



Compulsory Conciliation Hearing Summary Monday 29 August, 2016

In April, the Timor-Leste Government initiated compulsory conciliation under the United Nations Convention on the Law of the Sea (UNCLOS) with the aim of reaching an agreement on permanent maritime boundaries with Australia.

Timor-Leste has had no direct means to delimit a maritime boundary with Australia because in March 2002, two months before Timor-Leste's restoration of independence, Australia withdrew from the compulsory dispute settlement procedures related to maritime boundaries under UNCLOS, which excludes the possibility of any court or tribunal decision on maritime boundaries. Australia has also refused to negotiate permanent maritime boundaries on a bilateral basis.

This left Timor-Leste with no option but to initiate compulsory conciliation under UNCLOS. This is a process that allows an independent Conciliation Commission to assist the parties to seek a resolution of the maritime boundary dispute.

On Monday 29 August, Timor-Leste had the opportunity to make its case publicly before the Commission in a 90-minute presentation which was webcast live from the Permanent Court of Arbitration's website.

Presenting on behalf of Timor-Leste was Chief Negotiator Minister Xanana Gusmão, Minister of State and Presidency of the Council of Ministers, Agio Pereira, and Chief Executive Officer of the Maritime Boundary Office, Elizabeth Exposto. They were joined by legal Counsel for Timor-Leste, Professor Vaughan Lowe QC, Sir Michael Wood and DLA Piper.

Timor-Leste told the overall story of its efforts to pursue maritime boundaries, starting from the historical context and ending with a clear-cut explanation of how international law applies to Timor-Leste's maritime boundaries with Australia.

In short, the United Nations Convention on the Law of the Sea requires that a maritime boundary drawn between two neighbouring countries should reflect 'an equitable solution.' For neighbours with overlapping claims, international courts apply the 'equidistance/relevant circumstances' or 'three-stage' approach.

The three-stage approach typically starts by drawing a provisional equidistance line between two countries. The second step is to adjust that line to take account of 'relevant circumstances' which could distort the result (such as small, outlying islands) and the final step is to apply a non-disproportionality test.

Using this standard approach, Timor-Leste explained that the maritime boundary in the Timor Sea should be a 'median line', essentially half-way between Timor-Leste and Australia, with the side boundaries lying further to the east and west. A boundary drawn using this approach would place more oil and gas fields, including Greater Sunrise, within Timor-Leste's sovereign maritime area.

As part of its presentation, Timor-Leste also explained that the current resource-sharing arrangements in the Timor Sea are provisional arrangements which do not affect the delimitation of permanent maritime boundaries.

Australia challenged the competence of the Conciliation Commission. In its presentation, Australia argued that the 50-year moratorium within the Certain Maritime Arrangements in the Timor Sea (CMATS) treaty prevents Timor-Leste from discussing or negotiating permanent maritime boundaries. Australia spoke about the adequacy of the current treaty arrangements and the need for them to be respected and maintained. Australia argued that Timor-Leste was bringing the conciliation to avoid its existing treaty obligations.

Timor-Leste showed how Australia, in refusing to engage on maritime boundaries, had left little choice but to commence this conciliation. Timor-Leste pointed out that the task of a conciliation is to help parties to reach an agreement, and provisional treaties such as CMATS cannot prevent them from trying to do so. Timor-Leste went on to explain that the moratorium clause in CMATS was not intended to bar discussions or negotiations towards a maritime boundary agreement, which all coastal States have a right to pursue.

The Conciliation Commission is expected to deliberate on the issue of competence over the coming weeks.