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Australia fails in attempt to block Timor-Leste maritime boundary case

Australia forced to take part in conciliation at the Hague over maritime border in relation to area that contains an estimated $40bn worth of oil and gas

Guardian staff

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Timor-Leste will have its case against Australia over a disputed maritime boundary heard by the permanent court of arbitration in the Hague after the court rejected Australia's claim that the court had no jurisdiction.

Timor-Leste asked for the process which could decide on which side of the border lies a large oil and gas field over which the two countries have a revenue-sharing agreement.

Australia has resisted negotiating a permanent border until 2056 at the earliest. The conciliation process will now take place behind closed doors over the next year, the court said.

Xanana Gusmao, the former Timor-Leste president, welcomed the decision.

"Just as we fought so hard and suffered so much for our independence, Timor-Leste will not rest until we have our sovereign rights over both land and sea," Gusmao said in a statement.

Labor frontbencher Penny Wong also welcomed the ruling and said the dispute had gone on too long.

"Labor committed in February this year to reaching a binding international resolution with Timor-Leste, either through bilateral negotiation or international arbitration," Wong said.

"In light of this ruling, we call on the government to now settle this dispute in fair and permanent terms; it is in both our national interests to do so."

The Australian government has said it accepts the court's decision and will "continue to engage in good faith" with the arbitration process.

In a joint statement from the foreign minister, Julie Bishop, and the attorney general, George Brandis, the government defended the current maritime border arrangements, saying they had been hugely beneficial to Timor-Leste by creating a $16bn sovereign wealth fund.

The long-running dispute centres upon the maritime boundary between Timor-Leste and Australia, most pointedly over control of the area where an estimated $40bn worth of oil and gas lies beneath the sea.

Timor-Leste argues the maritime boundary between it and Australia should be a median line equidistant between the two countries, putting the vast majority of the exploitable area in

its territory. This position is supported by international law, the UN convention on the law of the sea, which Australia signed and ratified in 1994.

But Australia says a 2006 temporary revenue sharing agreement (known as CMats) that divides the revenues – significantly in Timor-Leste's favour, it argues – is valid, and should be honoured.

Timor-Leste argues that treaty should be scrapped because, six years after it was signed, it was revealed Australia had bugged the Timor-Leste government's cabinet room, with listening devices implanted by Australian Security Intelligence Service agents pretending to be aid workers renovating the office.

Australia's forced appearance at the permanent court of arbitration in The Hague is the first time any country has been brought for "compulsory conciliation". Timor-Leste says the action was necessary because of Australia's consistent refusal to negotiate on a permanent maritime boundary.

The dispute over the Timor Sea – more specifically the wealth that lies under it – has pre-empted and then shadowed all of the short and chequered history between the independent Timor-Leste and Australia.

In 1975, as Portugal moved towards decolonisation, the resistance movement Fretilin delcared Timor-Leste independent. Nine days later, the newly free nation was invaded by Indonesia's military in breach of international law, and to widespread international condemnation.

In 1979 Australia became the only western nation to offer *de jure* recognition of Indonesia's forced annexation, so the two countries could begin negotiations over the Timor Sea's resources.

The Timor Gap treaty was signed – the then foreign ministers Gareth Evans and Ali Alatas famously clinking champagne glasses in a plane above the Timor Sea – between Australia and Indonesia in 1989. That treaty did not establish a maritime boundary but provided for shared exploitation of petroleum resources in the part of the seabed claimed jointly by both countries.

Australia was Timor-Leste's saviour in 1999, leading the Interfet force which restored order in the country after the vote for independence and retribution by pro-Indonesia militias.

But in 2002, just two months before Timor-Leste became independent, Australia secretly withdrew from the maritime boundary dispute resolution procedures of the UN convention on the law of the sea, and the equivalent jurisdiction of the international court of justice, so that it could not be compelled into legally binding international arbitration. (Parliament was only told after the withdrawal had occurred.)

Timor-Leste's first treaty – the Timor Sea treaty – signed in 2002, gave a 90-10 split, in Timor-Leste's favour, of revenues from a joint development zone in the Timor Sea.

The second, CMats treaty – certain maritime arrangements in the Timor Sea – was signed in 2006, with both sides agreeing to impose a 50-year moratorium on negotiating a permanent maritime border. CMats gives Timor-Leste 90% of the current oil revenues from the joint petroleum development area, and Australia 10%, but a further treaty (Sunrise IUA) gives Timor-Leste only limited claim over future exploitation of the larger Greater Sunrise field.

It was during the negotiations over CMats that Australia bugged Timor-Leste's cabinet room. Australia has not admitted to the espionage, though it did raid the Canberra offices of Timor-Leste's lawyer Bernard Collaery, and seized the passport of the intelligence agent who blew the whistle on the spying operation.

Timor-Leste say the spying voids the treaty, which, it argues, was not negotiated in good faith.

● *Reporting by Ben Doherty, Reuters and AFP*

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