



Maritime Dispute Resolution and the Future of the Asian Order



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Timor-Leste, Australia, and Asia's Contested Maritime Order

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On September 1, the Permanent Court of Arbitration in The Hague (as a registry for a conciliation commission established under UN the Convention on Law of the Sea or UNCLOS) [announced](#) that Timor-Leste and Australia have agreed on the central elements of a maritime boundary delimitation in the Timor Sea. The 'package' agreement would address the legal status of the Greater Sunrise gas field (and the establishment of a Special Regime to manage it) as well as a pathway to the development of the resource and the sharing of the resulting revenue.

The compulsory non-binding conciliation process was enacted in April of 2016--the [first time](#) in UNCLOS history--after the Timorese government terminated the 2006 Treaty on *Certain Maritime Arrangements in the Timor*

Sea (CMATS) with Australia. This treaty, along with the 2003 International Unitization Agreement for the Greater Sunrise, was [designed](#) to establish a framework for the joint development of the contested gas field while placing a 50-year moratorium on permanent maritime delimitation.

Despite the breakthrough, the conciliation process will still continue. The parties have yet to formalize the agreement and several issues remain to be negotiated. They will continue to meet with the commission and all the details of the agreement will remain confidential until then.

The long and complicated [history](#) between Timor-Leste and Australia over the Timor Sea offers two salient lessons for contemporary maritime order in Asia.

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First, the peaceful resolution of the dispute should give us reason to be simultaneously optimistic and cautious about the future of the region's maritime order.

First, it seems to be going against the regional trend. By one [account](#), between 1945 and 2000 Asia experienced more territorial disputes and armed conflicts over territory than any other part of the world. Specifically, there [have been](#) twenty-eight disputes over maritime boundaries in Asia with only about 14 percent of these completely resolved. That Dili and Canberra are committed to a peaceful resolution is therefore commendable.

But the complexity of the case also suggests that the prevalent strategic narrative that maritime Asia should be upheld by a 'rules-based order' cannot be considered in linear fashion, as if it is perfectly clear who has abided by or broke the rules. The arrival of UNCLOS in 1994 has in fact complicated the region's patchy and overlapping maritime domain. While UNCLOS provides the framework for a peaceful management of maritime disputes, it does not predetermine the processes or results. The regime does not indicate a [preferred method of delimitation](#) of states' economic exclusion zones (EEZ) and continental shelf, for example. Instead, it calls on the disputants to find an 'equitable solution' themselves.

Consider some of the legal complexities underpinning the Timor-Australia case. Up until today, there is no permanent maritime boundary between the two states. Timor-Leste is not a party to agreements made between Indonesia and Australia prior to its independence. Any subsequent agreements made since then have also been grounded on the temporary suspension of delimitation talks. Further, both Dili and Canberra start with different premises about the basis of their claims under international law.

On the one hand, Dili has consistently argued for a median or equidistant line between their opposite coasts according to UNCLOS. Indeed, equidistance has been the most popular method of delimitation, [accounting](#) for almost 89% of delimited maritime boundaries. On the other hand, Canberra preferred the

concept of 'natural prolongation', where the division of the Timor Sea would be based on two separate continental shelves separated by the Timor Trough. Prior to UNCLOS, this was a powerful argument under international law, as the ICJ had [noted](#) in its 1969 Judgement on the North Sea Continental Shelf cases.

However, Indonesia's occupation of Timor (1975-1999) and a series of agreements it signed with Australia during this period, created an [unusual situation over time](#): in the central and northern Timor Sea, Australia had jurisdiction over the continental shelf while Indonesia had jurisdiction over the overlying water column. While the series of agreements between Timor and Australia since 2002--from the Timor Sea Treaty to CMATS--reflect this complex arrangement, the asymmetrical starting points for both parties persisted.

To complicate matters, Australia withdrew from the jurisdiction of the ICJ and the International Tribunal on the Law of the Sea (ITLOS) regarding maritime boundary disputes in March 2002. In effect, Timor could not take Australia to court to obtain an independent, final, and binding judgment of its maritime boundaries. It is worth briefly juxtaposing Canberra's position and its rhetoric in the context of the 2016 South China Sea tribunal case, for [criticizing Beijing](#) over the importance of UNCLOS for peace and stability in East Asia.

Second, as UNCLOS does not provide clear-cut solutions to the complex maritime boundaries in the region, we should pay serious attention the various bilateral non-legal contexts as well. The road to the Timor-Australia conciliation process, after all, was paved with a mix of resource management pressures, domestic politics, and geo-political insecurities.

The resource-management negotiations center on the exploitation of the contested Greater Sunrise which [contains](#) an estimated 8.4 trillion cubic feet of gas and 295 million barrels of condensate, [worth](#) up to \$53 billion. While both sides equally claim the area, what these resources could bring home have different effects.

Unlike Australia, Timor is wholly dependent on petroleum revenue to survive. The Joint Petroleum Development Area (JPDA) in the Timor Sea (designated by the Timor Sea Treaty and CMATS) [contributed](#) more than 90 percent of government budget and 70 percent of its total GDP. Additionally, oil from the JPDA is [estimated](#) to be depleted by 2020 and the country's wealth fund will only last until 2025.

Little wonder the Timorese parliament and government have created new [political infrastructure](#) to deal with the dispute with Australia, indicating a broad consensus to confront Canberra on the issue. Additionally, key political elites in Dili have returned to the "[politics of mobilization](#)" to manifest public sentiment on this issue, claiming the maritime boundary is matter of sovereignty and necessary to complete Timor-Leste's independence. The expectation is that the same public diplomacy strategy that successfully led to Timor's independence in 1999 could once again work against Australia.

But the dispute did not become an [especially salient](#) political issue during the 2004 Australian election. Canberra's position during the negotiations also did not appear to be softened by Timor's political mobilization. Only recently have [divisions emerged](#) between the two largest Australian parties. The opposition Labor Party (ALP) [announced that it was prepared](#) to negotiate the maritime boundary and that if there was no agreement, an ALP government would be willing to submit to international adjudication or arbitration. Analysts have [argued](#) that this shift in the previously bipartisan consensus impacted the current government's position behind the scenes that led to Canberra's willingness to negotiate and conclude an agreement.

Geopolitically, there was also apparently [pressure](#) from Washington for a resolution of the dispute with the South China Sea looming in the background. Furthermore, there have been concerns over a possible "Cuba 2.0" as China is increasingly establishing a foothold in Timor. The country after all sits strategically between the Pacific and Indian oceans. Aside from possible military presence, Beijing has

increased its economic influence as Dili's relations with its traditional donors, including Australia, flounder.

China has been making [overtures](#) to Timor through the Asian Infrastructure Investment Bank (AIIB) as Chinese and Timorese companies [built](#) office buildings for Timor-Leste's Ministry of Foreign Affairs, Ministry of Defense, and the Timor-Leste Defense Force, as well as the Presidential Palace. Xanana Gusmao, Timor's independence hero and chief negotiator in the maritime case against Australia, [saw](#) China as an "old friend". Former Timorese President Ramos-Horta also [believed](#) that China is an alternative to Japanese and American aid.

And yet, Indonesia might be the wild card here that "unscrambles the omelet" of the maritime agreements between Jakarta and Canberra, according to former foreign minister Alexander Downer. For over a decade, Australian authorities have been concerned that agreeing to an equidistance line-based boundary may have a [knock-on effect](#) to its existing boundaries with Indonesia. While an automatic 'unscrambling' of agreements is unlikely, there is concern Jakarta's involvement might complicate permanent boundary talks.

In conclusion, the September 1st breakthrough between Dili and Canberra should be cautiously welcomed. It is a positive development whenever a maritime dispute could be resolved peacefully. However, the bilateral, historical, and domestic as well as geo-political contexts of the dispute should also give us pause before aggressively championing a 'rules-based order' in Asia's maritime domain.



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