



Australian Government
Attorney-General's Department
**International Law & Human
Rights Division**

13/7327-02

1 October 2013

H E Mr Jose Luis Guterres
Minister of State for Foreign Affairs and Cooperation
Ministry of Foreign Affairs and Cooperation
Avenida de Portugal
Dili
Timor-Leste

Dear Minister

Arbitration under the *Timor Sea Treaty*

I refer to the arbitration initiated by Timor-Leste on 23 April 2013 pursuant to the *Timor Sea Treaty between the Government of East Timor and the Government of Australia* (Timor Sea Treaty).

I attach a letter to Australia's party-appointed arbitrator, Professor Michael Reisman, advising that Australia approves the selection of Professor Tullio Treves as the third arbitrator (and Chairman) of the Arbitral Tribunal. The letter has been copied to Timor-Leste's party-appointed arbitrator, Lord Collins of Mapesbury.

The letter also provides contact details for the Agent for Australia, Mr Greg Manning. In addition, I inform you that Australia will be represented in this matter by Counsel: the Solicitor-General of Australia, Mr Justin Gleeson SC, and Professor James Crawford AC SC of Matrix Chambers, London.

Should Timor-Leste also approve Professor Treves' appointment by 4 October 2013, the Arbitral Tribunal will be fully constituted. On that basis, we make the following proposals regarding the organisation and conduct of the arbitration.

Timor-Leste and Australia have previously agreed to accept the administrative facilities of the Permanent Court of Arbitration (PCA), should the Arbitral Tribunal so decide. There are additional procedural and administrative issues on which we propose that the Parties seek to reach agreement. If we can reach such agreement, we will be able to provide joint advice and assistance to the Arbitral Tribunal, and ensure the efficient conduct of the proceedings. In particular, we propose that Timor-Leste and Australia seek to agree on a preferred location for the arbitration, and rules of procedure for the conduct of the arbitration, and advise the Tribunal of these views in advance of its first meeting.

Location for the arbitration

As you are aware, pursuant to the Timor Sea Treaty, the Arbitral Tribunal shall convene 'at such time and place as shall be fixed by the Chairman of the Tribunal' and, thereafter, 'the Arbitral Tribunal shall determine when and where it shall sit'. Nonetheless, it is common practice for an arbitral tribunal to seek the views of the Parties regarding where the arbitration should take place.

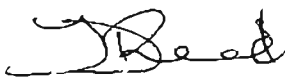
In Australia's view, the balance of convenience would favour a regional location, and we suggest that the best option would be Singapore. In addition to being in the Asia-Pacific region, Singapore is a convenient travel hub that can easily be reached from both Timor-Leste and Australia, as well as by the Arbitral Tribunal and Counsel located in Europe and America. Furthermore, the PCA has a venue in Singapore which is suitably sized and equipped for the conduct of arbitral proceedings, and is available free of charge, making the organisation of the proceedings more straightforward, and reducing the costs to both Parties.

Rules of procedure

As provided in Annex B of the Timor Sea Treaty, subject to any agreement between Australia and Timor-Leste, the Arbitral Tribunal shall determine its own procedure. In this regard, we propose that Timor-Leste and Australia seek to reach agreement on rules of procedure in advance of the first meeting with the Tribunal, to ensure the efficient conduct of the proceedings. To facilitate discussion and agreement, Australia has produced a draft set of rules of procedure for Timor-Leste's consideration (attached).

The draft rules of procedure are based on publicly available rules of procedure adopted for other *ad hoc* inter-state arbitrations facilitated by the PCA, and on the PCA *Optional Rules for Arbitrating Disputes Between Two States*, adapted to reflect the circumstances of an arbitration under the Timor Sea Treaty. Subject to the views of the Government of Timor-Leste, we suggest that it may be convenient for Counsel to meet and discuss the rules of procedure in the first instance.

Yours sincerely



John Reid

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Australian Government
Attorney-General's Department
**International Law & Human
Rights Division**

13/7334

1 October 2013

Professor Michael Reisman
Yale Law School
PO Box 208215
New Haven CT 06520
United States of America

By email: michael.reisman@yale.edu

Dear Professor Reisman

Approval of Professor Tullio Treves as third arbitrator

I am pleased to advise that the Government of Australia approves the selection of Professor Tullio Treves to act as the third arbitrator (and Chairman) of the Arbitral Tribunal in the proceedings initiated by Timor-Leste on 23 April 2013 under the *Timor Sea Treaty between the Government of East Timor and the Government of Australia* (Timor Sea Treaty). Should Timor-Leste also approve the appointment of Professor Treves by 4 October 2013, the Arbitral Tribunal will be fully constituted. On that basis, we make the following proposals.

Timor-Leste and Australia have both previously indicated their willingness to accept the services of the Permanent Court of Arbitration (PCA) as the administering authority for this arbitration should the Tribunal so agree, and the Notice of Arbitration and Response have both been provided to the PCA. Accordingly, Australia will forward this letter to the PCA for information, and would be happy for the Tribunal to instruct the PCA to make the necessary administrative arrangements concerning the conduct of the arbitration.

I note that, pursuant to Annex B of the Timor Sea Treaty, the Arbitral Tribunal shall convene at such time and place as shall be fixed by the Chairman of the Tribunal, and thereafter, the Arbitral Tribunal shall determine when and where it shall sit. In Australia's view, a regional location would be suitable and appropriate for both parties, and we suggest that the Tribunal consider conducting the arbitration in Singapore, where the PCA has a suitable venue available free of charge. Australia would be pleased to consult with the Chairman and the Tribunal, as appropriate and convenient, on this issue.

I also note the provision in Annex B of the Timor Sea Treaty that, subject to any agreement between Australia and Timor-Leste, the Arbitral Tribunal shall determine its own procedure. In this regard, we will consult with Timor-Leste and seek to reach agreement on rules of procedure in advance of the first meeting with the Tribunal. Of course, we would also be pleased to consult with the Tribunal on this issue.

The Agent for Australia will be Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department. Mr Manning's contact details are:

Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

Email: greg.manning@ag.gov.au
Phone: +61 2 6141 4109
Fax: +61 2 6141 3486

Mr Manning will be on leave until 31 October 2013. In his absence, correspondence can be directed to me as acting Agent.

I have copied this letter to Lord Collins and the Government of Timor-Leste.

Please do not hesitate to contact me should you require any further information.

Yours sincerely



John Reid

Acting Agent for Australia
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Draft Rules of Procedure
Timor-Leste v Australia

Whereas the Democratic Republic of Timor-Leste ('the Claimant') and the Commonwealth of Australia ('the Respondent') are Parties to the *Timor Sea Treaty between the Government of East Timor and the Government of Australia*, done at Dili on 20 May 2002 ('the Timor Sea Treaty')

Whereas the Claimant has invoked Article 23 of the Timor Sea Treaty to commence proceedings against the Respondent by Notice of Arbitration dated 23 April 2013 ('the arbitration')

Whereas in accordance with Annex B(a)(i) of the Timor Sea Treaty, the Claimant has appointed the Right Honourable Lord Collins of Mapesbury as arbitrator and the Respondent has appointed Professor Michael Reisman as arbitrator, [and the two Party-appointed arbitrators have in turn selected Professor Tullio Treves as chairman of the Arbitral Tribunal]

Whereas pursuant to Annex B(f) of the Timor Sea Treaty, the Arbitral Tribunal shall, subject to any agreement between Australia and Timor-Leste, determine its own procedure

The Claimant and the Respondent (together, 'the Parties') have decided that the arbitration shall be conducted in accordance with the following rules ('the Rules'):

Article 1 ***Scope of Application***

1. The arbitration shall be conducted in accordance with Article 23 and Annex B of the Timor Sea Treaty and these Rules.
2. To the extent that any question of procedure is not expressly governed by the Timor Sea Treaty or these Rules and the Parties have not otherwise agreed, that question shall be decided by the Arbitral Tribunal, taking into account, as appropriate, the views of the Parties, the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States, and relevant international arbitral practice.
3. These Rules are entirely without prejudice to the position of the Parties on questions of jurisdiction and competence over the dispute.
4. The International Bureau of the Permanent Court of Arbitration at the Hague ('the International Bureau') shall serve as registry for the arbitration and provide secretariat services.

Article 2 ***Notice and Calculation of Periods of Time***

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received by the International Bureau or by a Party when it has been delivered to the International Bureau or to the Agent of the Party appointed pursuant to Article 4.
2. For the purposes of paragraph (1), 'delivered' includes delivery by electronic means. If written pleadings are delivered by a Party by electronic means, that Party shall also send a hard copy of the pleadings (including all documents annexed thereto) on the following day by courier to each member of the Arbitral Tribunal, the International Bureau, the Agent of the other Party, and to counsel of the other Party at their respective addresses.
3. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such a period is an official holiday or a non-work day in the State of the Party or in the Netherlands, the period is extended until the first work day which follows. Official holidays or non-work days occurring during the running of the period of time are included in calculating the period.

Article 3 Representation and Assistance

1. Each Party shall be represented by an Agent and, if it so decides, one or more co-Agents who may be appointed by written notification at any time. The Parties may also be assisted by counsel and other persons of their choice.
2. The Agents of the Parties are:
For the Claimant: [to be advised]
For the Respondent: Mr Greg Manning (First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department)

Article 4 Arbitral Tribunal

The Arbitral Tribunal consists of the following members:

- [Professor Tullio Treves] (approved by the Parties and appointed as Chairman)
- Professor W. Michael Reisman (appointed by the Respondent)
- Lord Collins of Mapesbury (appointed by the Claimant)

Article 5 General

1. Subject to the Timor Sea Treaty and these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the Parties are treated with equality and that at each stage of the proceedings each Party is given a full opportunity of presenting its case. The Arbitral Tribunal, in exercising its discretion, shall conduct the arbitration so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the Parties' dispute.
2. All communications to the Arbitral Tribunal by one Party shall be communicated by that Party to the other Party and the International Bureau.

Article 6 Place and language of arbitration

1. The place where the arbitration is to be held shall be [to be determined by the Arbitral Tribunal].
2. The language of the arbitration is English.

Article 7 Phases of the Arbitration

1. There shall be a single round of written proceedings consisting of a Statement of Claim by the Claimant and a Defence to the Statement of Claim by the Respondent.
2. The Statement of Claim shall include the following particulars: a statement of the facts supporting the claim; submissions on the law; and the relief or remedy sought. The Defence shall reply to the particulars in the Statement of Claim and any submissions by the Respondent in answer thereto.
3. The written proceedings shall have annexed to them certified copies of all documents on which the Party filing them seeks to rely and a signed written statement by each witness whose evidence on questions of fact or expert opinion is relied on. Parties need not annex or certify copies of documents which have been published and are readily available to the Arbitral Tribunal and the other Party in English. When a document or statement is not in English, it shall be accompanied by a certified translation.
4. Unless the Arbitral Tribunal otherwise decides, no further document or witness may be tendered by a Party after the close of the written proceedings.

Article 8 Evidence

Each Party shall have the burden of proving the facts relied on to support its claim or defence. The Arbitral Tribunal shall determine the admissibility, relevance and weight of the evidence offered.

Article 9 Witnesses

1. At least [four weeks] before the oral hearing, each Party shall provide notification of the names and addresses of the witnesses (including expert witnesses) it intends to present, the subject upon and the languages in which such witnesses will give their testimony.
2. No expert or witness of fact may be heard unless he or she has provided a signed written expert report or statement, which shall form part of the written pleadings as set out in Article 7(3).
3. At least [two weeks] before the commencement of oral hearings, each Party shall provide notification of the witnesses, including experts, tendered by the other Party which it wishes to question. Failure to question a particular witness or expert shall not be deemed an admission of the truth or relevance of the statement of that witness or expert.
4. If a witness or expert is not tendered for questioning, despite a request under paragraph (1), then the evidence of that witness or expert shall be deemed to have been withdrawn.
5. Before testifying, witnesses (other than expert witnesses) shall not be in attendance at the hearing.
6. Subject to these Rules, the Arbitral Tribunal may determine the manner in which witnesses and experts are examined. Witnesses and experts may be examined, cross-examined and re-examined, and subject to questioning by members of the Arbitral Tribunal.

Article 10 Conduct of hearings

1. Having regard to Annex B, paragraph (i) of the Timor Sea Treaty, the Arbitral Tribunal, after consultation with the Parties, shall establish a timetable for the hearings, which shall be directed to exploring the remaining issues in dispute.
 - a. Issues of jurisdiction, admissibility and merits will be dealt with in a single hearing.
2. Subject to these Rules, the order in which the Parties will be heard, the method of handling the evidence and examining any witnesses and experts, and the time allotted for oral presentations on behalf of each Party shall be settled by the Arbitral Tribunal after consultation with the Parties.
3. The International Bureau shall make arrangements for the translation into English of oral statements not given in English made at the hearings and for a record of the hearings in English.

Article 11 Confidentiality

1. All written and oral pleadings, documents and evidence submitted in the arbitration, verbatim transcripts of meetings and hearings, and the deliberations of the Arbitral Tribunal, shall remain confidential unless otherwise agreed by the Parties.
2. The hearings shall not be open to the public, unless otherwise agreed by the Parties.
3. The award may be made public subject to such redactions as are approved by the Arbitral Tribunal after hearing from the Parties.