

Timor-Leste's Maritime Boundary Treaty with Australia



On 6 March 2018, Timor-Leste and Australia signed an historic Maritime Boundary Treaty at the United Nations Headquarters in New York. The Maritime Boundary Treaty establishes for the first time permanent maritime boundaries between Timor-Leste and Australia in the Timor Sea. The signing of the Treaty concludes the compulsory conciliation process, under the United Nations Convention on the Law of the Sea, which was initiated by Timor-Leste in April 2016. The Treaty sets permanent maritime boundaries in the Timor Sea based on international law, bringing

an end to Timor-Leste's long-running maritime boundary dispute with Australia. In giving recognition to Timor-Leste's rights over its seas, the Treaty signing marks a momentous step for the Timorese people in their struggle towards full sovereignty and independence.

The Agent for Timor-Leste in the Conciliation, Minister Agio Pereira signs the Maritime Boundary Treaty with Australian Foreign Minister Julie Bishop at the United Nations Headquarters, New York, on 6 March 2018.

What is in the Maritime Boundary Treaty?

The Maritime Boundary Treaty secures a median line in the Timor Sea, with only a slight adjustment to achieve an equitable result as required by international law. Most of the median line is 'all purpose', meaning it encompasses both the 'continental shelf' (which entails rights to exploit seabed resources, such as petroleum) and the 'exclusive economic zone' (which entails rights to exploit resources in the water column, such as fisheries).

Under the agreement, the Greater Sunrise resource is shared by Timor-Leste and Australia, with the majority sitting in Timor-Leste's maritime area and the majority of revenue flowing to Timor-Leste.

The agreed maritime boundary puts all of the resource fields in the former Joint Petroleum Development Area (JPDA) within Timor-Leste's continental shelf. This means that, unlike the previous revenue sharing arrangements, title to all future revenue from the Bayu-Undan and Kitan fields will be transferred to Timor-Leste. In the west, the agreed seabed boundary runs to the west of the previous JPDA and results in the Buffalo petroleum field transferring from Australia to Timor-Leste.

The agreement on maritime boundaries is comprehensive and final, however, part of the seabed boundary is provisional and subject to

automatic adjustment upon certain events. The provisional seabed boundaries in the north-east and the west could swing outwards to meet the trilateral points agreed in the upcoming negotiations with Indonesia. This means that, depending on the outcome of negotiations with Indonesia, Timor-Leste could look to extend its maritime area even further.



Maritime boundaries between Timor-Leste and Australia in the Timor Sea, as agreed in the new Treaty

How was the agreement reached?

The Timor-Leste Government initiated compulsory conciliation under the United Nations Convention on the Law of the Sea in April 2016. After a long-running dispute, Timor-Leste triggered this process to bring Australia to the negotiating table so that it could pursue its sovereign rights and secure permanent maritime boundaries in the Timor Sea. In taking this step, Timor-Leste became the first country to use this mechanism under the Convention.

Compulsory conciliation is a non-binding procedure in which a panel of expert conciliators assists State parties to reach an amicable settlement of their dispute.

The procedure can be used in circumstances where no agreement has been reached between maritime neighbours and one State has made a declaration excluding binding dispute settlement under the Convention on maritime boundaries.

The conciliation was conducted by a panel of five independent conciliators, known as the Conciliation Commission. The Commission's role was to understand the facts and legal position of each State and to make proposals with a view to resolving the issues in dispute. The Permanent Court of Arbitration served in an important support role as the Registry for the proceedings.

The agreement between Timor-Leste and Australia represents a significant and historic milestone for the international legal order and a model for the peaceful settlement of complex maritime disputes around the world.

While maritime disputes often take many years if not decades to resolve, under the guidance of the UN Conciliation Commission, Timor-Leste and Australia successfully settled their permanent maritime boundaries in just over a year.



The Conciliation Commission with both Parties at The Hague on 13 October 2017

What does the Treaty mean for Timor-Leste?

Establishing permanent maritime boundaries is a matter of national priority for Timor-Leste, as the final step in realising full sovereign rights as a newly independent State.

The seas which surround the island of Timor-Leste sustain its people—they are integral to Timorese culture, livelihoods, and way of life.

Permanent maritime boundaries will define the maritime area and exclusive sovereign rights that are internationally recognised as belonging to Timor-Leste. This step will allow Timor-Leste to secure both its political and its economic sovereignty.

After many years of dispute, resolving the maritime boundaries between Timor-Leste and Australia also represents a new stage in the bilateral relationship. Settling the boundaries will not only serve the national interests of each nation, but will provide a foundation to strengthen the friendship and solidarity between Timor-Leste and Australia.

Securing permanent maritime boundaries will create certainty for Timor-Leste's immigration, security, tourism, fisheries and

resource sectors; bring in investment and economic benefits; and enhance the development and prosperity of the young, emerging nation. Most importantly, securing Timor-Leste's maritime rights under international law is part of the Timorese people's long struggle for their sovereignty and will allow them to finally enjoy, with peace and dignity, the rich and beautiful seas which belong to them.



"The future for the next generations would look very different without access to our seas." – MBO CEO Elizabeth Exposto at the public hearing at The Hague, on 29 August 2016

Milestones in the conciliation process

Australia's jurisdictional challenge: The first procedural hearing of the conciliation was held at the Peace Palace at The Hague on 28 July 2016. Australia challenged the competence (or jurisdiction) of the Commission to proceed with the conciliation. However, on 19 September 2016, the Commission unanimously decided that it did have competence to hear the dispute.

Public hearing: While the proceedings of the Commission were predominantly confidential, the Commission held a landmark public hearing on 29 August 2016. At this hearing, Timor-Leste and Australia presented their positions in an open setting at the Peace Palace at The Hague, with the proceedings streamed live via the Permanent Court of Arbitration website.

CMATS terminated: After establishing competence, the Commission held several confidential meetings with the Parties to understand their positions. In the course of these meetings, the Governments of Timor-Leste and Australia agreed to an integrated package of confidence-building measures to make way for negotiations on maritime boundaries to commence. As part of that package, Timor-Leste notified Australia of its wish to terminate the 2006 Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS), a provisional resource-sharing agreement. In doing so, Timor-Leste exercised its right to terminate under the terms of the treaty. The treaty ceased to be in force on 10 April 2017. This event was of great significance to Timor-Leste because it removed the moratorium provision in CMATS which sought to prevent settlement of permanent maritime boundaries with Australia for a period of 50 years. The termination of CMATS cleared the path for negotiations to establish a fairer regime for the development of Greater Sunrise.

Withdrawing other legal cases: As part of the integrated package of measures agreed to make way for negotiations on maritime boundaries, Timor-Leste agreed to withdraw two arbitration cases against Australia related to taxation jurisdiction and alleged espionage during the negotiation of the CMATS treaty. These cases were formally withdrawn on 20 January 2017.

Negotiations on maritime boundaries: In December 2016, Timor-Leste and Australia made the historic commitment to negotiate on permanent maritime boundaries under the auspices of the Conciliation Commission. The Timor-Leste negotiating team was led by its Chief Negotiator, H.E. Kay Rala Xanana Gusmão, the father of the nation, leader of the Timorese people's struggle for independence, and the first elected President and former Prime Minister of Timor-Leste. The Commission convened the first meeting in January 2017, to explore both countries' positions on where the maritime boundary in the Timor Sea should be set.

30 August Copenhagen Agreement: On 30 August 2017, during conciliation meetings in Copenhagen, Timor-Leste and Australia reached a breakthrough in-principle agreement. This date has historic significance for Timor-Leste, as it marks the 18th anniversary of the referendum which led to Timor-Leste's independence. In addition to delimiting permanent maritime boundaries, the Copenhagen agreement addressed the legal status of the Greater Sunrise gas field, the establishment of a Special Regime for the development of Greater Sunrise, a pathway for the development of the resource, and arrangements for how the resulting revenue would be shared.

Finalising the Treaty: Timor-Leste and Australia continued to negotiate throughout September and October to draft the provisions of the new Treaty, which would reflect the Copenhagen Agreement of 30 August. On 13 October 2017, the Agents of both Parties initialled the final Treaty text at The Hague.

Negotiations on the development concept: In parallel to the Treaty negotiations, Timor-Leste and Australia began engaging with the international companies in the Greater Sunrise Joint Venture on the development of Greater Sunrise. Six rounds of trilateral negotiations took place from November 2017 to February 2018, and the discussions are ongoing.



"Securing our maritime rights will be the end of Timor-Leste's long struggle for sovereignty." – Chief Negotiator Kay Rala Xanana Gusmão at the public hearing, on 29 August 2016

L-R: Timor-Leste's Chief Negotiator, Kay Rala Xanana Gusmão; Agent for Australia, John Reid; the Chair of the Conciliation Commission, Peter Taksøe-Jensen; Agent for Timor-Leste, Minister Agio Pereira; and Head of the Australian Delegation, Gary Quinlan, at the Peace Palace at The Hague on 13 October 2017. (Photo credit: Todd Quinn)



What happens next?

The Conciliation Commission will produce a final report on the outcomes of the conciliation process, which will be submitted to the United Nations Secretary General. It is anticipated this report will be made public in April 2018.

The Treaty represents a final and comprehensive solution to the maritime boundary issues between Timor-Leste and Australia. The Treaty incorporates a mechanism for the approval process for the development of Greater Sunrise. Discussions are ongoing.



Many Timorese are dependent on the seas for their livelihood and sustenance.