

Australia and Timor Leste reach a deal on the Timor Sea – but much remains unknown

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A treaty signing ceremony on the East Timor Sea boundary could take place by the end of the year.

AAP

The announcement on the weekend by the Timor Sea Conciliation Commission is the first indication that Australia and Timor Leste are making real progress towards resolving their maritime boundary dispute.

If this process reaches a successful outcome, a permanent maritime boundary will have been drawn in the Timor Sea between Australia and Timor Leste for the first time. However, the conciliation still has some steps to complete. A formal treaty will need to be negotiated, signed and ratified before a new legal framework exists.

The catalyst for the dispute was the 2002 Timor Sea Treaty, negotiated by Australia and the United Nations Transitional Authority in East Timor (UNTAET) in the lead-up to East Timor's independence. That treaty was based partly on a precedent – the 1989 Timor Gap Treaty between Australia and Indonesia.

The 1989 treaty agreed on a joint development zone for the Timor Sea, providing for a 50/50 sharing of oil and gas revenue. Importantly, existing continental shelf boundaries concluded in 1972, which lay to the east and west in the Timor Sea, were not disturbed. The result was an unusual set of maritime boundary arrangements for the region.

However, this approach was justified because of developments in international law, following the 1982 United Nations Convention on the Law of the Sea, and the contested oil and gas riches of the Timor Sea.

The 2002 Timor Sea Treaty was a variant of this approach, though the joint development area was

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smaller and the royalty split was 90/10 in favour of Timor.

While the treaty provided some continuity from the previous regime, it left many issues unsettled. There was no permanent maritime boundary and no clear timetable for one to be finalised. There was no clarification of the status of the Greater Sunrise field that straddled the northeastern quadrant, and no clear framework for oil and gas development for the direct benefit of Timor Leste.

These issues formed the basis of Timor's campaign of the past decade to bring to an end what Dili considered to be an unjust series of associated treaties.

Since October 2016, the Timor Sea Conciliation Commission has met with the parties on six occasions. The most recent meeting concluded on August 30 in Copenhagen. There a breakthrough occurred, which has given confidence that a maritime boundary delimitation in the Timor Sea will be concluded.

Final details remain to be settled, but it seems a package of measures has been agreed. This includes the legal status of the Greater Sunrise gas field, the establishment of a "special regime" for Greater Sunrise, and mechanisms for resource development and revenue sharing.

It is anticipated that the conciliation will conclude by October. By this time the parties may have negotiated a treaty instrument to give effect to these arrangements. If not, treaty negotiations will still be able to take place independently of the conciliation. At this rate of progress, a treaty signing ceremony could take place by the end of the year.

This outcome represents a considerable political victory for Timor Leste. It has been able to force Australia into a third party conciliation, thereby circumventing Australia's preference for negotiated maritime boundaries. It has also been able to force Australia to abandon its support for joint development in the Timor Sea in favour of a permanent maritime boundary.

While the direction of that boundary remains unknown, international law would support a median line midway between the Australian and Timor coasts, subject to some technical adjustments.

It would appear that Australia has also made concessions on Greater Sunrise. The extent of these remains confidential.

Whether the eastern lateral boundary of the 2002 Timor Sea Treaty has been modified in favour of Timor Leste is unknown. Whatever that outcome, legal mechanisms will be required to resolve the transfer of sovereign rights to Timor from the previous arrangements.

The outcome will be a major achievement for Timor Leste's goal of settled boundaries, both land and maritime, with its major neighbours Australia and Indonesia. How Indonesia will react to these proposed arrangements remains unknown.

Australia's most complex maritime boundaries are with Indonesia. These have been carefully negotiated since the early 1970s, but reflect evolving legal rights and entitlements, some of which are out of step with international law in 2017. The challenge that may loom is whether Indonesia will use the precedent of a new Australia-Timor Leste treaty to reopen previously settled maritime boundaries with Australia.