

Mark Skulley



Has Australia really changed its stance on a maritime border with Timor-Leste?

[AUGUST 28, 2016](#) | [MARK SKULLEY](#) | [LEAVE A COMMENT](#)

Australia has injected last-minute intrigue into the opening of compulsory conciliation proceedings over the unsettled maritime border with Timor-Leste.

The utterances came – more or less out of the blue — ahead of hearings which are due to start in The Hague on Monday evening (AEST).

To recap, Timor has triggered compulsory conciliation under the UN's Convention on the Law of the Sea (UNCLOS) in an attempt to settle the maritime boundary between the two countries and claim a bigger share the large oil and gas deposits.

The process is the first such conciliation commission. The result is not binding but the recommendations carry moral force in being made in a report to the UN Secretary-General Ban Ki-moon.

Timor can't take its case to the International Court of Justice under because, in 2002, Australia withdrew from the treaty clause that provides for compulsory dispute resolution shortly before Timor-Leste's independence.

It argues that international law supports the maritime boundary being on the median line between Timor and Aus-

tralia.

Australia has argued that the 2006 Certain Maritime Arrangements in the Timor Sea Treaty (CMATS) put a 50-year hold on negotiating a permanent maritime border.

But Timor has argued that Australia did not negotiate CMATS in good faith because our spooks allegedly bugged the Timorese government offices in 2004.

Until this weekend, the Minister for Foreign Affairs, Julie Bishop has argued that Australia negotiated CMATS in good faith and remains committed to it.

Bishop has argued that the Timor Sea treaties, including CMATS, have allowed oil and gas reserves to be developed for the benefit of Timor and Australia and are “entirely consistent with international law.”



That’s the summary. But Australia has been a

strong supporter of arguments mounted by the US and others that China should respect the ruling in favour of The Philippines on the South China Sea.

This has raised the question of why – if Australia is such a strong supporter of the international law of the sea – why not submit to arbitration on the maritime boundary with Timor-Leste?

This weekend, The Australian’s Southeast Asia correspondent, Amanda Hodge, quoted Bishop as insisting that Australia’s position was full consent with its position in The Philippines arbitration case.

“In both situations we emphasise the importance of the rule of law and the willingness resolve disputes peacefully,” Bishop said, adding that Australia considered “the decision of the upcoming conciliation binding on both sides.”

A story about the Hague hearing for the ABC Online by Europe correspondent Steve Cannane included the following statement by Bishop: “As with the ruling in the Philippines arbitration case, we consider the decision of the upcoming compulsory conciliation binding on both sides.”

Meanwhile, the Australian Embassy in Dili issued a statement last week about the Hague proceedings.

“In this opening session, both Australia and Timor-Leste will present a statement,” the Embassy said. “Australia’s statement will outline Australia’s view of the Timor Sea dispute and how it might be resolved.”

These comments have brought speculation per whether Timor is close to a “win” on the maritime boundary, but it that true?

I interviewed the Prime Minster of Timor-Leste, Dr Rui Maria de Araújo, in Dili in April.



Prime Minister Araújo said Timor-Leste was

“very appreciative” of Australia participating in the conciliation, even though the “first point of disagreement” was that Australia had indicated it would be challenging the jurisdiction of the conciliation commission.

He said Australia had already indicated it would argue the 2006 Certain Maritime Arrangements in the Timor Sea Treaty (CMATS) deferred establishment of a permanent maritime boundary for 50 years.

“The way it is framed is that Australia is claiming that because of the agreement that we had, CMATS, the compulsory conciliation doesn’t have jurisdiction on that,” Araújo said.

“So the commission of conciliators will have to go through the arguments from Australia, and also the arguments for Timor-Leste, and make a decision.”

But has the position of the Turnbull government really changed between April and August?

The Timorese are skeptical, given their experience of the last 40 years or so.

They are wondering why Bishop refers to the outcome of the conciliation commission being binding from Australia’s point of view? Is Australia confident of winning the jurisdictional argument and then running the line that settles things for 50 years?

The opening arguments to the conciliation commission will be broadcast live on the Permanent Court of Arbitration website <https://pca-cpa.org/en/news/timor-leste-australia/> (<https://pca-cpa.org/en/news/timor-leste-australia/>)

Further hearings will be held in private. Stay tuned for the openings – they should be interesting !

Introduction (AEST) at 17:30 – 17:45

Timor-Leste’s Opening 17:45 – 19:15

Break 19:15 – 19:30

Australia’s Opening 19:30 – 21:00