

Maritime Boundary Office



Timor-Leste asks for no more than what it is entitled to under international law.

FACT SHEET 2016

FOR PUBLIC INFORMATION

WHAT ARE MARITIME BOUNDARIES?

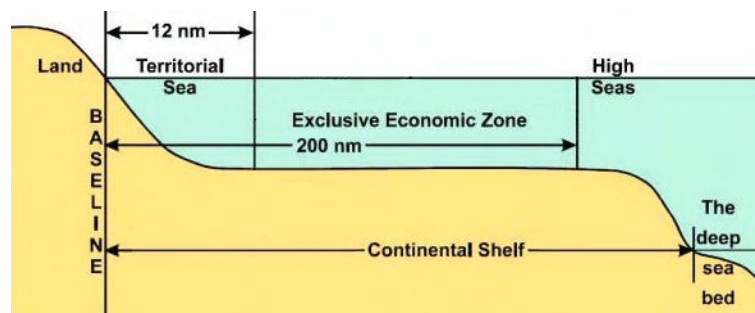
Coastal States are entitled to determine their land borders and to define or 'delimit' the extent of their sovereign maritime territory in accordance with international law.

The United Nations Convention on the Law of the Sea (**UNCLOS**) is the leading multilateral treaty on the law of the sea. Timor-Leste, Australia and Indonesia are all signatories to UNCLOS.

UNCLOS recognises different kinds of rights to maritime areas, such as the territorial

sea (close to the coastline), the exclusive economic zone (**EEZ**) (which extends up to 200 nautical miles), and the continental shelf (which can underlie an EEZ or extend beyond the EEZ in certain circumstances).

Where neighbouring States have overlapping claims to EEZ or continental shelf rights, UNCLOS requires that they reach agreement on a permanent maritime boundary based on international law, in order to achieve an equitable solution.



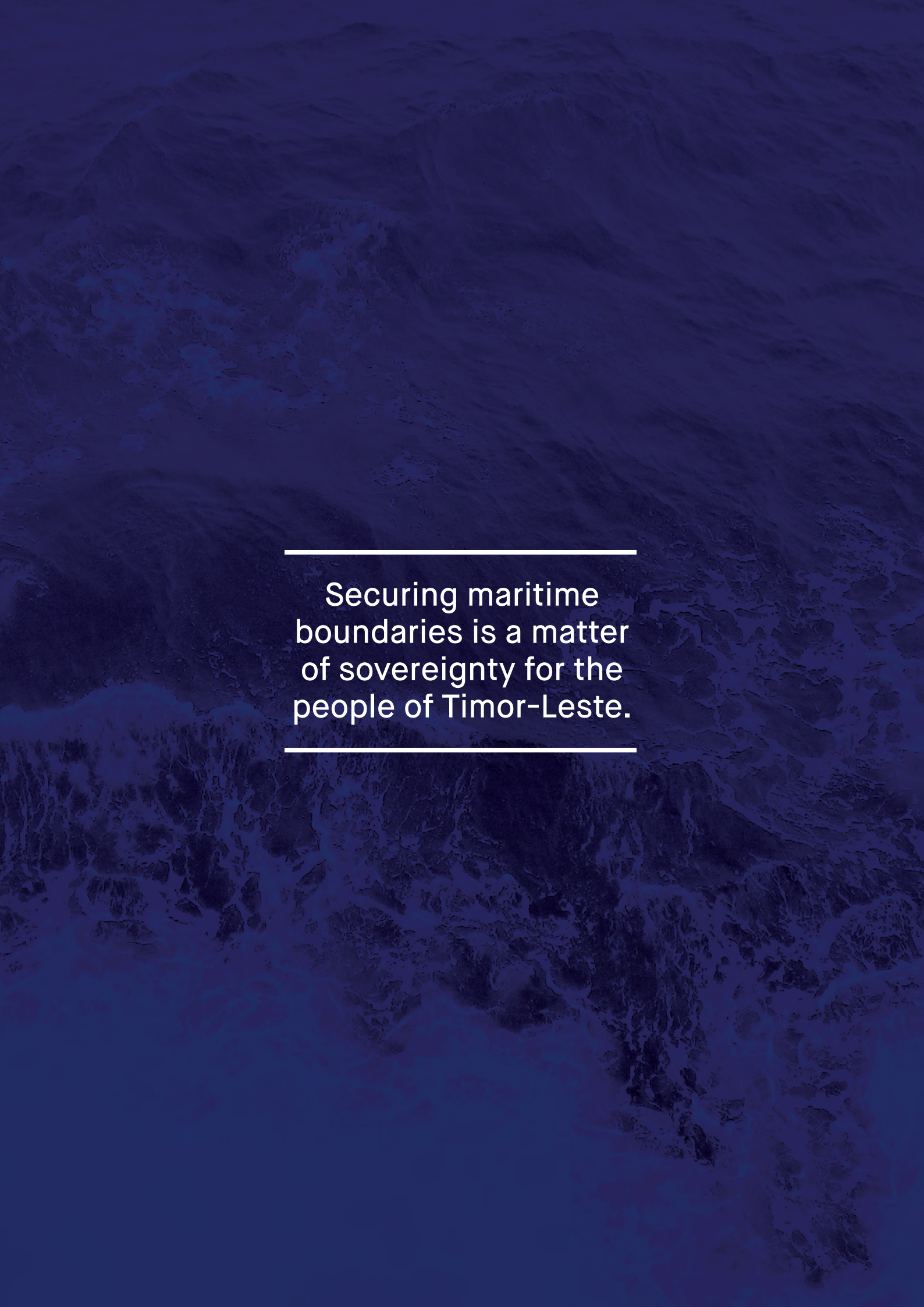
The above figure represents a coastal State's potential rights under international law, where there are no overlapping claims with neighbouring States.

WHAT DOES TIMOR-LESTE WANT?

Timor-Leste does not yet have permanent maritime boundaries with its neighbours, Australia and Indonesia. Timor-Leste seeks to settle its permanent maritime

boundaries with its neighbours in accordance with its rights under international law, as it is required to do, as a State party to UNCLOS.

Timor-Leste is working to build a stronger relationship with its neighbours, based on honesty, respect and equality, by reaching an amicable resolution of its maritime boundaries.



Securing maritime
boundaries is a matter
of sovereignty for the
people of Timor-Leste.

The **territorial sea** extends up to 12 nautical miles from a State's baselines (which are generally drawn along the low-water line of the coast). States have control of the air-space above the territorial sea and the water column, seabed and subsoil below.

The **exclusive economic zone** extends up to 200 nautical miles from a State's baselines. States have the right to exploit living and non-living resources in the seabed, subsoil and water column, including petroleum resources and fisheries.

The **continental shelf** extends to at least 200 nautical miles from a State's baselines. In some cases, a State can claim an extended continental shelf beyond 200 nautical miles where there is a 'natural prolongation' of the shelf. States can exploit resources that lie in the seabed and subsoil of the continental shelf.

Where neighbouring States (with opposite or adjacent coasts) have **overlapping claims** to EEZ or continental shelf rights, UNCLOS requires that they reach agreement on the basis of international law, in order to achieve an equitable solution.

WHY ARE MARITIME BOUNDARIES SO IMPORTANT TO TIMOR-LESTE?

Determining permanent maritime boundaries has become a matter of national priority for Timor-Leste, as the final step in establishing its sovereignty as a newly independent State. For the people of Timor-Leste, securing rights to the nation's maritime territory is a continuation of their long struggle for sovereignty and

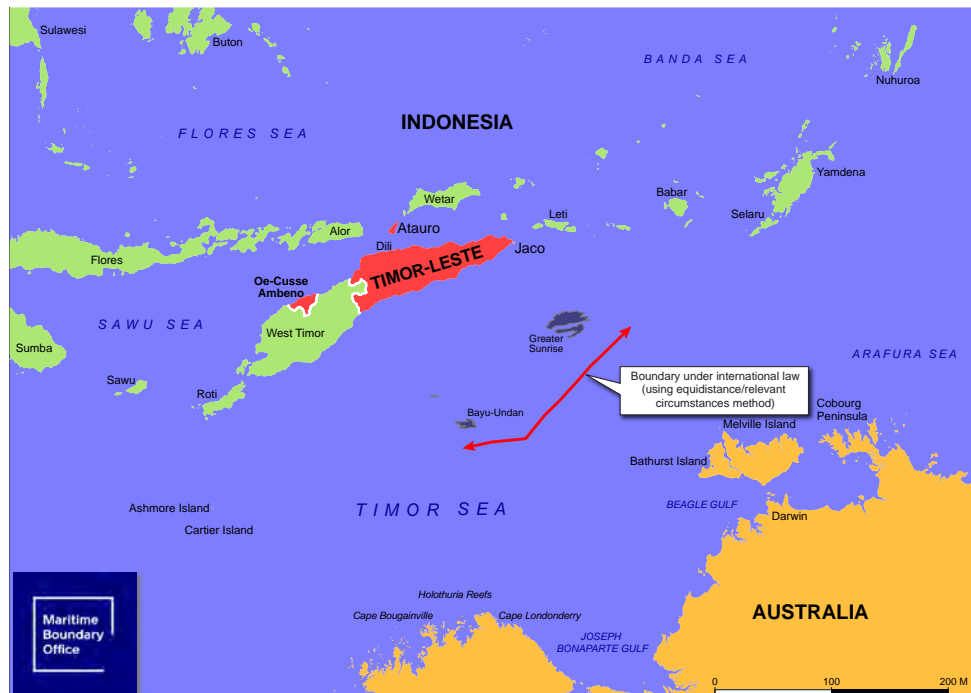
independence. Maritime boundaries will allow Timor-Leste to better explore and develop petroleum and fisheries resources, encourage business and investment, and add to the resource revenues in the sovereign wealth fund, which is a fund dedicated to building a prosperous future for the people of Timor-Leste.

WHAT ARE TIMOR-LESTE'S RIGHTS UNDER INTERNATIONAL LAW?

UNCLOS imposes an obligation on States to define permanent maritime boundaries with neighbouring States by agreement. In cases of overlapping claims (i.e. where there is less than 400 nautical miles between neighbouring coasts), international law generally takes the approach that a median or equidistance line should be drawn between them, with adjustments made for relevant circumstances (if any), in order to reach an equitable solution. This is known as the "equidistance/relevant circumstances approach" to maritime boundary delimitation.

In most cases, an adjusted equidistance line is drawn as an equitable solution under international law.

The current, provisional arrangements between Timor-Leste and Australia in the Timor Sea take a different approach in sharing the resources in the Joint Petroleum Development Area and Greater Sunrise field, without prejudice to both States' positions on final delimitation of maritime boundaries.



Existing provisional agreements between Timor-Leste & Australia

Before Timor-Leste became an independent nation in 2002, the **Timor Sea Arrangement** was agreed between Australia and the United Nations during the period of United Nations administration. Drawing on the terms of the Timor Gap Treaty agreed between Australia and Indonesia during the occupation, the arrangement set out temporary resource-sharing arrangements and established a Joint Petroleum Development Area in the Timor Sea.

That treaty was replaced with the near-identical **Timor Sea Treaty**, agreed between the governments of Australia and Timor-Leste, and signed on 20 May 2002 – the day Timor-Leste restored its independence.

Soon after the Timor Sea Treaty, Australia and Timor-Leste entered into special provisional arrangements relating to the Greater Sunrise area, known as the **Unitisation Agreement**.

The **Certain Maritime Arrangements in the Timor Sea (CMATS)** treaty was signed on 12 January 2006. It was during negotiations on this treaty that Australia allegedly spied on Timor-Leste's negotiating team. While this treaty noted it was without prejudice to the final delimitation of maritime boundaries, it also included a 'moratorium' clause providing that the two nations would not assert, pursue or further by any means claims to sovereign rights, jurisdiction and maritime boundaries for 50 years. Timor-Leste states that this moratorium is inconsistent with Timor-Leste's right to delimit its permanent maritime boundary and with the obligation under UNCLOS for neighbouring States to agree permanent maritime boundaries and not to jeopardise or hamper the reaching of the final agreement.

These provisional agreements divide revenue from oil and gas extraction in the Joint Petroleum Development Area and Greater Sunrise between Australia and Timor-Leste. However, CMATS recognises Timor-Leste's jurisdiction over all resources in the water column (such as fisheries) within this joint area.

CAN TIMOR-LESTE GO TO COURT TO SECURE ITS MARITIME RIGHTS IN THE TIMOR SEA?

Timor-Leste is not able to ask a court or judicial body to determine its maritime boundaries with Australia. In 2002, two months before Timor-Leste regained independence, Australia submitted declarations to the International Court of Justice and UNCLOS which 'carved-out' or excluded the jurisdiction of the Court

and of other binding dispute resolution procedures under UNCLOS in respect of maritime boundaries. As a result, there is no option to seek a binding determination from an international court or tribunal on the position of Timor-Leste's maritime boundaries with Australia under international law.

WHAT IS THE STATUS OF MARITIME BOUNDARY NEGOTIATIONS WITH INDONESIA?

The leaders of Timor-Leste and Indonesia agreed in August 2015 to renewed and wider discussions, covering both maritime and land boundaries. Timor-Leste commenced talks with Indonesia to permanently delimit maritime boundaries in September 2015. The small fraction of the land boundary that is unsettled will be finalised shortly.

In the initial consultations on maritime boundaries, Indonesia and Timor-Leste jointly developed a set of principles and guidelines and a work plan for the negotiations. Both States have committed to negotiate a permanent maritime boundary in accordance with international law, particularly UNCLOS.



Consultation Meeting between Timor-Leste and Indonesia

HAS INDONESIA SETTLED MARITIME BOUNDARIES WITH ITS OTHER NEIGHBOURS?

Indonesia has ten neighbours with whom it shares maritime boundaries. Of these, Timor-Leste and Palau are the only countries with whom Indonesia is yet to reach any maritime boundary agreement and it has started discussions with both.

HAS AUSTRALIA SETTLED MARITIME BOUNDARIES WITH ITS OTHER NEIGHBOURS?

Australia has reached agreement on maritime boundaries with all of its neighbours except Timor-Leste. Less than 2% of its total maritime boundary remains unsettled - this is the area to be negotiated with Timor-Leste.

WHAT IS THE STATUS OF MARITIME BOUNDARY NEGOTIATIONS WITH AUSTRALIA?

There are currently only provisional arrangements between Australia and Timor-Leste to manage oil and gas activities in the Timor Sea. These are without prejudice to the final delimitation of maritime boundaries. These arrangements and UNCLOS both specifically require and clearly oblige the parties to negotiate an agreement on permanent maritime boundaries.

Despite that obligation, Australia has relied on the 'moratorium' clause under CMATS and is currently unwilling to negotiate permanent maritime boundaries with Timor-Leste. Due to Australia's carve-out of the maritime boundary jurisdiction of international courts and tribunals, a permanent maritime boundary with Australia can only be achieved through bilateral negotiations.



Meeting of the Consultative Commission of the Government of Timor-Leste on maritime boundaries



Photo credit: AFP

WHY DID TIMOR-LESTE COMMENCE TWO LEGAL CASES AGAINST AUSTRALIA?

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 related treaty negotiations leading to the 2006 CMATS treaty. Timor-Leste submits, based on the allegations of espionage and in accordance with recognised principles of international law, that the tribunal should find the 2006 CMATS treaty to be void and should consequently declare the previous 2002 Timor Sea Treaty operative in its original terms.

The International Court of Justice document seizure case

In December 2013, during the espionage arbitration, Australian intelligence officials seized legal documents and data belonging to Timor-Leste, including documents relating to the arbitration, from one of Timor-Leste's lawyers in Canberra. After Australia refused to return the seized documents, Timor-Leste took action in the International Court of Justice to prevent Australia's use of the documents, and to retrieve them.

At an early stage of the case, the Court found in favour of Timor-Leste, and granted Provisional Measures which prohibited Australia from interfering with communications between Timor-Leste and its legal advisers and required Australia to seal the seized materials until a final determination of the case.

HOW DID THESE CASES PROCEED?

Following Timor-Leste's public success at the International Court of Justice, Australia requested an adjournment of both proceedings for six months in an attempt to amicably resolve all issues in dispute. After several rounds of consultations, Australia rejected the approach proposed by Timor-Leste for commencing structured negotiations on a permanent maritime boundary. Australia counter-proposed further bilateral discussions, but was not willing to discuss permanent maritime boundaries as part of those discussions.

Following the termination of the consultations, Australia returned the illegally seized documents and data and recognised the need for all States to respect the confidentiality of communications between States and their legal advisers. On this basis, Timor-Leste terminated the case. Timor-Leste subsequently decided to reactivate the espionage arbitration.

WHAT IS THE RELEVANCE OF THE LATEST ARBITRATION WITH AUSTRALIA ON 'EXCLUSIVE JURISDICTION'?

In late 2013, the Australian Government became involved in a long-running tax dispute between Timor-Leste and petroleum contractors operating in the Joint Petroleum Development Area, an area in the Timor Sea which is provisionally shared between the two countries. Australia claimed it had 'exclusive' jurisdiction (including to tax) over the pipeline connected to the Joint Petroleum Development Area. Timor-Leste and Australia had tried for more than 18 months to resolve the issue through consultation, but, as no resolution was reached, Timor-Leste protected its interests by commencing an arbitration. This arbitration is not about the settling of permanent maritime boundaries between Australia and Timor-Leste.



WHAT WILL A PERMANENT MARITIME BOUNDARY AGREEMENT WITH AUSTRALIA MEAN FOR COMPANIES CURRENTLY OPERATING IN THE TIMOR SEA?

A permanent maritime boundary agreement between Australia and Timor-Leste will create certainty for investors and companies operating in the Timor Sea. Timor-Leste is committed to minimising disruption to existing operations and to ensuring that activities can continue on equivalent conditions to the current provisional arrangements.

IS IT CONSISTENT FOR TIMOR-LESTE TO SUPPORT THE DEVELOPMENT OF GREATER SUNRISE WHILE HOLDING THAT CMATS IS INVALID?

Yes, as any actions which Timor-Leste takes with the developers of Greater Sunrise are consistent with its overall position that the CMATS treaty is invalid (and the Timor Sea Treaty continues).

Timor-Leste continues to be supportive of the development of Greater Sunrise, including a pipeline to Timor-Leste. The development of Greater Sunrise would be transformational for Timor-Leste's economy, by increasing growth, jobs and infrastructure development. Timor-Leste remains committed to working with oil and gas companies, including companies currently operating in the Timor Sea, in order to further the country's economic development.





FACT SHEET 2016

For more information contact:

Maritime Boundary Office

Council for the Final Delimitation of Maritime Boundaries

Government of the Democratic Republic of Timor-Leste

info@gfm.tl

+670 7742 5544



**Maritime
Boundary
Office**