UNCLOS CONCILIATION: THE TIMOR-LESTE V. AUSTRALIA MARITIME BOUNDARY DISPUTE

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INTRODUCTION

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1. MARITIME BOUNDARY DISPUTE
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Timor Sea – Source: MBO
MARITIME BOUNDARY DISPUTE

Australia Indonesia Agreements on Timor Sea

1. Seabed Boundary
2. Joint Development
3. EEZ Boundary
MARITIME BOUNDARY DISPUTE

1972 Australia-Indonesia Seabed Boundaries Agreement

Source: UN Treaty Series
1989 Australia-Indonesia Treaty on Zone of Cooperation

Source: Australia’s Opening Presentation
MARITIME BOUNDARY DISPUTE

1997 Australia-Indonesia EEZ Treaty

Source: Timor-Leste’s Opening Presentation
MARITIME BOUNDARY DISPUTE

Australia-Indonesia Seabed Boundaries Agreement
Currently in force

Australia-Indonesia EEZ Agreement
Never in force

Australia-Indonesia (Timor Gap) Zone of Cooperation Treaty
Ceased to be in force
MARITIME BOUNDARY DISPUTE

Source: Australia’s Presentation

Source: Timor-Leste’s Presentation
MARITIME BOUNDARY DISPUTE

UNCLOS

Entered into force 16 November 1994

Australia
- Ratified on 5 October 1994.
- Made an Article 298 declaration in 2002, excluding maritime delimitation disputes from UNCLOS binding procedures.

Timor-Leste
- Ratified on 8 January 2013.

Entered into force between 2 states on 2 February 2013
2. PROVISIONAL ARRANGEMENTS
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Australia Timor-Leste Agreements

1. 2002 Timor Sea Treaty (TST)
2. 2003 Agreement on Unitization of Greater Sunrise
3. 2006 Treaty on Certain Arrangements (CMATS)
2002 Timor Sea Treaty

- **Australia**: 10%
- **Timor-Leste**: 90%

In force for 30 years or until there is a permanent boundary.

Disputes shall be submitted to arbitration at the request of either party.

**Source:** Australia’s presentation
PROVISIONAL ARRANGEMENTS

2006 CMATS

Australia: 50%
Timor-Leste: 50%

Timor-Leste exercises jurisdiction

Validity: 50 years.
Disputes: negotiation.

Source: Timor-Leste’s presentation

- Neither Party shall assert or further its claims on maritime boundaries.
- Neither Party shall initiate any proceedings before a dispute settlement mechanism on maritime boundaries.

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3. CONCILIATION PROCEEDINGS
Commencement of Proceedings and Establishment of Commission

11 April 2016
• Timor-Leste initiated proceedings and appointed 2 conciliators (Judge Abdul Koroma and Judge Rüdiger Wolfrum)

2 May 2016
• Australia appointed 2 conciliators (Dr. Rosalie Balkin and Professor Donald McRae)

25 June 2016
• 4 conciliators appointed the chairman (Ambassador Peter Taksøe-Jensen) from a shortlist of candidates accepted by both states.

The parties agreed that the Permanent Court of Arbitration acts as Registry.
Competence of the Conciliation Commission

(Proceedings were bifurcated upon Australia’s request)

Australia submitted Objection to Competence
Timor-Leste submitted Response
Hearings on Competence
Decision on Competence

12 August
25 August
29-31 August
19 September

3 weeks
3 weeks
CONCILIATION PROCEEDINGS

Source: PCA
4. DECISION ON COMPETENCE
Australia’s Objections to Competence

※ Article 281
• Compulsory conciliation is precluded

※ Article 298
• Conditions were not met.

Timor-Leste contested each objection
Article 281: UNCLOS procedures will not apply if (i) the parties "have agreed to [settle the dispute] by a peaceful means of their own choice"; (ii) "the agreement" between the parties excludes further procedure; and (iii) the parties are able to reach settlement by the means that they have agreed.

Australia: (i) CMATS imposes a moratorium; (ii) parties agreed in 2003 by an exchange of letters to settle the dispute by negotiation.

Commission: CMATS does not provide any means to settle the dispute as required by Article 281. It merely exclude all means of dispute settlement.

Commission: 2003 letters do not constitute a binding agreements.
Article 298: Compulsory conciliation can only be initiated if (i) the dispute “arises subsequent to the entry into force of this Convention” and (ii) “no agreement within a reasonable period of time is reached in negotiations between the parties”.

Australia: (i) dispute arose in 2002 before the 2013 entry into force of the Convention between Australia and Timor-Leste; (ii) there was no negotiation between the 2 parties as required by Article 298.

Commission: “Entry into force of this Convention” means the 1994 entry into force of the Convention, as opposed to the 2013 entry into force as between the two parties.

Commission: Negotiations did not take place. In any case, Article 298 does not expressly require prior negotiation. Such a requirement would effectively grant a party the right to veto any recourse to compulsory procedures, contrary to the intention of Article 298.
Unanimous Decision

**Competence**

The Commission is competent with respect to the compulsory conciliation of the matters submitted by Timor-Leste.

**Scope**

The Commission can consider maritime boundary and transitional and implementing arrangements.

**Timeline**

18 September 2017.
5. PROSPECTS FOR SETTLEMENT
PROSPECTS FOR SETTLEMENT

Timeline

“Within the timeframe”

“Aim to reach agreement”

“By the end of the conciliation process in September 2017”
PROSPECTS FOR SETTLEMENT

Procedure

"Meetings"

- "constructive"
- "very productive"
- "very positive"

showing
- "sincere willingness"
- "good faith"

reflecting "spirit of cooperation"

Pervaded with "optimism"
PROSPECTS FOR SETTLEMENT

“Integrated Package of Confidence-Building Measures”

“facilitate conciliation process” and “to create the conditions conducive to the achievement of an agreement”.

Joint Statement of 9 January 2017
1. Noted termination of CMATS.
2. Agreed that 2002 TST and its supporting framework remain in force for existing petroleum operations.
3. Confirmed “commitment to negotiate permanent maritime boundary under the auspices of the Commission”.

Joint Statement of 27 January 2017
2. Committed to providing a stable framework for existing petroleum operations.
3. Ensured that issue of transitional arrangements will be included in conciliation program and rights of JPDA companies will be protected.
Happy Ending?

Source: PCA
THANK YOU

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