where no agreement has been reached between neighbouring States and one State has made a declaration excluding the jurisdiction of binding dispute settlement bodies on maritime boundaries, as Australia has done. Compulsory conciliation can help a State like Timor-Leste try to resolve a maritime boundary dispute when it has no other option.

The conciliation is conducted by a panel of five independent conciliators, known as the conciliation commission. The commission seeks to understand the facts and legal position of each State.

If Australia and Timor-Leste cannot reach agreement, the conciliation commission will provide a report to the Secretary General of the United Nations with recommendations to assist resolution. Australia and Timor-Leste would then be obliged to negotiate in good faith on the basis of the commission's report.

Why is Timor-Leste pursuing compulsory conciliation?

Compulsory conciliation is currently the only avenue available to Timor-Leste to engage Australia in negotiations on permanent maritime boundaries. This is because:

1. In March 2002, two months before Timor-Leste's restoration of independence, Australia withdrew from the

compulsory dispute settlement procedures related to maritime boundaries under UNCLOS and the International Court of Justice. This excludes the possibility of an international court or tribunal deciding the maritime boundaries between Timor-Leste and Australia; and

2. Australia refuses to negotiate maritime boundaries on a bilateral basis.

Maritime boundaries are a matter of sovereignty for the people of Timor-Leste. The Government of Timor-Leste will consider all options to achieve its rights under international law.

What happens now?

Timor-Leste notified Australia of the commencement of compulsory conciliation on 11 April 2016 and has appointed two conciliators. Timor-Leste has proposed that the Permanent Court of Arbitration (PCA) administers the conciliation.

Australia now has the opportunity to appoint two of the conciliators. The four State-appointed conciliators will then appoint a chair before proceedings commence.

What about Indonesia?

The conciliation concerns the dispute between Timor-Leste and Australia alone.

Timor-Leste's other maritime neighbour, Indonesia, has agreed to bilaterally negotiate maritime boundaries with Timor-Leste according to international law, particularly UNCLOS.

Timor initiates conciliation; Australia notified

Conciliation Commission formed and procedure decided

Conciliation - parties make submissions and attend hearings

Commission makes recommendations in its report

Parties must negotiate in good faith based on report

