

## Regarding talks between East Timor and Australia

Fri, 11 Dec 2015. From: Asia Pacific Analysis <asiapacificanalysis@gmail.com>

This is some analysis comparing views attributed to the Australian Ambassador in the posting from the Australia Timor-Leste Business Council [9 December 2015] and what is on the public record concerning the “talks” between Australia and Timor-Leste [September 2014 and March 2015]. We think it is important to recall the facts here and avoid the spin.

Kind Regards  
Asia Pacific Analysis

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It is with some interest we reviewed this release by the Australia Timor-Leste Business Council recounting their meeting with H.E. Peter Doyle the Ambassador of Australia to Timor-Leste.

Regardless of what your view may be on Timor-Leste’s desire to settle maritime boundaries, some of the views attributed to the Ambassador deserve scrutiny as they seem to contradict the statements of his own Minister, the Hon Julie Bishop MP.

We note the release recounts:

“The Ambassador informed that following the consultation between the Commonwealth of Australia and Democratic Republic of Timor-Leste in regard to establishing a framework to establish a maritime boundary between Australia and Timor-Leste, which at the conclusion of the timeframe set by Timor-Leste occurred in March 2015 and that a framework for future consultation had not been reached. The Ambassador informed that nothing had been determined and it was in Timor-Leste’s “court” to resolve and not the Australian Government.”

As background, in August 2014 the Government of Australia asked the Government of Timor-Leste to suspend two legal cases it had in process to allow dialogue to “resolve differences amicably.” Australia was particularly concerned about a highly public case before the International Court of Justice that had already delivered a set of provisional measures that reflected badly on its behavior.

Statements made by Timor-Leste’s Government Spokesperson note that Timor-Leste expected a genuine dialogue on maritime boundaries during the suspension.

A release dated 3 May 2015, states

“In September, 2014, the Foreign Minister of Australia, the Hon Julie Bishop MP, and Prime Minister of Australia the Hon Tony Abbott MP, requested a 6-month adjournment to the ICJ hearings and TST Arbitration to allow the two countries “to seek an amicable settlement”. Timor-Leste agreed to Australia’s request with the proviso that bilateral discussions during the adjournment period should produce a roadmap for structured talks on the delimitation of permanent maritime boundaries between Timor-Leste and Australia. The adjournment period expired on 3 March 2015. A schedule for bilateral talks on maritime boundaries between the two countries remains undefined.”

Australia's Minister for Foreign Affairs, the Hon Julie Bishop countered the statement of the Government of Timor-Leste by denying “an agreement to engage in bilateral talks on maritime boundaries had been part of the deal last year to adjourn the ICJ matter.” In another article she was reported as saying “a deal to produce a structured plan for bilateral talks on a maritime boundary was never part of the agreement to suspend the legal proceedings.”

Considering this background and these statements in relation to the view attributed to the Ambassador we wish to make three observations:

Firstly the characterization of the consultation as being to “establish a framework to establish maritime boundaries” contradicts the statements of his Minister Julie Bishop.

Secondly the “time frame” was not set by Timor-Leste but requested by Australia.

Thirdly it is disingenuous to say the ball is in Timor-Leste’s court.

Australia made reservations in 2002 removing itself from the compulsory dispute mechanisms of the United Nations Convention on the Law of the Sea relating to maritime boundary delimitation to deny Timor-Leste access to resolutions using the International Court of Justice or the International Tribunal of the Sea.

Extending the tennis metaphor apparently put by the Ambassador, Australia effectively removed the independent umpire from the game.

When the reservation was made the Australian government explained it prefers to negotiate maritime boundary issues bilaterally.

And yet, it seems clear from the statements by Foreign Minister Bishop and the Government of Timor-Leste, that the Government of Australia is unwilling to negotiate, or even begin a substantive dialogue with its northern neighbor on maritime boundaries.

To return to the metaphor, Australia is not even on the court, they have taken the bat and ball and gone home.

Perhaps the idea “that the ball is now in Timor-Leste’s court” is evidence of an error in communication within the Department of Foreign Affairs and Trade. Perhaps it is a new spin in the DFAT media strategy regarding this thorny issue, an approach to make Australia seem open and friendly and ready to proceed.

One thing is certain, at this time

Timor-Leste is alone on the maritime boundary “court”

The umpire has been knocked out

And the other player is unwilling to step into the game.

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### **On Dec 11, 2015, Charles Scheiner of La’o Hamutuk replied:**

Thanks to Asia Pacific Analysis for this insightful summary of the media record on Australia's non-negotiating position.

During the last five weeks, I've talked with a half-dozen officials from the Australian Department of Foreign Affairs and Trade on three different occasions. Their consistent position can be summarized as “Australia won't come on the field because Timor-Leste says it wants to win.” If such a view were widespread in non-metaphorical sports, not many matches would take place.

More specifically, Australian diplomats assert that Timor-Leste's position is inflexible, and that Dili's advocacy for a median-line boundary means that there is no point in entering into negotiations, as Timor-Leste is rigid and will not concede anything during discussions. They seem not to understand that public airing of a desired outcome has little to do with the compromises that always occur when two sides sit down together. I'm not a diplomat, but I believe that positions are usually softened during dispute resolution processes, not before they begin.

Observers can speculate about which side would be more inflexible if talks start, or who would gain most from a third-party judicial process, but only one party is refusing to participate in any sort of negotiations or arbitration.

For more and updated information on this controversy, see <http://www.laohamutuk.org/Oil/Boundary/CMATSindex.htm>.