

International court dismisses Australian challenge over Timor Sea border dispute

By Patrick Kelly
28 September 2016

Dismissing an Australian government challenge, the Permanent Court of Arbitration in The Hague issued a ruling Monday upholding its authority to consider a case brought by East Timor over the disputed maritime border in the Timor Sea.

The judgment is a significant blow to the Australian government. It marks another exposure of Canberra's contempt for international law and its rank hypocrisy over the resolution of maritime disputes. Earlier this year, the government joined Washington in backing a dubious Permanent Court of Arbitration (PCA) finding against China over territorial disputes in the South China Sea. The US-backed case, brought by the former Philippine administration, was aimed at bolstering the Obama administration's aggressive drive to maintain its military hegemony in the Asia Pacific.

While Canberra has demanded that China abide by the arbitration ruling, in 2002 Australia declared that it would not recognise any arbitrated case involving its own disputed maritime border with East Timor. This unilateral withdrawal from a key aspect of the United Nations Convention on the Law of the Sea (UNCLOS) was aimed at preventing any legal scrutiny of the Australian government's thuggery and intimidation of East Timor during negotiations over the division of multi-billion dollar oil and gas fields in the Timor Sea.

Unable to pursue compulsory arbitration, the East Timorese government has used a never-before invoked clause of UNCLOS, allowing for compulsory conciliation. This involves The Hague court considering the rival sea boundary claims and issuing non-binding recommendations that are supposed to be the basis of a negotiated settlement.

Even this limited legal mechanism is regarded as a threat by the Australian government. It sought to have the case thrown out on the grounds that the PCA was not legally authorised to hear it.

The 33-page ruling issued by the court on Monday dismissed this claim, sharply rejecting all the arguments advanced by the government's legal team.

These arguments centred on the supposed sanctity of the 2006 Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS), specifically, one of the treaty's clauses that stated the maritime boundary between Australia and East Timor would be left unresolved for 50 years. Australian government lawyers declared that the East Timorese were "violating treaty commitments," adding that their challenge to the court was "motivated by a serious regard for principle ... at a time when the rules-based order globally is under serious challenge, it is vital that countries stand by their treaty commitments."

These statements brazenly flew in the face of Australian imperialism's record in Timor. In 1975 the then Labor government encouraged the Indonesian military regime's invasion of the former Portuguese colony. Subsequent Labor and Liberal-National governments collaborated with Jakarta in carving up the lucrative energy reserves in the Timor Sea. In 1999, Canberra made a tactical shift, endorsing East

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Jensen, gave short shrift to every aspect of the Australian challenge to its competence to hear the case.

Under international law, a maritime border case cannot be brought to The Hague if two states have agreed upon another means of settling the dispute and that this agreement excludes other procedures. Australian government lawyers claimed that an exchange of letters in 2003 between John Howard and Mari Alkatiri, then Australian and East Timorese prime ministers, constituted a legal agreement to determine a maritime boundary through negotiation. The PCA dismissed this, explaining that the letters did not constitute a legally binding agreement and therefore had no bearing.

Australia's lawyers also maintained that the CMATS treaty bolstered the 2003 correspondence, with the 50-year exclusion of settling on maritime borders supposedly blocking any potential involvement of The Hague. The PCA also rejected this argument. It noted that "what CMATS is not—and what Article 281 [of UNCLOS] requires—is an agreement 'to seek settlement of the dispute by a peaceful means of [the Parties'] own choice.' CMATS is an agreement *not* to seek settlement of the Parties' dispute over maritime boundaries for the duration of the moratorium."

The court stated that the conciliation process had to be completed within 12 months.

Xanana Gusmão, the former Timorese president and prime minister who headed the country's legal delegation in The Hague, issued a statement after Monday's judgment. "Just as we fought so hard and suffered so much for our independence, Timor-Leste will not rest until we have our sovereign rights over both land and sea," he said.

In reality, the Timorese case before the PCA is a desperate manoeuvre aimed at placing some pressure on the Australian government and the American-Australian oil companies that have the rights to the Timor Sea's energy reserves. Dili has the right to abrogate the CMATS treaty, but does not want to alarm transnational corporate investors by doing so unilaterally.

Timorese lawyers in The Hague told the court that government ministers recently travelled to oil and gas company headquarters in Australia and the US, seeking input on a potential post-CMATs treaty that "meets the investors' requirements."

The Timorese government sought to curry favour with the Australian government by dropping a legal case it initiated over Canberra's bugging operation during the CMATS negotiations. The case triggered provocative police and intelligence raids in 2013 targeting an Australian lawyer representing East Timor, Bernard Collaery, and a retired Australian Secret Intelligence Service (ASIS) officer who blew the whistle on the bugging operation.

The Timorese ruling elite is desperate to secure additional investment in the Timor Sea—both to further line its own pockets, and to stave off the threat of outright state collapse. Currently 95 percent of government revenue is derived from royalties generated by the Bayu-Undan oil and gas project, which is forecast to run dry in less than a decade. The country's sovereign wealth fund is currently worth \$16 billion, but the global plunge in oil and gas prices has resulted in government spending exceeding limits aimed at ensuring the fund's ongoing growth.

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