

The Council for the Delimitation of Maritime Boundaries

In April 2015, the Timor-Leste Government established the Council for the Delimitation of Maritime Boundaries to coordinate and manage Timor-Leste's maritime boundary agenda.

The Council encompasses three entities:

- the Consultative Commission - consisting of eminent past and present leaders of the nation, chaired by the Prime Minister
- the Maritime Boundary Office - responsible for the executive management of the Council and coordinating all efforts to secure final boundaries
- the Negotiation Team - led by the Chief Negotiator and responsible for conducting negotiations related to maritime boundaries, except for ministerial-level interactions

The overarching purpose of the Council is to achieve the final settlement of Timor-Leste's maritime boundaries in accordance with UNCLOS and international law.



Timor-Leste's Prime Minister Rui Maria de Araújo talks with Indonesia's President Joko Widodo during an official visit to Indonesia in August 2015.

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Maritime
Boundary
Office



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Timor-Leste's
Maritime
Boundaries

Timor-Leste and maritime boundaries

Timor-Leste's independence was restored in May 2002 after a 24-year struggle against foreign occupation.

Independence brought new challenges as the nation had to establish a system of Parliamentary democracy, a civil service, a justice system and social services from the ashes of its traumatic past.

In July 2002, Timor-Leste's National Parliament passed a law to formally claim Timor-Leste's territorial waters, Exclusive Economic Zone and other maritime rights under international law, however the nation did not have access to the technical and legal resources to finalise its maritime boundaries at that time. Since then, Timor-Leste has built the foundations of a peaceful, democratic State and is now better equipped to negotiate a fair delimitation of maritime boundaries and bring to an end its long struggle for territorial and maritime sovereignty.

Maritime rights under international law

Timor-Leste has ratified the United Nations Convention on the Law of the Sea (UNCLOS). Indonesia and Australia have also ratified the Convention.

All signatories to UNCLOS have obligations to reach final agreements on maritime boundaries. Under UNCLOS, States are allowed to enter into "provisional arrangements", but such arrangements are "not to jeopardize or hamper the reaching of the final agreement."

UNCLOS provides that coastal States can claim rights to an Exclusive Economic Zone extending up to 200 nautical miles (approximately 370 kilometres) and to a continental shelf of at least 200 nautical miles, in which they have exclusive rights to explore for, and exploit, resources in the water column (for example, fish), and under the seabed (for example, oil and gas).

UNCLOS provides that where countries have opposite or adjacent coasts and have overlapping claims, like Timor-Leste, Australia and Indonesia, they are required to delimit maritime boundaries by agreement on the basis of international law, in order to achieve an equitable solution. In such cases, international courts generally follow the equidistance/relevant circumstances approach to achieve an equitable solution.

Timor-Leste is seeking to negotiate equitable maritime boundaries with Indonesia and Australia in the Timor Sea in accordance with international law.

Negotiations with Indonesia

The Timor-Leste Government has been negotiating with the Indonesian Government since independence to finalise land borders. Nearly 98% of the land borders have now been agreed.

At a meeting in August 2015, Timor-Leste Prime Minister Rui Maria de Araujo and Indonesian President Joko Widodo agreed to resolve the remaining land border areas by the end of the year. They also agreed, in a spirit of friendship and trust, to commence maritime boundary negotiations.

Negotiations with Australia

Between the historic vote for independence in 1999 and the restoration of independence in May 2002, the United Nations was responsible for administering the territory. During this transitional period, in July 2001, the United Nations' administration signed a resource-sharing arrangement with Australia in the Timor Sea. The agreement was modelled on the 1989 Timor Gap Treaty between Australia and Indonesia that was negotiated only after Australia formally recognised Indonesia's annexation of Timor-Leste.

The agreement gave Australia rights over resources extending up to the Timor Trough, around 50 nautical miles from Timor-Leste's shores - far beyond the median line that would most likely be drawn by an international court, applying the equidistance/relevant circumstances approach under international law.

In March 2002, just before Timor-Leste became an independent nation, Australia withdrew from the maritime jurisdiction of the International Court of Justice and the International Tribunal on the Law of the Sea. This meant the new nation of Timor-Leste could not ask an international court to decide where an equitable boundary would lie under international law in the Timor Sea if it was unable to reach agreement with Australia.

Australia then insisted Timor-Leste adopt the temporary resource-sharing arrangements in the Timor Sea agreed between Australia and the United Nations during the period of United Nations administration.

The Timor Sea Treaty between the governments of Australia and Timor-Leste was signed on 20 May 2002 - the day Timor-Leste became independent.

A second treaty, amending the Timor Sea Treaty, titled "Certain Maritime Arrangements in the Timor Sea", was signed on 12 January 2006. While this treaty noted it was without prejudice to the final delimitation of maritime boundaries, it included a clause that the two nations would not assert, pursue or further by any means claims to sovereign rights, jurisdiction and maritime boundaries for the next 50 years. It was during negotiations on this treaty that Australia allegedly spied on Timor-Leste's negotiating team.

The espionage arbitration

On 23 April 2013, Timor-Leste commenced arbitration proceedings under the 2002 Timor Sea Treaty in the Permanent Court of Arbitration in The Hague, following the allegations of espionage during the 2006 treaty negotiations. Timor-Leste submits, based on these allegations of espionage conduct and in accordance with recognised principles of international law, that the tribunal should find the 2006 treaty to be ineffective and should consequently declare the 2002 Timor Sea Treaty remains valid and operative in its original terms.

The International Court of Justice document seizure case

In December 2013, during the arbitration proceedings, Australia unlawfully seized legal documents and data, including documents relating to the arbitration, from one of Timor-Leste's lawyers in Canberra. Timor-Leste immediately took action in the International Court of Justice to retrieve the documents.

The International Court of Justice handed down an interim decision on the Canberra raids on 3 March 2014 that ordered Australia to seal the seized documents and data and to keep them sealed until the Court's final decision. The Court also made a significant decision, by 15 votes to one, that "Australia shall not interfere in any way in communications between Timor-Leste and its legal advisers in connection with the pending Arbitration". One year later, Australia agreed to return the illegally seized documents and data, and Timor-Leste therefore terminated the case.

Attempts to negotiate

In September 2014, Australia asked Timor-Leste to suspend the espionage arbitration and document seizure cases for six months to enable bilateral discussions. In good faith Timor-Leste agreed to the suspension.

However, despite several meetings in Canberra, Singapore and Dili, Australia refused to progress discussions on maritime boundaries. As no agreement was reached, Timor-Leste is reactivating the espionage case in the Permanent Court of Arbitration and is exploring all avenues to get Australia to the negotiating table in order to reach agreement bilaterally.

Australia has made it clear that maritime boundaries with Timor-Leste are not up for discussion. Yet Australia has settled maritime boundaries with all its other maritime neighbours, including Indonesia, Papua New Guinea, Solomon Islands, France (New Caledonia and Kerguelen) and New Zealand through bilateral talks. Timor-Leste is seeking the same opportunity.