

TIMOR-LESTE'S CONCILIATION WITH AUSTRALIA ON MARITIME BOUNDARIES

On 11 April 2016, the Timor-Leste Government initiated compulsory conciliation with Australia under the United Nations Convention of the Law of the Sea (UNCLOS), administered by the Permanent Court of Arbitration (PCA). Through this process, the Conciliation Commission met regularly with Timor-Leste and Australia with the aim of reaching an agreement on maritime boundaries. On 1 September, 2017 the PCA announced that Timor-Leste and Australia had reached agreement in principle on the central elements of a maritime boundary agreement.

What is compulsory conciliation?

Compulsory conciliation is a procedure under UNCLOS in which a panel of conciliators assists State parties 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.

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.

Timor-Leste is the first country to initiate compulsory conciliation under UNCLOS.

What has been achieved in the conciliation?

Public hearing: On 29 August 2016, Timor-Leste and Australia presented their positions publicly at The Hague. This meeting was streamed live via the Permanent Court of Arbitration website.

Competence: The first procedural hearing of the conciliation was held at The Hague on 28 July 2016. Australia challenged the competence of the commission (i.e. the legality of the proceedings). However, on 26 September 2016 the Commission unanimously decided that it does have competence (or 'jurisdiction') to hear the dispute.

CMATS terminated: Further meetings were held in Singapore from 13 October 2016. In the course of those meetings the Governments of Timor-Leste and Australia agreed to an integrated package of measures to create the conditions for the achievement of an agreement on permanent maritime boundaries. As part of that package, Timor-Leste notified Australia of its wish to terminate the 2006 Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS), a provisional resource-sharing treaty. The treaty ceased to be in force on 10 April 2017. Timor-Leste and Australia agreed that, following the termination of CMATS, the 2002 Timor Sea Treaty and its supporting regulatory framework would remain in force in its original form. This will provide certainty to petroleum investors until permanent boundaries are resolved.

Withdrawing other legal cases: As part of the integrated package of measures agreed to make way for negotiations on maritime boundaries, Timor-Leste withdrew two arbitration cases against Australia related to taxation jurisdiction and alleged espionage during the negotiation of the CMATS treaty.

Negotiations on maritime boundaries: In December, Timor-Leste and Australia made the historic commitment to negotiate on permanent maritime boundaries under the auspices of the Conciliation Commission. The Commission convened further meetings in January 2017 in Singapore to explore both country's positions on where the maritime boundary in the Timor Sea should be set.

In-principle agreement: On 30 August 2017, during conciliation meetings in Copenhagen, Timor-Leste and Australia reached agreement in principle on a comprehensive maritime boundary agreement. This date has historic significance for Timor-Leste as it marks the 18th anniversary of the referendum which led to Timor-Leste's independence. In addition to delimiting maritime boundaries, the Copenhagen agreement addresses the legal status of the Greater Sunrise gas field, the establishment of a Special Regime for the development of Greater Sunrise, a pathway to the development of the resource, and arrangements for how the resulting revenue will be shared.

What are the next steps?

Final treaty: Timor-Leste and Australia expect to finalise the remaining elements of the agreement at a meeting in October 2017. A final treaty is hoped to be signed before the end of 2017.

Commission report: At the conclusion of the conciliation process, the Conciliation Commission will issue a report to the Secretary General of the United Nations in accordance with its obligations under Annex V of UNCLOS, which sets out the elements of the agreement between the Parties.

What about Indonesia? Indonesia is not a party to the current conciliation as these proceedings only concern the setting of the boundary between Timor-Leste and Australia. The final outcome of the conciliation will not affect the maritime rights of Indonesia.

Timor-Leste and Indonesia have already agreed to bilaterally negotiate maritime boundaries according to international law and these discussions have begun.

For further information: <https://pcacases.com/web/view/132>