

THE AUSTRALIAN

New deal for Timor Gap would cement sovereignty: Gusmao



'Our land was scorched, our people killed by the hundreds of thousands,' former East Timor president Xanana Gusmao.

AMANDA HODGE THE AUSTRALIAN 12:00AM August 30, 2016

The Timor Sea treaties governing resource sharing between Australia and East Timor in the Timor Sea “will end and end soon” Dili vowed yesterday at The Hague.

This prompted Australia to warn that dissolving the agreements would cause “reputational harm and raise sovereign risk” for both countries.

In a 90-minute opening address to a non-binding conciliation commission hearing that has exposed deep-rooted resentments at its treatment by Australia, the East Timor delegation led by former president Xanana Gusmao said “securing our maritime rights will the end of Timor Leste’s long struggle for sovereignty”.

Mr Gusmao argued the country was forced into provisional treaties with Canberra, including the Certain Maritime Arrangements in the Timor Sea governing the Greater Sunrise gas field, through economic desperation.

Referencing its 24-year occupation by Indonesia, Australia’s recognition of that occupation and the spying scandal in which ASIS agents allegedly bugged government offices to gain advantage in maritime negotiations, Mr Gusmao told the Permanent Court of Arbitration that in the lead up to the treaty negotiations with Canberra Dili’s situation was “vulnerable to duress and exploitation”.

“You must understand at the time Timor Leste had nothing. Our land was scorched, our people killed by the hundreds of thousands, more than 70 per cent of our infrastructure, including schools and hospitals, burned. We were entirely in their hands and in no position to take informed decisions of our own,” he said.

But Solicitor-General Michael Gleeson SC rejected suggestions Dili was at a disadvantage when negotiating Timor Sea treaties, pointing to the seniority of its delegation at the time, which also included senior UN officials, and the subsequent flow of more than \$16 billion in revenue into East Timorese coffers.

“Australia would reject any suggestion that negotiations of the treaty was in any way one-sided or done under duress,” Mr Gleeson said in his opening address to the hearing at which he will argue the dispute does not fall within the panel’s jurisdiction.

Mr Gleeson said East Timor originally suggested a 50-year moratorium on negotiating permanent maritime boundaries under CMATS — though it now seeks the dissolution of those treaties and negotiation of permanent boundaries — and on many occasions had publicly celebrated the agreement.

“It is Timor Leste which has changed its mind about this treaty after failing to secure its preferred development of a pipeline (from the Greater Sunrise gas field) to its south coast. That is the operative cause as to why the Greater Sunrise field has not been developed,” he said.

East Timor has argued the 2006 CMATS treaty — which raised Timor’s share of royalties from Greater Sunrise from 18 per cent to 50 per cent in exchange for delaying maritime border negotiations — should be set aside because Australia failed to negotiate the treaty in good faith, as required under the UN Convention on the Law of the Sea.

Mr Gusmao said Australia’s consistent refusal to negotiate permanent maritime boundaries with East Timor, despite having settled every other sea border, was “difficult to explain”, as was its decision to withdraw from binding international dispute resolution bodies on maritime boundaries just two months before East Timor regained independence in 2002.

He said the country was “shocked and appalled” when a former ASIS officer revealed in 2012 that Australian spies had bugged the new government’s cabinet room, allowing Australian maritime boundary negotiators access to top-secret conversations.

East Timor’s legal adviser Vaughan Lowe QC told The Hague panel that Timor was entitled under the terms of the 2006 CMATS treaty, which governs the joint development of sea bed resources, to unilaterally terminate it if development had not occurred by 2013. “CMATS has failed as a treaty,” Mr Lowe told the commission. “It did not lead to the development of Greater Sunrise and has outlived its usefulness.”

In a reference to the spying scandal and an ASIO raid on the Australian lawyer representing East Timor, Department of Foreign Affairs and Trade deputy secretary Gary Quinlan said Australia “does not pretend that the course of our relationship with Timor Leste has been free of difficult issues”.

But he warned East Timor’s determination to end the CMATS treaty, despite its legal obligations, could “undermine the reputation of both parties” for providing a stable environment for development of the Timor Sea.

“The argument that Australia is holding back Timor Leste is not true,” he said.

“The reality is that Timor Leste’s change of heart in relation to the Timor Sea treaties has created uncertainty, raised sovereign risk, undermined investor confidence and considerably delayed Greater Sunrise’s development.

“Casting aside the Timor Sea treaties would take us back to square one.”