the interpreter

DFAT on China and Timor-Leste: No 'two-step' but one considered approach

Allaster Cox
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This post is part of a debate on South China Sea ruling

Dr Michael Leach makes a number of inaccurate claims in his Interpreter post: 'The PCA ruling, Australia and Timor-Leste'.

Dr Leach asserts Australia is engaged in a 'two-step' in its approach to international law with China and Timor-Leste. He also appears to accept a premise of Australia's 'persistent refusal to negotiate maritime boundaries with Timor-Leste'. The facts, however, are quite different.

Australia takes a consistent approach, whether in relation to the Timor Sea or the South China Sea. We believe parties to disputes should resolve them peacefully, in accordance with international law. This is the approach Australia and Timor-Leste have taken in the Timor Sea.

In previous negotiations, Australia and Timor-Leste were unable to reach agreement on permanent boundaries. As an alternative, both countries agreed to put in place arrangements to enable joint development of the resources. The UN Convention on the Law of the Sea actively encourages countries this type of approach. It's a practical way of working together to overcome disputes. The arrangements between Timor-Leste and Australia have been cited as best practice.

Far from a 'refusal to negotiate', Australia in fact has made significant concessions. Under our joint arrangements, Timor-Leste receives the vast bulk of revenues (90% of the Joint Petroleum Development Area). This has allowed it to develop a US$16 billion petroleum fund.

Australia takes its treaty obligations seriously and believes in sticking to the agreements we have made. This is an expression of our respect for international law.

Dr Leach claims that CMATS is 'inoperative' but this is not the case.

CMATS provides for a 50/50 revenue split between Australia and Timor-Leste, despite 80% of Greater Sunrise lying in an area of exclusive Australian seabed jurisdiction. Greater Sunrise will be developed when the Greater Sunrise Joint Venture and both governments agree on a development plan.

Australia's long-standing preference is to resolve maritime boundary issues through negotiation. This is common practice and international law

specifically allows this. Around 30 countries including Canada, Thailand, the Republic of Korea, Mexico and France, take the same approach.

Importantly, where a country takes Australia to an international court or tribunal, Australia engages in that process. In fact, we are participating in two arbitrations initiated by Timor-Leste and we will abide by the decisions of the arbitrators. We have called on the parties to the South China Sea arbitration to do the same.

We are also participating in a separate conciliation process initiated by Timor-Leste. The conciliation will be heard by a five-member commission appointed by Australia and Timor-Leste. Although a conciliation is not a legally binding process, Australia is engaging in the process in good faith, in accordance with our international legal obligations.

Despite our differences, Australia is, and will remain, committed to our relationship with Timor-Leste. Timor-Leste's stability and prosperity are important to Australia and a key focus of our bilateral engagement, including through our $93.7 million aid program.

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