



## Stop or Go? When?

*September 2, 2016*



So now what?

Is the Conciliation Commission going to go ahead?

Stop or go?

Well I don't really know for sure. But here's some reasoned speculation!

Since the commission has been releasing quite a lot of information to tell us what is going on, we can assume that when they have made their decision on Australia's challenge they will issue a Press Release through the Permanent Court of Arbitration. What [their release](#) said on the 22nd of August was that: "After having heard the Parties on the objections raised by Australia, the Commission will decide whether to rule on Australia's objections as a preliminary matter or to continue with the conciliation proceedings and defer the question of competence for later decision."

So the way I read that is they will now decide if the proceedings STOP or GO ahead, and go means they will 'shelve' the question of competence for the time being. How that works is for another post that needs some research first!

When?

OK - so how long is this decision to stop or go going to take? Well we know from the [PCA release](#) on the 31st of August that "on 12 and 25 August 2016, the Parties provided the Commission with written submissions on the question of the Commission's competence." Added to this was the two and a half days hearing that dealt with this matter after the initial opening statements.



That means there must be a lot to consider. Could it take months?



That would be unlikely since the Commission, constituted on the 25th of June this year, have only 12 months to write their report. It is due on the 25th of June 2017, unless there is agreement between the parties to extend. If it does go ahead wouldn't they want to get stuck into the next step of consultations before the Christmas break?

So...

Here's my reasoned speculation: we should know something in 2 or 3 weeks, maybe a month. I don't think it would be longer than that. Some of our Timor Sea Forum members with a legal background think they would need at least couple of weeks to consider such an important matter but at the same time the Commission would not want to let it drag on.



The decision on the competence of the commission to hear the parties, a yes or a no, should not be considered as a decision on the position of East Timor and its case to establish a maritime boundary with Australia. It will be a technical decision based interpretation of Annex V of UNCLOS and Article 298.

Whatever that decision is, and we may well know in a couple of weeks, the campaign to establish a maritime boundary will not be stopping, certainly not for all of the advocates here in Australia and for the Timorese people. The dispute is unresolved and the injustice in the Timor Sea will be getting more and more attention.

Canberra is no longer as one on the issue of the Timor Sea. The current policy of the Turnbull Government

to leave the dispute unresolved will not stand the test of time and cannot properly serve Australia's national interest.

## Tick Tick Tick

*September 1, 2016*

A few diary entries as we wait. Latest first and then going back in time.



## Thursday 1 September 2016

The hearing at the Hague is done. Only the first half day was open, the next two and a half, where the Australian side made their objections and challenges to the 'competence of the commission' were behind closed doors.

Considering some of the tone of the Australian opening statement I think we can assume that the Australian team played hardball in the following meetings. There were hints, even in the public opening statement by Australia, of what the old treaty negotiations may have been like. Some of the same themes were there: you are going broke so don't rock the boat, if we did a border we would be going hard for 'Continental Shelf'

and shut up – its a good deal.

And there was a glimpse of the patronising tone: writing off Timor's request to finalise its sovereignty and establish a maritime boundary as a case of ... you didn't get the pipeline so now you have changed your mind. Plus the insistence that there should be no emotion. Good Lord, after 24 years of fighting for liberation and 17 years of trying to rebuild their nation from the ashes – now they are still fighting to get their border – there should be some emotion.

And from Australia, there should be a little respect.

What will the Commission decide? Well of course I trust it will proceed. Australia is already beginning to stress that if it does go ahead we all should remember it is 'non-binding'.

True, but if Australia is indicating at this point that it will flat out ignore a report issued by the United Nations next year or participate in this process in a recalcitrant fashion, then we might as well stop talking about the South China Sea and International Law.

How we can be pitching for a position on the United Nations Human Rights Council in 2018–2020 and poking a stick in the eye of UNCLOS? I don't think that will go down well.

If Australia's challenge to the competence of the commission is successful there is still an unresolved dispute. It will not go away. And changes in the Timor Sea are coming. Ignoring, obfuscating, belittling, ducking and weaving – none are a suitable response to an issue that will ramp up and further damage our relationship with East Timor and our international reputation as a good global citizen.

Senator Penny Wong gets this and wrote about it in the [Lowy Interpreter](#) today.



Anyway that is all for this morning after the close of the hearing on competency in the Hague. Not sure how many days we will have to wait, but since the Commission's work has been somewhat transparent to date, we can assume there will be a press release coming.

I noticed this morning that all the materials from the opening statements, including the transcript, the presentation slides of both parties and the video are available on [this page](#) at the PCA website.

## Wednesday 31 August 2016

Tick tick tick ... as Australia tries to escape from the conciliation process set up under the United Nations Convention on the Law of the Sea.

Xanana Gusmao: "Australia used to tell others to respect international law, they must now show us that they also abide by international law"

My two cents worth: Both sides accept there is a dispute. There is a dispute resolution mechanism set up under international law to assist the parties to resolve their dispute. Both parties are signatories to the UN convention that provides the mechanism.

For goodness sake! Australia should take advantage of the expertise of these five eminent commissioners to assist finding an equitable solution. It is likely to be a mostly private process and the report it produces is non-binding.

I dearly hope that Australia's 'haggling in the Hague' is unsuccessful and that the commission, whilst accepting their concerns, lets the process proceed.

Otherwise the dispute will intensify, damaging our relationship and leaving us unprepared for the changes to come in the Timor Sea.

## Tuesday 30 August 2016

After reading the Media Release of the [Brandis and Bishop](#):

How can we keep saying how generous we are when a boundary based on the median line would put the entire Joint Petroleum Development Area under the sovereignty of Timor-Leste?

On top of that we know that Darwin's development was massively boosted by the pipeline coming from Bayu-Undan. 90/10, often quoted, does not represent the total benefits enjoyed by both countries.

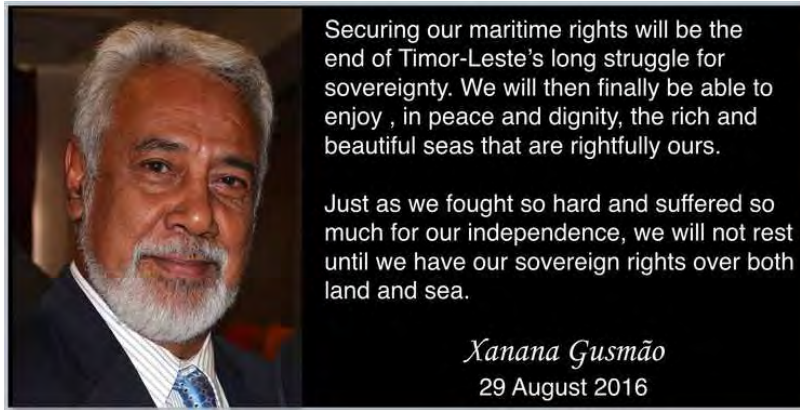
And of course no mention of withdrawal from UNCLOS arbitration as that does not suit the story.

Finally ... confident that both countries can overcome their differences? How? Australia is insisting 'it is what it is' and Timor should pull their heads in.

Doesn't sound like the way to resolve a dispute to me.

## Monday 29 August 2016





After watching the webcast:

Well there you go. The same old same old from Australia. Stick to the good deal you got and stop being difficult. The same patronising approach. Now in private they will go really hard to get of the process.

[Not UNCLOS Embracers, but UNCLOS Escapers!](#)

Noticed that AUS didn't even try to defend the indefensible withdrawal from UNCLOS arbitration jurisdiction.

In the joint release from Brandis and Bishop there is a recanting of the idea that both parties must accept the outcome of the Commission. Apparently that now only applies to a decision on competence with the release making the point that if the thing goes ahead it is 'non binding'.

And I'm still looking for "Australia's view of the Timor Sea dispute and how it might be resolved" promised in the [media release](#) from the Australian Embassy in Dili.

I got the Australian view about the Timor Sea but I seem to have missed "how it might be resolved" ....

I do take heart in the idea that most Aussie voters voted for parties who are for a negotiation of maritime boundaries with East Timor in the last election.

Time for a cup of tea.

