



The Future of Conciliation: Institutional Administration of Conciliation Proceedings

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- Institutional support for conciliation proceedings:
 - Rules and previous experience
- Case studies:
 - *Conciliation between The Democratic Republic of Timor-Leste and The Commonwealth of Australia*
 - *Review Panel Established Under the Convention and Management of High Seas Fishery Resources in the South Pacific Ocean*
- Overview of forms of institutional support
- Examples of institution-specific support
- Observations and recommendations

Rules:

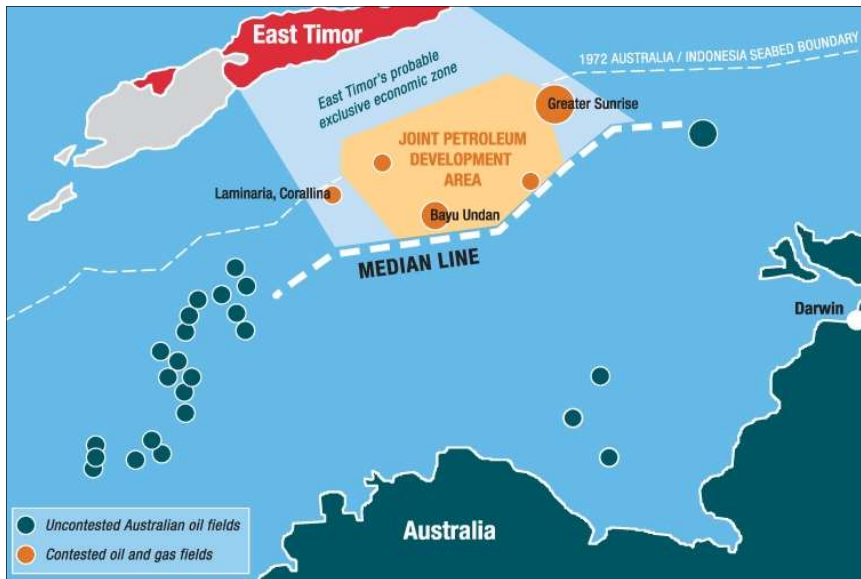
- Appointment of conciliators: rules may provide for an institution or a person to recommend or directly appoint a conciliator
- Replacement and disqualification of conciliators: institutions may be called upon to decide on a proposal to remove or disqualify a conciliator, e.g. ICSID Rule 9
- Other administrative assistance: administrative assistance by a suitable institution or person; advice on modifying rules, e.g., introduction to PCA Optional Rules; arrange meeting venue, e.g. PCA Art. 9(2); conduit for communications, ICSID Rule 3(2); certification and authentication

Previous institutional experience:

- PCA, OAS, ICSID, UN, other commercial dispute resolution bodies

Procedural steps:

- 11 April 2016: Compulsory conciliation initiated by Timor-Leste vis-a-vis Australia pursuant to Article 298 and Annex V of UNCLOS

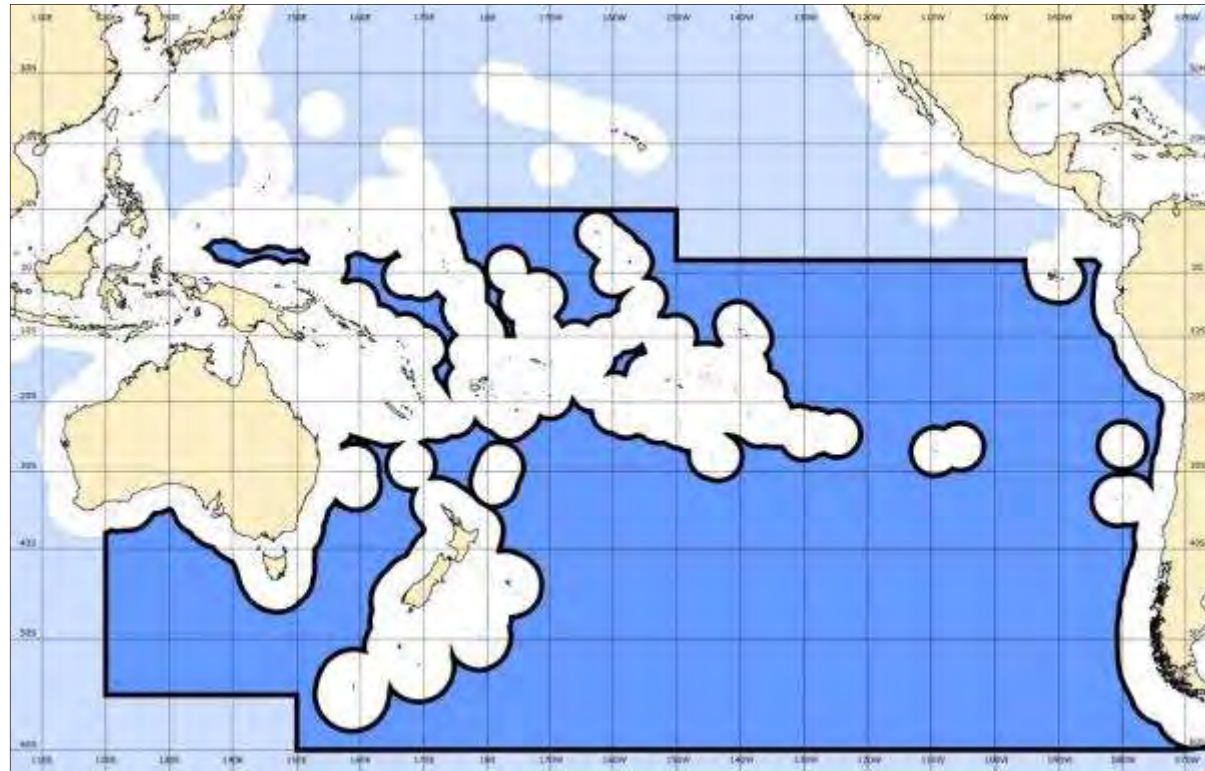


Procedural steps continued:

- 2 May 2016: Australia submits Response to the Notice of Conciliation
- 25 June 2016: Five-member Conciliation Commission constituted:
 - H.E. Ambassador Peter Taksøe-Jensen (Denmark) (Chair), Dr. Rosalie Balkin (Australia), Judge Abdul G. Koroma (Sierra Leone), Prof. Donald McRae (Canada/New Zealand) and Judge Rüdiger Wolfrum (Germany)
- 28 July 2016: First procedural meeting in The Hague
- 29-31 August 2016: Opening Session of the Conciliation and a Hearing on Competence in The Hague
- 19 September 2016: Decision on Competence rendered (Commission competent to continue)
- 9 January 2017: Joint statement issued by Timor-Leste, Australia and the Conciliation Commission

Background to case:

- Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, entry into force 24 August 2012
- Adoption of a conservation and management measure for Chilean jack mackerel by Commission on 1 February 2013



Source: SPRFMO website www.sprfmo.int

Case study 2: Review Panel Established Under the Convention and Management of High Seas Fishery Resources in the South Pacific Ocean

Background to case continued:

- Objection by the Russian Federation
- Review panel proceedings involving Russia, Chile, New Zealand, EU Delegation to the South Pacific RFMO, Chinese Taipei, Commission, South Pacific RFMO
- Non-binding findings and recommendations



Hearing before the Review Panel Established under the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean

Procedural steps:

- 19 April 2013: Objection by the Russian Federation under Article 17 and Annex II of the Convention
- 21 May 2013: Constitution of the Review Panel:
Professor Kamil Bekyashev (Russia, appointed by Russia); Sra Valeria Carvajal (Chile, appointed by Chairperson of the Commission); Professor Bernard Oxman (USA, appointed by agreement between Russia and the Chairperson of Commission)
- 27 May 2013: Procedural Timetable
- 7 June 2013: Procedural Directive No. 1
- 13-27 June 2013: Written submissions
- 1 July 2013: One-day hearing in The Hague
- 5 July 2013: Review Panel's Findings and Recommendations (non-binding)
- 7 August 2013: Russia accepts Findings and Recommendations

Administrative support provided:

- Early work during drafting of Convention
- PCA acted as registry (*pro bono*)
- Special features of these proceedings:
 - First time initiated; no budget
 - Multiple States and intergovernmental organisations involved
 - Tribunal worked in three languages (English, Russian, Spanish)
 - Tight timeframes, multiple submissions
 - Fully transparent proceedings
 - Review process akin to arbitration but non-binding outcome
 - Ongoing multilateral relationship

Forms of administrative support for conciliations

- Constitution of the conciliation commission: list procedure; “modified” list procedure; panel appointments; checks for independence and impartiality, fees, availability
- Procedural framework and rules: procedural precedent (model clauses); assistance drafting procedural orders, terms of reference; appointment of secretary; scheduling
- Experts: appointment of experts
- Management of proceedings: maintaining an archive (including secure intranet); acting as a conduit for communications; publicity; arranging site visits; travel assistance (entry visas, safe passage); hearing arrangements; managing fees and expenses
- Conclusion/termination of conciliation proceedings: drafting report or agreement; terms for transition (confidentiality); certification/authentication; “one-stop shop”
- Accreditation and training services/maintaining panels

HKIAC:

- offers hearing facilities free-of-charge for conciliations (and other proceedings) involving developing states listed on the OECD Development Assistance Committee List, where parties agree to a form of HKIAC administration
- accreditation and training services for mediators
- maintaining lists of qualified individuals and experts available for appointment
- support in obtaining entry visas to Hong Kong

PCA:

- Financial Assistance Fund
- Headquarters Agreement and Host Country Agreements (access to certain diplomatic immunities and privileges)

Observations and recommendations



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