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**UNCLOS DISPUTE SETTLEMENT MECHANISMS  
ON MARITIME BOUNDARIES AND THE TIMOR SEA**


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## UNCLOS Dispute Settlement Regime


**UNCLOS** When a state becomes a party to UNCLOS, it consents to UNCLOS dispute settlement procedures in Part XV, including compulsory procedures entailing binding decisions.

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Rationale: stability and certainty of the agreed text, consistent application and a fair and effective dispute settlement regime.

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## Obligation to Exchange Views - Negotiation

Article  
283

When a dispute arises, the parties to the dispute *shall proceed expeditiously to an exchange of views regarding its settlement* by negotiation or other peaceful means.

Articles  
74&83 (1)

Delimitation shall be effected *by agreement* on the basis of international law, as referred to in Article 38 of the ICJ Statute in order to achieve an equitable solution.

Example: Indonesia & Timor-Leste Maritime Boundary Negotiation

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## Adjudication - Arbitration

### Article 286

If no agreement is reached, the dispute shall be submitted at the request of any party to a court or an arbitral tribunal (ITLOS, ICJ, arbitration).

### Articles 74 & 83(2)

If no agreement can be reached within a reasonable period of time, the states concerned shall resort to compulsory procedures entailing binding decisions.

Examples: Bangladesh/Myanmar Bay of Bengal Case (ITLOS);  
Bangladesh/Myanmar Bay of Bengal Case (Annex VI arbitration)

*Decisions are legally binding (Article 296).*

*Absence of a party shall not constitute a bar to the proceedings.*

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## Optional Exceptions in Article 298

• Article 298: a state party may declare that it does not accept any of the compulsory procedures entailing binding decisions for certain categories of disputes, including "disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitation".

• China, Australia, Korea and Thailand.

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## Compulsory Conciliation on “New” Maritime Boundaries Disputes

If a dispute arises after UNCLOS entered into force and is not settled by negotiation, and one party to the dispute has made a declaration under Article 298, that party still has an obligation to accept conciliation initiated by the other party (Article 298).


Maritime boundary dispute between Timor-Leste and Australia: (i) dispute formed after UNCLOS entry into force; (ii) parties not able to settle dispute by negotiation; (iii) in 2002, Australia made a declaration under Article 298 to exclude maritime boundaries disputes from adjudication or arbitration => compulsory conciliation.

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## Compulsory Conciliation Procedure

Commission has 5 members. Unless parties agree otherwise: each party selects 2, and those 4 select the 5<sup>th</sup>. The failure of a party to reply or participate does not constitute a bar to the proceedings.

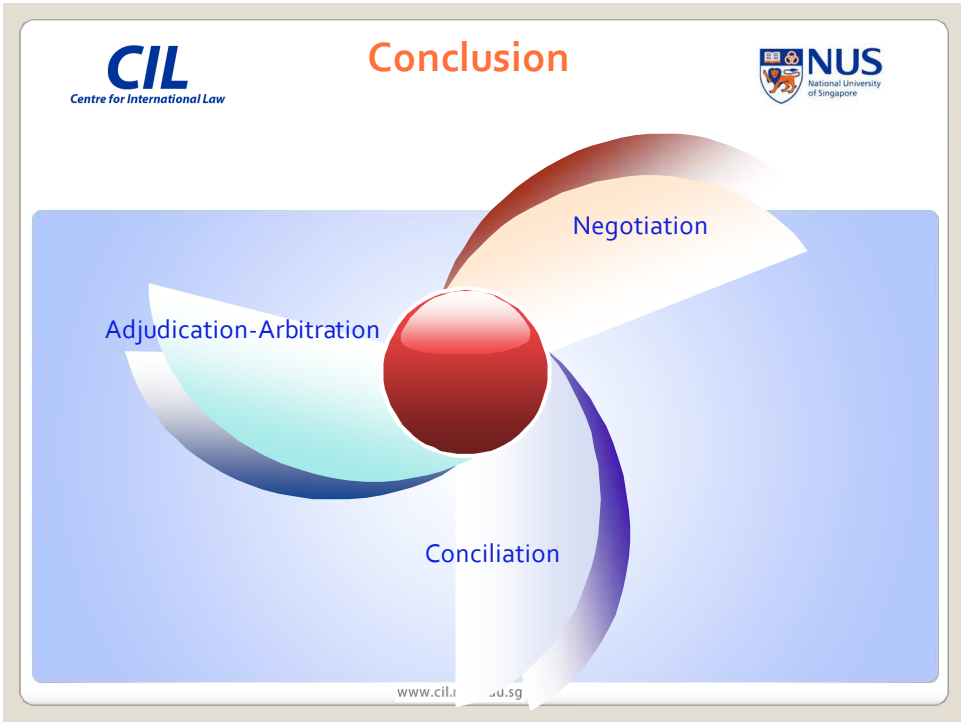
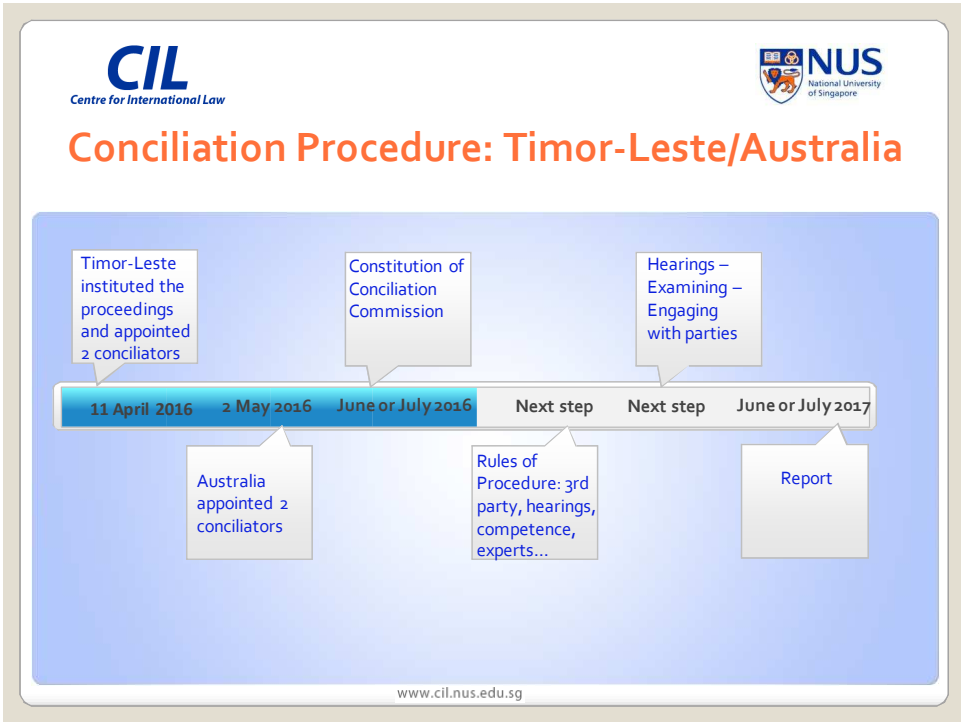
Commission shall hear the parties, examine their claims, and make proposals with a view to reaching an amicable settlement.

Commission shall issue a report within 12 months of its constitution which shall record any agreements or its conclusions on facts or law and recommendations to the parties.

Parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, they shall, by mutual consent, submit to ITLOS, ICJ or arbitration.

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**Thank you!**

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