

PCA Case No. 2013-16

**IN THE MATTER OF THE ARBITRATION UNDER
THE TIMOR SEA TREATY OF 20 MAY 2002**

- between -

THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE

- and -

THE COMMONWEALTH OF AUSTRALIA

TERMINATION ORDER

ARBITRAL TRIBUNAL:

**Professor Tullio Treves (Chairman)
Professor W. Michael Reisman
Lord Collins of Mapesbury PC, FBA**

REGISTRY:

The Permanent Court of Arbitration

20 March 2017

WHEREAS on 23 April 2013, the Democratic Republic of Timor-Leste (“**Timor-Leste**”) initiated these proceedings by way of a Notice of Arbitration served upon the Commonwealth of Australia (“**Australia**”) pursuant to the *Timor Sea Treaty between the Government of East Timor and the Government of Australia* of 20 May 2002;

WHEREAS on 5 December 2013, the Arbitral Tribunal held a procedural meeting with the Parties at the Peace Palace in The Hague, the Netherlands;

WHEREAS on 6 December 2013, the Arbitral Tribunal issued Procedural Order N° 1, adopting the Rules of Procedure for these proceedings and reserving dates from the afternoon of 27 September through 2 October 2014 for a hearing;

WHEREAS on 7 January 2014, further to the agreement of the Parties, the Arbitral Tribunal issued Procedural Order N° 2, directing that the confidentiality requirements of the Rules of Procedure would not apply insofar as would be required for either Party to submit copies of correspondence, pleadings, or transcripts from these proceedings in the proceedings initiated by Timor-Leste before the International Court of Justice;

WHEREAS on 31 January 2014, Australia applied for an Order Disallowing the Giving of Potential Evidence by one of Timor-Leste’s witnesses (“**Witness K**”), and on 29 March 2014, the Arbitral Tribunal held a hearing in London, United Kingdom in respect of Australia’s application;

WHEREAS on 18 April 2014, the Arbitral Tribunal issued Procedural Order N° 3, which decided as follows:

- 3.1 The Tribunal decides that the evidence of Witness K is provisionally admitted.
- 3.2 The final disposition of Australia’s application is deferred until the issue of the Tribunal’s final award.

WHEREAS on 1 September 2014, the Parties wrote jointly to the Arbitral Tribunal as follows:

We write to notify the PCA and the Tribunal that the Parties have agreed to request the Tribunal to adjourn the hearing set for 27 September 2014, in order to enable the Parties to pursue negotiations on a procedure leading towards an amicable settlement of the case.

The adjournment would be without prejudice to the right of either party to reapply for a rescheduling of the hearing at a future date.

WHEREAS on 3 September 2014, the Arbitral Tribunal issued Procedural Order N° 4, which decided as follows:

1. The hearing scheduled to take place from 27 September through 2 October 2014 is adjourned *sine die*, without prejudice to the right of either Party to apply for the rescheduling of the hearing at a future date.
2. The Parties are requested to inform the Tribunal in due course regarding the disposition of these proceedings.

WHEREAS on 30 July 2015, Timor-Leste wrote to the Arbitral Tribunal noting that “[t]he Parties’ attempts to negotiate an amicable settlement of the case have not been successful” and indicating that Timor-Leste would write further to the Arbitral Tribunal in the near future;

WHEREAS on 21 December 2015, Timor-Leste wrote to the Arbitral Tribunal, noting *inter alia* that “the Government of Timor-Leste has now decided to recommence the Arbitration and will be in touch with the representatives of Australia and with the Tribunal on the subject at the earliest opportunity”;

WHEREAS on 11 February 2016, Timor-Leste wrote to the Arbitral Tribunal, noting that the Agents of the Parties were in contact with one another and that “[t]he intention will be to arrive at agreement between the Parties as soon as possible on the timing and the procedural arrangements for the hearing, including the examination of witnesses, which can then be put to the Tribunal for its approval”;

WHEREAS on 15 April 2016, the Parties wrote jointly to the Arbitral Tribunal, noting that they would be meeting “to discuss procedural arrangements relevant to the resumption of these proceedings” and proposing certain dates on which the Parties would be available for a hearing;

WHEREAS on 25 April, 3 May, 21 June, and 26 July 2016, the Parties and the Arbitral Tribunal exchanged correspondence in respect of the scheduling of a hearing;

WHEREAS on 21 October 2016, the Parties wrote jointly to the Arbitral Tribunal, suspending the proceedings by agreement until 20 January 2017 as part of the implementation of “one important element of recent proposals put forward by the Commission in the conciliation proceedings initiated under Article 298 and Annex V of the UN Convention on the Law of the Sea”;

WHEREAS on 24 October 2016, the Arbitral Tribunal wrote to the Parties, taking note of the Parties’ agreed suspension;

WHEREAS on 20 January 2017, Timor-Leste wrote to the Arbitral Tribunal, noting the Trilateral Joint Statement issued on 9 January 2017 by the Foreign Ministers of Timor-Leste and Australia and the Conciliation Commission in the Annex V proceedings, which disclosed Timor-Leste’s decision to initiate the termination of the *Treaty on Certain Maritime Arrangements in the Timor Sea* pursuant to Article 12(2) of that treaty;

WHEREAS, in its letter of 20 January 2017, Timor-Leste indicated that the termination of the *Treaty on Certain Maritime Arrangements in the Timor Sea* would “render the continuation of the arbitral proceedings unnecessary” and that, accordingly, Timor-Leste was withdrawing its claims and requesting the termination of the proceedings pursuant to Article 30(2) of the Rules of Procedure;

WHEREAS, in its letter of 20 January 2017, Timor-Leste further indicated its understanding that “termination of the arbitral proceedings will be without prejudice to the position of either Party in respect of the matters underlying those proceedings”;

WHEREAS on 23 January 2017, Australia wrote to the Arbitral Tribunal, indicating its agreement that “the continuation of the Arbitration has been rendered unnecessary as contemplated by Article 30.2” of the Rules of Procedure and joining Timor-Leste in “requesting that the Tribunal issue an order for the termination of the proceedings”;

WHEREAS on 24 January and 9 February 2017, the Parties and the Arbitral Tribunal exchanged correspondence regarding confidentiality and the publication of documents following the termination of the proceedings;

THE ARBITRAL TRIBUNAL HEREBY ISSUES THE FOLLOWING ORDER:

1. Pursuant to Article 30(2) of the Rules of Procedure, the arbitral proceedings are hereby terminated.
2. The termination of the arbitral proceedings shall be without prejudice to the position of either Party in respect of the matters underlying these proceedings.
3. Following the issuance of this termination order, the PCA will render an accounting to the Parties and confer with them in respect of the disposition of any unexpended funds.
4. Either Party may, on receipt of the agreement of the other Party, produce documents otherwise covered by the Tribunal’s orders on confidentiality where the production of these documents is necessary under the compulsion of a domestic court or tribunal.

Done this 20th day of March 2017,



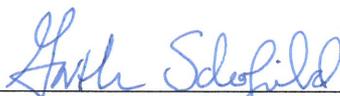
Professor W. Michael Reisman



Lord Collins of Mapesbury PC, FBA



Professor Tullio Treves
Chairman



Mr. Garth L. Schofield
Registrar