

# 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**). Since then, significant steps have been taken by both countries with the aim of reaching an agreement on permanent maritime boundaries.

## 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.

The Conciliation Commission comprises Ambassador Peter Taksøe-Jensen (Chair) (Denmark), Judge Abdul Koroma (Sierra Leone), Judge Rüdiger Wolfrum (Germany), Dr Rosalie Balkin (Australia) and Professor Donald McRae (Canada and New Zealand).

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 (PCA) 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 will cease to

be in force as of 10 April 2017. Following the termination of CMATS, both parties agreed the 2002 Timor Sea Treaty and its supporting regulatory framework will 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 in January 2017, 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 2016, 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.

## What are the next steps?

The negotiations will continue throughout the year, on a confidential basis, before the conciliation procedure concludes in September 2017. Timor-Leste and Australia have confirmed they will engage with the process in good faith with a view to reaching an agreement on maritime boundaries by that time.

If no agreement is reached, 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.

## What about Indonesia?

Indonesia and Timor-Leste have already agreed to bilaterally negotiate permanent maritime boundaries, in accordance with international law. 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.

*For further information on the conciliation procedure visit the PCA website: <https://pcacases.com/web/view/132>*

