



Maritime Dispute Resolution and the Future of the Asian Order



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Despite the Odds: Timor-Leste’s Quest to Avoid a Debt Trap Dilemma and Achieve Democratic Stability

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The successful mediation of Timor-Leste’s and Australia’s contested maritime boundary, announced by the Permanent Court of Arbitration in The Hague roughly one year ago in March 2018, is one in a string of recent positive developments for this small, burgeoning democracy. The promising conciliation process comes atop a fractious yet ultimately peaceful political standoff in 2017-2018. It is also welcome news given the country’s ongoing efforts to escape the resource curse tied to an excessive dependency on offshore oil and gas reserves. Taken together, these interlinked trendlines will determine whether Timor-Leste emerges as a robust democracy with a diversified economy, succumbs to political

infighting, burdened by an overreliance on limited natural resources, or – worse – winds up as the latest victim of China’s debt trap diplomacy.

The country successfully navigated a political crisis last year when a coalition of political parties under the banner Change for Progress (AMP) won elections in May. In 2017, a minority government had failed to gain enough seats, setting in motion a tense standoff between competing factions within Timorese politics. Rather than leading to violence or unrest as in the past, the outcome, following fresh elections in May 2018, further consolidated Timor-Leste’s democratic stability and electoral precedent.

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Yet the country confronts the dilemma of a “resource curse” and the looming possibility of Chinese debt. According to the CIA World Factbook, oil accounts for 90% of government revenues, stressing the urgent need to stimulate alternative sources of economic growth.¹ With international investors reluctant to back Dili’s plans for onshore oil processing of its offshore oil and gas reserves, Timorese politicians are eyeing China as a potential source for much-needed investment. Yet analysts warn of the possible strings attached to Chinese loans and the leverage Beijing might subsequently gain over the tiny but strategically positioned democracy.²

This confluence of domestic and international drivers will have a determining effect on the country’s political and economic stability. Where the three issue areas (maritime delimitation under international law; democratic consolidation via free and fair elections; resource dependency and Chinese investment) intersect is in the question of Timor-Leste’s national identity. Can the country navigate these challenges and opportunities to become a resilient democracy with an independent foreign policy and good governance standards? Or will it gravitate toward a less fortunate trajectory as a resource-dependent country mired in poverty? In a worst-case scenario, Timor-Leste may come to resemble other small countries in the region such as Sri Lanka or the Maldives which have struggled with the consequences of Chinese debt traps, in the form of loans and investment undermining their sovereignty and democratic governance.

Australia-Timor Maritime Boundary Resolution

It is difficult to overstate the significance of the mediated resolution to the Australia-Timor-Leste maritime boundary dispute. The conciliation serves as a positive example for small countries seeking to use international law to their advantage in dealing with major powers. The case is also a timely arrow in the quiver of the Permanent Court of Arbitration in The Hague (and UN Convention on the Law of the Sea (UNCLOS) more broadly), the credibility of which had been badly shaken by Beijing’s decision to reject its decision

regarding territorial claims in the South China Sea.

Moreover, as Lyle Morris notes in his contribution to this paper series, this is the first time that an UNCLOS member has invoked “compulsory conciliation,” as opposed to arbitration.³ The recent cases of Bangladesh vs. Myanmar (2012) and Philippines vs. China (2016) both resulted in binding arbitration, while the outcome of the Australia-Timor-Leste case is one of “amicable delimitation.” Since Canberra withdrew from the International Tribunal for the Law of the Sea (ITLOS) in 2002, Timor-Leste was unable to initiate binding arbitration. However, according to UNCLOS Annex V, Dili was able to invoke compulsory conciliation without necessitating arbitration, as mentioned above.⁴

Furthermore, the treaty expands Dili’s rights to underwater oil and gas reserves, over which Canberra had laid larger claims prior to mediation.⁵ The agreement confers enormous advantages to Dili, provided it is able to deliver on plans to extract and refine those reserves. Thus, the ability of tiny Timor-Leste to compel Australia to negotiate, despite the fact that Canberra had previously withdrawn from ITLOS, has implications well beyond its waters. Ideally, the case serves as precedent to other small countries finding themselves involved in boundary and/or resource sharing disputes with larger and more powerful nations.

Timor-Leste’s Democratic Consolidation

In June 2018, President Francisco Guterres swore in former revolutionary leader and president Taur Matan Ruak as prime minister following a tense round of elections in May.⁶ A minority government led by the Fretilin party the previous year failed to form a coalition following elections in July 2017. In response to Fretilin’s narrow victory in the polls, independence hero Xanana Gusmao of the National Congress for Timorese Reconstruction (CNRT) party vowed to form a strong opposition (Gusmao was prime minister from 2012-15 while Ruak was president). In January President Guterres dissolved parliament and called for fresh elections, which ultimately led to the AMP

coalition winning 43 of 65 legislative seats.

The new government faces an array of problems, most notably a prominent cast of characters well known among the political establishment and voters for their revolutionary credentials. An older generation of independence heroes turned politicians has dominated Timor-Leste's political landscape since independence in 2002. Like many young democracies, personality politics have prolonged divisions and often impeded progress on much-needed socio-economic development. While these political figures retain broad political support, increasingly, Timorese citizens say they believe it is time for Timor-Leste to transition to a new generation of political leadership.⁷ Economic management of oil and gas revenues (which account for 85 percent of state revenues and nearly half of total GDP)⁸ and the national budget also represent important areas of policy debate. The national budget in particular remains a thorny issue given Timor's fractious political divide. Prime Minister Ruak presented a draft budget to the parliament in December, and it was passed in February following some closed-door negotiations, leaving details vague pending an upcoming cabinet shuffle expected in the next month or two.⁹ The president (though largely a ceremonial role) comes from a different political party (Fretilin) than the majority coalition, AMP, and Fretilin may benefit from the cabinet reshuffle as part of the political horse-trading involved in the budget process.

Despite all these squabbles, Timor-Leste's democracy has proven stable enough to weather multiple political hiccups. New survey data released by the International Republican Institute (IRI) shows that most Timorese citizens believe their country's political stability will improve, and that their government is doing a good job of managing affairs of state.¹⁰ Each election further cements the precedent of settling disputes at the ballot box, and the latest round of high-wire political drama only strengthens Timor's democratic resiliency. In fact, as the IRI survey data shows, an overwhelming majority of voters are now more interested in politics as a result of the 2017-2018 election debacle—

a promising sign for active democratic participation. Nevertheless, there are potential threats to the country's long-term democratic sustainability.

First, dependency on oil and gas reserves is politically fraught. As Evan Laksmana points out in this paper series, Timor-Leste's petroleum fund is only expected to last until 2025, while current projections hold that available reserves in the Joint Petroleum Development Area (delineated with Australia in 2006) will be exhausted by 2020.¹¹ Most citizens strongly support the way the government is spending petroleum fund resources. Nevertheless, according to new polling data, more Timorese say that their country is heading in the wrong direction as opposed to the right direction, and compared to recent years, this number has increased.¹² Timorese leaders must stimulate alternate industries for economic growth if they are to provide for the wellbeing of their 1.3 million citizens.¹³ At present, some 70 percent of Timorese rely on agriculture for their livelihood.¹⁴ These figures do not bode well for lasting prosperity or economic diversification, and declining growth (or national bankruptcy) would trigger a state of national emergency. Eco-tourism, for instance, could bring more international travel to Timor-Leste and ideally would focus on preserving the small country's rich biodiversity. An influx of tourists could support local jobs in the food and beverage, hotel, and services industries. Another option for the developing nation to consider is investing in advanced agriculture practices such as specialized coffee growth, an industry that has demonstrated considerable success in Indonesia.

Chinese Influence

Second and relatedly, rising Chinese influence could have destabilizing effects on Timorese politics. As Timorese politicians struggle to find investors for a liquified natural gas pipeline and onshore processing, a plan proposed and developed by opposition leader and former prime minister Xanana Gusmao, they may end up turning to China as lender of last resort. Western oil corporations such as ConocoPhillips and Royal Dutch Shell have deemed the project too risky,¹⁵ while

Australia remains ambivalent.¹⁶ Gusmao, who is also Minister of Planning and Strategic Investment, has made the issue a political one by championing the project as a matter of national sovereignty and has appealed directly to the Timorese people on the grounds of national pride.¹⁷

Increasingly, Timorese politicians have appealed to Beijing as a friendly nation which might hold the power to “bail out” Timor-Leste from its own unsustainable budget.¹⁸ Former President Jose Ramos-Horta explained in 2017 that if Australia, Japan, or the United States are unable to provide the support Timor-Leste needs to develop its economy, “obviously there is an alternative. The alternative today is always China.”¹⁹

Beijing has also courted Timor-Leste through its Asian Infrastructure Investment Bank (AIIB). Chinese companies have built several government buildings for Timor-Leste: the Presidential Palace, the Ministry of Foreign Affairs, Ministry of Defense, and the Timor-Leste Defense Force.²⁰ Furthermore, according to journalist David Hutt, between 2009-2016, Timor-Leste granted Chinese companies building contracts worth more than \$525 million.²¹ A large number of Chinese expatriates have moved to the country to fulfill these construction and development projects, often fueling resentment from Timor-Leste’s impoverished population (the poverty rate remains high at 41.8%, according to the World Bank).²² Many Timorese people view Chinese living in the country with a degree of suspicion or resentment, believing they are just there to make money.²³ While most Timorese have a favorable opinion of China and expect relations with Beijing to continue to improve, according to opinion polls conducted by IRI, China falls well behind the United States, Australia, Japan, and Indonesia, among other countries, in surveys of Timorese attitudes toward foreign countries.²⁴

Yet China’s influence is incontrovertibly on the rise. On top of the steady flow of Chinese development finance and imports, Timor-Leste has purchased two patrol boats from Beijing and requested more, in addition to a request for helicopters.²⁵ However, former President Ramos-Horta has expressed

skepticism toward claims of rising Chinese influence: “It’s a cliché and it’s silly.... We are ready to increase our cooperation with China but in a way that is mutually beneficial.”²⁶ Ramos-Horta underscores that while cooperation with Beijing is deepening, “Australia and Indonesia are equally important for Timor-Leste” and these relationships “will expand in the future.”

One long-term development practitioner in Timor-Leste conveyed to me how Timorese have seen other countries’ experience with China and have their “eyes wide open” with regard to Chinese investment.²⁷ After all, they realize that Beijing could “buy the place.” Most people in Timor-Leste would prefer western aid and investment, so Timorese politicians are “playing the China card” in order to benefit from both sides.

Conclusion

The positive trendlines analyzed above (the peaceful resolution of the Australia-Timor-Leste maritime boundary dispute; and the consolidation of Timor-Leste’s electoral democracy) indicate the important contributions of rule of law to the country’s regional stature and domestic governance (and – equally importantly – vice versa). The third and final issue area (economic dependence on dwindling natural resources as well as potential reliance on Chinese investment) holds large implications for the country’s ability to provide continued growth and opportunity for its young population, and for Timor’s governance, transparency, and attractiveness to international investors. In particular, decisions regarding Chinese investment in the oil and gas sector may determine whether the country escapes the “resource curse” or becomes the latest example of so-called Chinese “debt trap diplomacy,” with broader repercussions for sovereignty, rule of law, and geopolitical competition.

A growing list of scholars and analysts have been collecting data on the methods of China’s debt leverage and conditional loans and investment.²⁸ Beijing’s “debt trap diplomacy” often manifests in mega-infrastructure projects such as maritime ports, which poorer countries cannot afford

to pay back and so default on loans, thereby ceding sovereign rights to China. One prominent example is the Hambantota Port project in Sri Lanka, where former President Mahinda Rajapaksa invited unsustainable levels of Chinese loans, which the successor government of Maithripala Sirisena struggled to pay back before eventually ceding territorial control of the port to China for 99 years.²⁹ The Hambantota Port is merely one cautionary example of many for Timor-Leste's government to consider when accepting Chinese investment.

Since its independence in 2002, Timor-Leste has demonstrated remarkable democratic resilience and a deep well of resourcefulness. While the country confronts daunting political and economic headwinds, its headstrong capacity for national renewal may steer it through toward a prosperous and stable future. A few other regional trendlines bear mentioning.

The path toward Timorese membership in the ten-member regional grouping, the Association of Southeast Asian Nations (ASEAN), is now clear and awaits formal approval. The country applied more than six years ago, and ASEAN has traditionally admitted members without extensive preconditions.³⁰ Timor-Leste could have a significant positive impact on the group, especially in light of regional democratic regression and intra-regional development.

With regard to the first, Southeast Asia has experienced a region-wide decline in democratic governance in recent years.³¹ Thailand's 2014 coup has mired the country in military dictatorship; Myanmar has been struggling to move past entrenched military rule since partial democratization in 2011 and has been the theater of vicious spates of ethnic cleansing; Cambodia has seen massive setbacks to multiparty competition and freedom of the press; and in the Philippines human rights and independent media have suffered large setbacks since Rodrigo Duterte came to power in 2016. Timor-Leste's addition to ASEAN would represent a bulwark for the region's democratic proponents and could introduce much-needed change to internal institutional dynamics within the group.

ASEAN continues to make strides toward increased economic connectivity and broader economic growth. With lowered barriers to trade and investment, streamlined visa requirements, information sharing, enhanced intraregional travel and education exchange, Timor-Leste is well-positioned to benefit from regional gains and the connectivity wave. If the young democratic polity can overcome the divisions induced by its highly factionalized politics, and successfully steer past the various challenges outlined in this paper, it may escape the troubling fate of so many resource-based economies now subject to China's predatory brand of economic policy, and act as a positive example for rule of law and international stability—both within the region and beyond.

Endnotes

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