

Timor-Leste urges Australia 'not to turn its back on law' over maritime boundary

Australia brought before permanent court of arbitration in The Hague after refusal to negotiate with northern neighbour over long-running dispute

Ben Doherty

Monday 29 August 2016 08.57 EDT

Timor-Leste has urged Australia not to “turn its back on the law” and to negotiate over the Timor Sea maritime boundary, but Australia has claimed the commission it has been brought before has no jurisdiction to hear the matter and said that any decision it makes will be not be binding on Australia.

Australia has been forced to appear before a UN conciliation commission at the permanent court of arbitration in The Hague - the first time any country has been brought for “compulsory conciliation” - by Timor-Leste after its consistent refusal to negotiate a permanent maritime boundary, and revelations Australian agents spied on Timor-Leste’s government during earlier treaty talks.

The long-running dispute centres upon the maritime boundary between Timor-Leste and Australia, most pointedly over control of the area where an estimated \$40bn worth of oil and gas lies beneath the sea.

Timor-Leste argues the maritime boundary between it and Australia should be a median line equidistant between the two countries, putting the vast majority of the exploitable area in its territory. This position is supported by international law, the UN convention on the law of the sea, which Australia signed and ratified in 1994.

But Australia says a 2006 temporary revenue sharing agreement (known as CMats) that divides the revenues -significantly in Timor-Leste’s favour, it argues - is valid, and should be honoured.

Timor-Leste argues that treaty should be scrapped because, six years after it was signed, it was revealed Australia had bugged the Timor-Leste government’s cabinet room, with listening devices implanted by Australian Security Intelligence Service agents pretending to be aid workers renovating the office.

Xanana Gusmão, the freedom fighter who became Timor-Leste’s first elected president and then its prime minister, led his country’s delegation at The Hague overnight Australian time.

He said he had, in his various roles “tried to persuade consecutive Australian governments to sit down as friends and negotiate”.

“But Australia turns its back on the law,” he told the court.

Gusmão said Timor-Leste's early years of independence were marked by vulnerability and poverty, and that this was exploited in negotiations. "Our land was scorched, our people were killed ... we had no money, forcing us to beg."

"We were not aware at the time, that under the cover of an Australian aid program, Australia installed listening devices in the East Timorese cabinet offices. When this came to light, we were shocked and appalled."

Gusmao said Timor-Leste remained willing to negotiate and that he only wanted an arbitration in line with international law, which, he said, was clear.

"We have not come to The Hague to ask for favours or for special treatment. We have come to seek our rights under international law. The maritime boundary between two countries should stand at halfway between them."

Gusmao said Timor-Leste was a young country, and a developing nation, but that it understood, and would insist upon, recognition of its rights. "We will not rest until we have our sovereign rights over land and sea."

Australia's solicitor general, Justin Gleeson, told the commission that the current treaty - CMats - provide a stable platform for the development and exploitation of the area to the benefit of both nations. "The treaties are reasonable and they are right and they should be respected," he said.

"Australia would reject any assertion that the treaties were one-sided or conducted ... under duress."

Australia's foreign minister, Julie Bishop, and the attorney general, George Brandis, earlier issued a joint statement saying they did not believe the commission could adjudicate on the matter because the 2006 treaty was in effect.

"In line with our pre-existing, legally binding treaties, which are in full accordance with international law, we will argue that the commission does not have jurisdiction to conduct hearings on maritime boundaries," they said.

Brandis and Bishop said Australia would abide by the commission's finding as to whether it has jurisdiction to hear matters on maritime boundaries, but "if the commission ultimately finds that it does have jurisdiction to hear matters on maritime boundaries, then its final report on that matter is not binding".

"Our statement reaffirms our principled commitment to upholding existing treaty obligations with Timor-Leste. These have benefited both our countries, and enabled Timor-Leste to accumulate a Petroleum Fund worth more than \$16bn, more than eight times its annual GDP."

The dispute over the Timor Sea - more specifically the wealth that lies under it - has pre-empted and then shadowed all of the short and chequered history between the independent Timor-Leste and Australia.

In 1975, as Portugal moved towards decolonisation, the resistance movement Fretilin declared Timor-Leste independent. Nine days later, the newly free nation was invaded by Indonesia's

military in breach of international law, and to widespread international condemnation.

In 1979 Australia became the only western nation to offer *de jure* recognition of Indonesia's forced annexation, so the two countries could begin negotiations over the Timor Sea's resources.

The Timor Gap treaty was signed - the then foreign ministers Gareth Evans and Ali Alatas famously clinking champagne glasses in a plane above the Timor Sea - between Australia and Indonesia in 1989. That treaty did not establish a maritime boundary but provided for shared exploitation of petroleum resources in the part of the seabed claimed jointly by both countries.

Australia was Timor-Leste's saviour in 1999, leading the Interfet force which restored order in the country after the vote for independence and retribution by pro-Indonesia militias.

But in 2002, just two months before Timor-Leste became independent, Australia secretly withdrew from the maritime boundary dispute resolution procedures of the UN convention on the law of the sea, and the equivalent jurisdiction of the international court of justice, so that it could not be compelled into legally binding international arbitration. (Parliament was only told after the withdrawal had occurred.)

Timor-Leste's first treaty - the Timor Sea treaty - signed in 2002, gave a 90-10 split, in Timor-Leste's favour, of revenues from a joint development zone in the Timor Sea.

The second, CMats treaty - certain maritime arrangements in the Timor Sea - was signed in 2006, with both sides agreeing to impose a 50-year moratorium on negotiating a permanent maritime border. CMats gives Timor-Leste 90% of the current oil revenues from the joint petroleum development area, and Australia 10%, but a further treaty (Sunrise IUA) gives Timor-Leste only limited claim over future exploitation of the larger Greater Sunrise field.

It was during the negotiations over CMats that Australia bugged Timor-Leste's cabinet room. Australia has not admitted to the espionage, though it did raid the Canberra offices of Timor-Leste's lawyer Bernard Collaery, and seized the passport of the intelligence agent who blew the whistle on the spying operation.

Timor-Leste say the spying voids the treaty, which, it argues, was not negotiated in good faith.