

Deja vu for Timor as Turnbull neglects boundary talks

Frank Brennan | 20 March 2016

When Malcolm Turnbull became prime minister six months ago, our Timorese neighbours thought there might be an opportunity to draw a line on the past and to kick start the negotiation of a permanent maritime boundary between Australia and Timor-Leste. For the moment, they find themselves sadly mistaken.

Rui Maria de Araujo, the fairly new prime minister of Timor-Leste, wrote to our very new prime minister Malcolm Turnbull inviting him to turn a new leaf in the Australia-Timor relationship. It was not to be.

However the Timorese should not lose heart. They are well used to winning the hearts and minds of Australians even when Australian political leaders appear to be tone deaf to their pleas. This time they have convinced the Labor Party about the justice of their cause, and there is every chance that the Australian community will rally behind them after the federal election.



Behind the scenes, there is still plenty of legal intrigue about Australia's 2004 bugging of the Timor cabinet offices during the negotiation of CMATS, the most recent treaty delaying the negotiation of a permanent maritime boundary.

Australia has refused to issue a passport to the ex-ASIS officer, 'Witness K', who was involved in the bugging and who is happy to give evidence for the Timorese before an international tribunal. It would be best for both sides if the neighbour's dirty laundry were not put on public display.

Under CMATS, the two countries agreed to put the negotiation of a permanent maritime boundary on hold for up to 50 years. The hope was that a business plan for the exploitation of the Greater Sunrise oil and gas deposit in the contested Timor Sea could be finalised within six years and the mining completed before the need to negotiate a maritime boundary.

This was not to be. It is now nine years since CMATS came into effect and there is still no prospect of an agreed business plan.

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act in the Timor Sea."

The Timorese have a sense of *deja vu* with Australian politics. Back in 2002, the Howard Liberal-National Party Government decided to withdraw from the jurisdiction of the International Court of Justice in relation to the determination of maritime boundaries. The Labor Party in opposition was not able to commit to a reversal of that decision.

When Howard's Foreign Minister Alexander Downer then rushed the CMATS treaty through the parliamentary review process cutting corners with indecent haste, the Labor Party made no commitment to review the treaty when elected to government.

Labor prime ministers Gillard and Rudd never committed to negotiating a maritime boundary nor to resubmitting to the jurisdiction of the International Court of Justice.

At last year's ALP National Conference, the Timorese and their supporters had a partial win, breaking the bipartisan Australian consensus on delaying the negotiation of a maritime boundary. The ALP party platform was amended to read:

In Government, Labor will enter into structured engagement with Timor-Leste to negotiate the settlement of maritime boundaries between our two countries. Labor reaffirms our commitment to a rules-based international system, underpinned by a philosophy of multilateralism and institutions like the International Court of Justice (ICJ).

In light of this, in Government Labor will review its reservations to the United Nations Convention on Law of the Sea (UNCLOS) to the settlement of maritime boundary disputes through the ICJ and the International Tribunal of the Law of the Sea (ITLOS).

This was only a partial win because though there was a fresh commitment to commencing negotiations for a permanent maritime boundary, the further commitment was only to review the reservations to UNCLOS first put in place by Alexander Downer.

On 18 January, Turnbull went to Washington and lectured the Americans about the virtues of UNCLOS and the desirability of the Americans and the Chinese subjecting themselves to international law.

Referring to the rising tensions in the South China Sea, Turnbull told his audience that 'unilateral actions are in nobody's interest. They are a threat to the peace and good order of the region on which the economic growth and national security of all our neighbours depend. These differences should be resolved by international law.'

Obviously he had not considered Australia's long term stand on the Timor Sea.

The real breakthrough for the Timorese came when Tanya Plibersek, the Deputy Leader of the Opposition and the Shadow Minister for Foreign Affairs, told the National Press Club on 10 February:

If we want to insist that other nations play by the rules, we also need to adhere to them. The maritime boundary dispute has poisoned our relations with our newest neighbour. This must change for their sake and for ours.

A Shorten Labor Government will redouble our efforts to conclude good faith negotiations with Timor Leste to settle the maritime boundaries between our two countries. If we are not successful in negotiating a settlement with our neighbour, we are prepared to submit ourselves to international adjudication or arbitration.

That night, speaking on ABC *Lateline*, she told Tony Jones that Labor was now committed not just to kick-starting good faith negotiations for a permanent maritime boundary but also that 'if we couldn't come to a resolution [we will] submit ourselves to international adjudication or arbitration'.

She had communicated this advice to Xanana Gusmao the previous day and 'he was very pleased to hear that'.

Four things have become clearer since Australia was taken to the cleaners by Timor in the International Court of Justice in 2014:

A commitment by Australia and Timor-Leste to negotiate a maritime boundary would be no matter of concern to Indonesia.

The situation in the South China Sea could well be improved (and definitely not worsened) were Australia to commit to the negotiation of a maritime boundary with Timor Leste.

The CMATS Treaty has run its course. It has not achieved its primary objective which was the facilitation of the immediate development of Sunrise. It is now an irritant.

The espionage case and the refusal of a passport for Witness K will be an ongoing sore in the relationship unless it be in the interests of both parties to discontinue all such proceedings.

Were Labor to win the forthcoming federal election, there would be no reason to delay any further the negotiation of a maritime boundary. If on the other hand, Turnbull is returned with a mandate in his own right, he should come to see that Australian values and sound political principles support the need for his government to draw the line on past attempts to foreclose on boundary negotiations.

Given the ALP change and his own commitment to innovation and bold, clear thinking, Turnbull is unlikely to pledge his government to a further 41-year stand-off with Timor on the negotiation of a maritime boundary. Decent Australians and Timorese expect a change. Turnbull will have to stop preaching on the South China Sea if he is not prepared to act in the Timor Sea.



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