

Timor-Leste tests the waters of UN law in maritime dispute with Australia

The move to escalate sea boundary negotiations with Australia to the United Nations will be a “test case” for international law, says Timor-Leste Foreign Minister Hernani Coelho.

By Samantha Yap

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PHOTOS



Protesters in Dili in March calling for Australia to negotiate a permanent maritime boundary in the Timor Sea. (Photo: Courtesy of Zeisse Pereira Lay)

SINGAPORE: Timor-Leste is taking Australia to the United Nations (UN) to settle a long-running maritime border dispute by using a legal mechanism that has not been invoked before.

Amid the tension of other ongoing maritime disputes in the region, particularly over the South China Sea, Timor-Leste's Foreign Minister Hernani Coelho told Channel NewsAsia that this test of international maritime law would set an interesting precedent.

“It will be a very good example for all of us and I think for the world as whole because it will be interesting to see how we are going to implement a theory that was envisioned back in 1982,” said Mr Coelho, who was on a visit to Singapore.

The conciliation procedure can be used where one party in the dispute has withdrawn from UNCLOS' compulsory dispute settlement procedures – as Australia did in 2002, two months before Timor-Leste's independence.

Australia has refused to accept that a binding settlement on sea boundaries should be decided by international tribunal.

IMPLICATIONS FOR SMALL STATES

But under the conciliation alternative, a commission will hear the parties' arguments and both would then be obliged to negotiate in good faith on the basis of its report – which, while not binding, carries political pressure, say analysts.

The case between Timor-Leste and Australia may have broader implications for regional security concerns over maritime disputes, namely, the escalating tensions in the South China Sea.



International law is also being tested by China and the Philippines in an ongoing arbitration case under UNCLOS concerning China's nine-dash line claim over the South China Sea.

Mr Coelho called an international mechanism like UNCLOS “a very important instrument” for small states. “But it is also very important to provide a strong foundation for the role a big state should play,” he added.

“You have 193 countries with everybody acting in their own way, it will be very complicated for us to work together.”

WHAT THE DISPUTE IS ABOUT

More than a decade after gaining independence in 2002, establishing permanent sea boundaries is a matter of sovereignty and economics for Timor-Leste.

The young state has long argued that without a permanent border drawn up along the “median line” between Australia, it is missing out on billions of dollars in revenue from oil and gas.

According to Mr Coelho, who is a member of Timor-Leste's Council for the Final Delimitation of Maritime Boundaries, 75 per cent of Timor-Leste's state budget revenue comes from the oil and gas fields in the Timor Sea.

Timor-Leste believes it is entitled to a wider maritime area than what has been agreed upon with Australia in several treaties.

In 2002, the two countries signed the Timor Sea Treaty which provides for the sharing of proceeds in the Joint Petroleum Development Area.

In 2006, Australia and Timor-Leste signed a Certain Maritime Arrangement of the Timor Sea treaty for the equal distribution of proceeds of petroleum obtained in the Greater Sunrise oil and gas



This map, from activist group Timor Sea Justice, shows the proposed median line between the two countries, as well as the Australia-Indonesia seabed boundary line, which encompasses oil fields that Timor-Leste says is rightfully theirs. (Courtesy of Timor Sea Justice)

The Australian government has expressed its disappointment with Timor-Leste's recent initiation of the compulsory conciliation process, saying this contravenes their prior agreement to “not pursue proceedings relating to maritime boundaries”.

However, Mr Coelho's view is that the treaties were “about an arrangement for resource-sharing without prejudice to negotiations to actually define the maritime boundary”.

In a statement last week also, Timor-Leste's Prime Minister Rui Maria de Araujo said Australia was “obliged” under international law to negotiate permanent sea boundaries but had refused to do so.

But the Australian government said it “stands by the existing treaties which are fair and consistent with International law”.

“These treaties have benefitted both our countries and enabled Timor-Leste to accumulate a Petroleum Fund worth more than US\$16 billion,” said a spokesperson for the Australian government.

While Mr Coelho acknowledges that the outcome of the UNCLOS conciliation process is not binding, he sees merit in having a third-party opinion that will offer Timor-Leste options on what steps to take next.

“At least this will provide us with internationally accepted principles towards which some new progress would be made,” he said.

As for its other big neighbour, Timor-Leste has bilaterally finalised 98 per cent of its land borders with Indonesia under UNCLOS, with the remaining 2 per cent to be concluded within the next year or two.