

Australia and Timor-Leste to negotiate permanent maritime boundary

Neighbours agree to tear up the controversial treaty that divides future revenue from Greater Sunrise oil and gas reserve, potentially ending years of dispute



Students hold placards during a protest outside the Australian embassy in Dili, Timor-Leste, on 22 March 2016, demanding Australian and Timor-Leste resolve a boundary dispute. Photograph: Antonio Dasiparu/EPA

Ben Doherty

Sunday 8 January 2017 23.07 EST

Australia and Timor-Leste have agreed to begin negotiations on a permanent maritime boundary between the two countries, potentially ending years of dispute over the lucrative oil-rich Timor Gap and closing a chapter of mistrust and enmity between the two neighbours.

Canberra and Dili have agreed to tear up the controversial Certain Maritime Arrangements in the Timor Sea (CMats) treaty that divides future revenue from the Greater Sunrise oil and gas reserve, where an estimated \$40bn worth of oil and gas lies beneath the Timor Sea.

Timor-Leste has sought to abandon the agreement for years, alleging it was unfairly negotiated because of Australian espionage.

Dispute over how to delineate the sea boundary between the two countries has marred relations since Timor-Leste won its independence in 2002, but most acutely in 2012, when Australia was revealed to have spied on Timor-Leste's cabinet by bugging its cabinet room under the pretext of renovations.

The two countries have been taking part in a year-long compulsory conciliation, overseen by the permanent court of arbitration (PCA) in The Hague, over the maritime boundary dispute. The conciliation is taking place behind closed doors, but, in an unprecedented move, the foreign affairs ministers of Australia and Timor-Leste, along with the PCA, announced key developments in the negotiations on Monday.

Terminating the CMats treaty is a significant shift in position for Australia, which had maintained the treaty was valid and should remain in force. The treaty will cease to exist three months from Timor-Leste's formal notification.

The treaty established a temporary maritime boundary for 50 years. After terminating it, both countries have agreed to negotiate on a permanent boundary.

"The parties recognise the importance of providing stability and certainty for petroleum companies with interests in the Timor Sea and of continuing to provide a stable framework for petroleum operations and the development of resources in the Timor Sea," the

joint statement from foreign affairs ministers Julie Bishop and Hernâni Coelho said.

“The governments of Timor-Leste and Australia have each confirmed to the other their commitment to negotiate permanent maritime boundaries under the auspices of the commission.”

Under the Law of the Sea and established state practice, any negotiation over a maritime boundary is likely to establish a boundary equidistant between the two countries, which would put the majority of the Greater Sunrise oil fields within Timor-Leste’s territory.

However, Australia’s position has always been that the maritime boundary should lie closer to Timor-Leste, at the edge of Australia’s continental shelf. That boundary would put Greater Sunrise under Australian control.

Australia’s demarcation at the edge of the continental shelf is not widely supported. The majority of international legal opinion supports the principle of equidistance.

Professor Clive Schofield from the Australian National Centre for Ocean Resources and Security at the University of Wollongong told Guardian Australia Monday’s announcement marked a significant shift in Australia’s position, and “a step Australia was reluctant to take”.

CMats “failed” as a treaty, Schofield said, because it did not ensure sufficient confidence for Greater Sunrise to be exploited - with particular concern over the direction of a pipeline from it - and because it did not “put to rest” controversy over the maritime boundary.

“I do believe what makes bilateral relationships work is trust. In that sense, the controversy over spying allegations fatally damaged CMats as a treaty.”

Schofield said because of the uncertainty over Greater Sunrise, and particularly the pipeline, the time for its profitable exploitation might have already passed, a development that would harm Timor-Leste much more than Australia. Timor-Leste is dependent on oil and gas revenues for its sovereign wealth fund, and existing fields are approaching the end of their viability.

Schofield said negotiations over the Australia-Timor-Leste boundary were likely to start from an equidistant line. “I would firmly expect the states to start with drawing a median line ... and there are not, to my mind, compelling reasons to shift that line one way or another.”

But Schofield said the third player in any maritime boundary negotiations - Indonesia - could be even more problematic for both Australia and Timor-Leste.

The dispute over the Timor Sea has preempted and then overshadowed the short and chequered history between independent Timor-Leste and Australia.

In 1975, as Portugal moved towards decolonisation, the resistance movement Fretilin declared Timor-Leste independent. Nine days later, the newly free nation was invaded by Indonesia’s military in breach of international law, and to widespread international condemnation.

In 1979 Australia became the only western nation to offer de jure recognition of Indonesia’s forced annexation, so the two countries could begin negotiations over the Timor Sea’s resources.

The Timor Gap treaty was signed (the then foreign affairs ministers Gareth Evans and Ali Alatas famously clinking champagne glasses in a plane above the Timor Sea) between Australia and Indonesia in 1989. That treaty did not establish a maritime boundary but provided for shared exploitation of petroleum resources in the part of the seabed claimed jointly by both countries.

Australia was Timor-Leste’s saviour in 1999, leading the Interfet force which restored order in the country after the vote for independence and retribution by pro-Indonesia militias.

But in 2002, just two months before Timor-Leste became independent, Australia secretly withdrew from the maritime boundary dispute resolution procedures of the UN convention on the law of the sea, and the equivalent jurisdiction of the international court of justice, so that it could not be compelled into legally binding international arbitration.

Australia has never formally admitted spying on Timor-Leste during CMats negotiations, though it did raid the Canberra offices of Timor-Leste’s lawyer Bernard Collaery, and seized the passport of the intelligence agent who blew the whistle on the spying operation.

Australian Associated Press contributed to this report