

The World Today with Eleanor Hall

An hour of current affairs background and debate from Australia and the world every Monday to Friday, 12:05 pm, ABC [Local Radio](#) and [Radio National](#).

Timor reckons China law of sea verdict has lessons for Australia

Peter Lloyd reported this story on [Wednesday, July 13, 2016 12:20:00](#)

NICK GRIMM: The international court ruling on China's conduct could have implications closer to home.

Like China, Australia is locked in a long-running maritime dispute with its northern neighbour Timor Leste or East Timor.

The case also calls into question Australia's tactics in making territorial claims overseas rich in energy reserves worth billions.

Peter Lloyd explains.

PETER LLOYD: Cast your mind back to 2002. John Howard is prime minister. Alexander Downer is the minister sent abroad to speak for Australia.

That year, the foreign minister led the negotiating team striking a resource-sharing agreement for the vast oil and gas reserves being divvied up with the newly independent, but impoverished, and traumatised post-conflict nation of Timor Leste.

In recent years though a more stable, secure and governance smart outfit in Dili has done a top-down audit of the nation's financials.

They concluded the oil and gas treaties short changed Timor, and spectacularly accused Mr Downer of bugging their rooms to gain unfair advantage in the deal-making days.

And that tough verdict on China delivered overnight has given Dili a lift.

It reckons there's a clear lesson here for Australia.

Steve Bracks is a governance advisor for Timor, formerly premier of Victoria.

STEVE BRACK: Well it's absolutely comparable, there is a dispute that the Timor Leste government has taken to UNCLOS (UN Convention on the Law of the Sea) in compulsory conciliation to be resolved over the next 12 months, and that is on the territorial waters between Australia and Timor.

And that is about a resource issue in which Australia is claiming greater share than it otherwise should have.

This should be resolved through the international law for a dispute resolution under UNCLOS, and if Australia is to be consistent as it has already said in the South China Sea it should allow this to run its course, to cooperate with the UNCLOS and to have this resolved under international law.

PETER LLOYD: Is one of the parallels here that Australia like China can say at the end of this process we don't abide by it?

STEVE BRACK: Well if Australia says that they don't abide by international law and the processes under compulsory conciliation at UNCLOS, then it would be hypocritical to the statements on the South China Sea where it's urged China to abide by the compulsory conciliation.

PETER LLOYD: When the Timorese revealed their plan to take Australia to compulsory UN conciliation back in April, this was what the Foreign Minister said through a spokesman.

FOREIGN MINISTER STATEMENT (voiceover): We stand by the existing treaties, which are fair and consistent with international law. Timor-Leste's decision to initiate compulsory conciliation contravenes prior agreements between our countries.

PETER LLOYD: The case involving China trampling on the Philippines territory wasn't dealt with by UN conciliation.

That was a fully-fledged court case before the International Court in the Hague.

China's never accepted the court's authority but most UN members do.

And lawyers who specialise in law of the sea reckon last night's ruling was a game changer, on the limits of state power taking a run at the space and resources claimed by other states.

Chris Flynn is a partner with law firm Gilbert and Tobin.

CHRIS FLYNN: Australia and East Timor have been having this argument, as you know, for a long time around where their boundary is, but if you applied the reasoning of the court in the South China Sea dispute to this dispute with East Timor, what you end up with is the likelihood that the court would say to Australia, if it did go, if this did make it to the Permanent Court of Arbitration or to the Hague, that the court would say East Timor is right, you need to apply only the principles under the law of the sea convention.

And if you apply those law of the sea convention principles the boundary should be drawn along the equidistant line.

PETER LLOYD: Today on AM the Foreign Minister Julie Bishop seemed to concede new ground that matched Labor's April announcement that it would accept the UN ruling, no matter what.

JULIE BISHOP: We accept the outcomes are binding as we accept that the finding in the Philippines arbitration case is final and legally binding on both China and the Philippines.

PETER LLOYD: Law of sea lawyer Chris Flynn says those remarks suggest Australia is not as certain as it once was, about the status quo up north.

CHRIS FLYNN: Australia has been kind of boxed in by this decision. If the Foreign Minister is saying that Australia will respect international law, then it has to respect the decision it was reached by the PCA (Permanent Court of Arbitration) yesterday.

And the PCA has said that the principles of the law of the sea convention will apply to any dispute such as that between the Philippines and China and also therefore between Australia and East Timor.

And if you apply that then Australia has to come to a point where they have to climb down as you say and admit that the equidistant principles apply between Australia and East Timor.

And that is consistent with international law.

NICK GRIMM: Lawyer Chris Flynn, ending Peter Lloyd's report.



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