



## Myth Busting No 1 - Australia's Boundaries with neighbours and the Continental Shelf

January 12, 2017

The Australian newspaper, a News Corp publication, produced an unexpectedly positive [editorial](#) about the announcement on Monday of the Australian and Timor-Leste Government's intention to negotiate maritime boundaries. It also contained statements that need to be challenged. One promoted, perhaps unwittingly, the myth that Australia's boundaries with its neighbours are based on "the continental shelf principle".

The editorial says:

"Australia argues that its maritime boundary should be drawn along its continental shelf, as it has always been. Timor maintains it should be an equidistant line between the two countries, a boundary that would give Dili most of the revenue flowing from the Timor Sea. Contemporary international law supports East Timor's claim of equidistance. But the argument for it is complicated by consideration of our boundaries with Indonesia as well as Australia's contention that the Timor Trough extending from close to the coastline of East Timor divides the two continental shelves. For decades Australia has based its maritime borders on the continental shelf principle endorsed by UNCLOS."



There are several parts of this quote that could be questioned but let's focus on the very last part which may lead people to incorrectly believe that Australia's borders with neighbours are based on "the continental shelf principle".

The fact is that almost all of Australia's maritime boundary delimitations with its neighbours are based on equidistance. All of them in fact, if we are talking about the last four decades.

## Australia's Maritime Borders

Country	Border Treaty Area	Concluded	Based on Equidistance?
New Zealand	Tasman Sea	2004	Yes
Solomon Islands	Coral Sea	1988	Yes
France	Pacific Ocean - New Calidonea	1982	Yes
	Southern Ocean	1982	Yes
Papua New Guinea	Torres Strait	1978	Yes
Indonesia	Timor Sea	1972	No
	Arafura Sea	1971	Yes

Keeping it simple, Australia has maritime boundaries with five of its seven maritime neighbours. They are New Zealand, Solomon Islands, France, Papua New Guinea and Indonesia. Boundaries are unresolved with Timor-Leste and Antarctica.

Australia's pre-eminent expert on international maritime delimitation, Professor Don Rothwell, presented a survey of the boundary treaty arrangements with all of our neighbours at a Monash University symposium last year. You can see a video of his presentation on the Monash [webpage](#) that recounts the event along with the slides used.



The table above simplifies what he says in the survey. Professor Rothwell nuanced his comments for each one so PNG was "predominately equidistant", the Solomon Islands boundary "relies on principles of equidistance", the boundary with New Caledonia uses "a modified equidistant line" and the Indonesian arrangement in the Arafura Sea is "based on an equidistance line provision". He didn't specify with New Zealand but we know that it is based on equidistance. Alexander Downer confirmed this in his [media release](#) announcing the boundary delimitation in 2004 when he said, "The Treaty confirms the median line boundary between the overlapping EEZs (Exclusive Economic Zones)."

The only boundary between neighbours based on "the continental shelf" that Professor Rothwell refers to is the boundary with Indonesia in the Timor Sea.

It is true that the continental shelf is an important principle for maritime entitlements, particularly when there are no overlapping claims, but the facts are clear:

Except for one exceptional case (Indonesia), all of Australia's maritime boundaries with neighbours have been negotiated by principles of equidistance.

The negotiation with Timor-Leste should be based on equidistance, which even the conservative Australian newspaper recognises as "supported by contemporary international law."

## CMATS going, TST for now, Maritime Boundaries coming ....

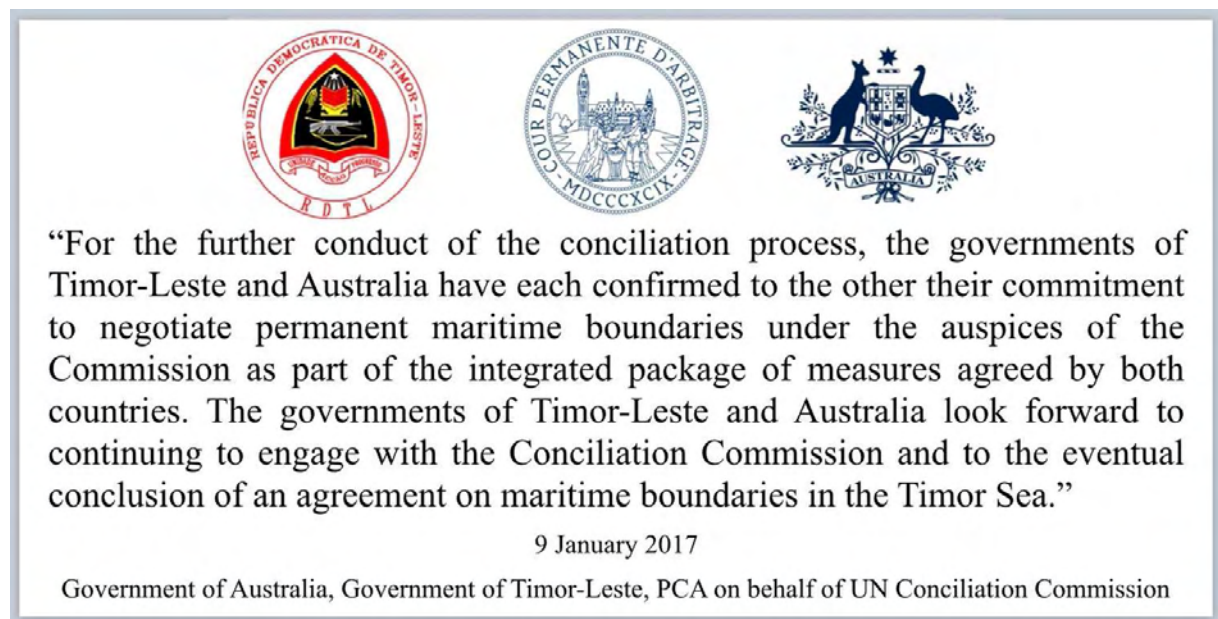
January 9, 2017

CMATS is the treaty known as "Certain Maritime Arrangements in the Timor Sea" [2006], and the TST is the "Timor Sea Treaty" [2002].

Today a [joint statement](#) was released by the Government of Australia, the Government of Timor-Leste and the Permanent Court of Arbitration on behalf of the UN Conciliation Commission.

This is the first joint statement to come out of the conciliation process so far and is a significant one. Available on the Australian Foreign Minister website [here](#).

There is some careful language around what presents as a commitment by the current Government of Australia to proceed with negotiations of a permanent maritime boundary with Timor-Leste.



So there are qualifiers of **time** – “for the further conduct of the conciliation process” which is expected to end in September 2017, **context** – “under the auspices of the Commission”, and **modality** – part of a secret agreed “integrated package of measures”.

Still – this is something new and important.

Also significant is the announcement of the Timorese Government’s intention to terminate CMATS and more particularly Australia’s intention to accept this without contesting. An important point is their acceptance that three months from the initiation of the termination that CMATS is **really dead**.

The CMATS treaty had extraordinary provisions in its Article 12 that could in effect bring it to life again even after its termination. So called “Zombie” or “Phoenix” clauses. But the Australian Government has in this joint statement said that they have agreed that “no provision of the Treaty will survive termination. All provisions of the treaty will cease to have effect three months after the delivery of Timor-Leste’s notification.”

The Timor Sea Treaty will remain in place after the termination to manage current commercial activities in the Timor Sea.

So it seems the decks are being cleared for maritime boundary negotiations to commence in earnest.