

# On Timor, Australia looks like it's denying an impoverished neighbour its birthright

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This week's conciliation talks in The Hague give Australia a new chance to do the right thing by East Timor to help it secure its future

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**A**ustralia and East Timor start conciliation talks in The Hague on Monday in an effort to resolve their bitter legal dispute over maritime boundaries - and \$40bn of petroleum rights. Timor argues that Australia refuses to recognise Timor's rights under international law.

The conciliation is compulsory under the UN law of the sea convention, but it will not produce a binding decision. The independent conciliators may nonetheless help both countries to clarify the legal issues and reflect on their claims - and adjust them to reach a fair solution.

Lately Australia has been on the nose in Timor. Anti-Australia graffiti is sprinkled around the capital, Dili. Thousands of Timorese protested outside the Australian embassy earlier this year. The dispute threatens the goodwill from Australia's support for Timor's independence since 1999. Things are not helped by espionage claims that paint Australia as the neighbourhood cheat and bully.

Australia denies breaching international law. The legal issues are not clear cut. Timor and Australia agreed on three treaties from 2002 and 2006 to share resources in adjacent maritime areas and to suspend maritime boundary claims for 50 years. Timor has amassed a \$16bn Petroleum Fund as a result.

Australia may be right to argue that it is lawful to manage disputes in this way. In practice, however, Timor had little choice but to cut a deal. In 2002, Australia cunningly withdrew its consent to the compulsory settlement of maritime boundary disputes at the international court of justice and under the UN law of the sea convention.

This was technically legal. Countries may give or withhold their consent in advance to international adjudication. Timor was thus prevented from suing Australia in an independent court - even if its substantive legal claims to maritime boundaries were correct.

Australia prefers negotiation on boundary disputes to adjudication. Negotiation has some advantages. But it also often benefits a country with more bargaining power, as in the huge imbalance between Australia and Timor. China similarly prefers negotiation over courts in the South China Sea because it has more leverage over its neighbours.

When negotiation breaks down, there is then no independent court to apply international law, which provides the underlying rules on where boundaries should be drawn. An obstructive country can simply refuse to reach agreement or to recognise another country's rights.

Timor now argues that the 2006 treaty is invalid because Australia spied on its treaty negotiators, thus gaining an unfair advantage. While spying alone does not invalidate a treaty, fraud can. It is untested whether espionage constitutes fraud.

That claim is being tested in another case, a binding arbitration between Australia and Timor - itself tarnished by Australia's seizure of documents from Timor's lawyer in Canberra, Bernard Collaery. In 2014, the international court of justice ordered Australia not to interfere with Timor's legal communications, since doing so may undermine the equality of parties to a dispute under the United Nations Charter.

If the treaty is invalid it would reopen the boundary and resource issues. Timor claims that determining the maritime boundary in accordance with international law would give it exclusive ownership over certain resources currently shared with Australia.

Experts differ on where the boundary might actually be drawn, including if Indonesia could extend its boundary at Timor's expense. There are practical concerns too about the economic and environmental feasibility of Timor's ambitious development plans.

Timor's boundary claims are nonetheless strong. Australia's last minute, peremptory removal of international judicial oversight in 2002 may well indicate that it privately agrees.

Ultimately, what is technically legal may not necessarily be wise, just, or ethical foreign policy. There is an inescapable perception that Australia is denying its tiny, impoverished neighbour its sovereign birthright to determine its boundaries, control its own resources, and shape its own destiny.

This dynamic contaminates the wider bilateral relationship. The dispute cannot be viewed in isolation but is part of a long history of bad faith by Australia that continues to poison relations and corrode trust.

From the late 1970s, successive Australian governments illegally recognised Indonesian sovereignty over Timor. Timor's resistance museum displays an infamous photo of the then foreign ministers, Gareth Evans and Ali Alatas, toasting champagne in flight above the Timor Sea, after carving up the resource spoils far below in 1988.

Australia also did little to protest Indonesian atrocities, which left up to 183,000 dead, including six Australian journalists murdered at Balibo and Dili in 1975.

This legacy and the present dispute overshadow Australia's positive contributions. Australian military forces resisted the Japanese invasion of Timor in 1942 and led the UN intervention in 1999. Ever since, Australia has stabilised Timor by supporting democracy, development, nutrition, public health and security.

Australia should be faithful to the spirit as well as the letter of the law - and be more generous. The modest benefits to Australia of the current arrangements are far outweighed by the diplomatic damage they inflict.

For Timor, determining its boundaries is about completing its sovereignty and ensuring its economic future. That has been a long, painful journey over 450 years, outlasting Portuguese colonialism and Indonesian occupation.

Australia should stop obstructing Timor and help it to secure its borders and its future. This week's conciliation gives Australia a new chance to do the right thing.

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