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Timor-Leste: Boundary treaty renegotiation is in Australia's interests

BY

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The revelation this week that Australia will negotiate a maritime boundary with Timor-Leste represents a significant and welcome policy shift within the Australian Government.

Progress in this decades-old dispute is long overdue. Australia's commitment to negotiations is a positive step for both countries, the broader region and the international community.

Xanana Gusmao, Timor-Leste's legendary former resistance leader, president, prime minister and now chief negotiator in the Compulsory Conciliation with Australia, has repeatedly emphasised that for his young nation, finalising Timor-Leste's maritime boundaries is the final step in achieving full sovereignty. As a small half-island state in potentially oil-rich waters, with a desperately impoverished population, it is clearly in Timor-Leste's national interest to have permanent maritime boundaries so it can have unfettered sovereignty over the resources to which it is entitled under international law.

I believe it is also clearly in Australia's national interest to negotiate a permanent maritime boundary with Timor-Leste based on the principles of international law.

It is in Australia's national interest to have a permanent maritime boundary for the benefit of our security, defence and fisheries services operating in the Timor Sea.

It is in Australia's national interest to have an economically and politically stable neighbour to our near north. A maritime boundary based on international law would provide Timor-Leste with the economic base it needs to deliver desperately needed health and education services and invest in transport and water infrastructure.

It is in Australia's national interest to have a relationship with Timor-Leste based on trust and mutual respect. It reveals much about the relationship between the two countries that not one minister from the Abbott or Turnbull governments has visited Timor-Leste, which is a little over one hour's flying time from Darwin. There is no question that Timor-Leste is a friend of Australia, however, it is understandable that many Timorese believe Australia has not always acted as a friend.

It would also be in our interest to be seen to be respecting the international rules-based order.

The Conciliation Commission will oversee a series of confidential meetings in the coming months, engaging with both parties for the 'eventual conclusion of an agreement on maritime boundaries in the Timor Sea'. I am optimistic about the UN Compulsory Conciliation process. Both parties appear to be engaging in good faith.

The decision to terminate the 2006 Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS) was sensible and inevitable. CMATS was tainted by allegations in 2013 that Australia had bugged the room where the Timorese delegation gathered to discuss tactics during negotiations in 2004. It was also the Treaty that applied a 50 year 'moratorium' on maritime boundary negotiations between Australia and the then fledgling nation of Timor-Leste.

In a recent article in *The Interpreter*, Bec Strating makes the curious argument that while CMATS was in place Australia 'could counter charges of hypocrisy by arguing that its respect for the legally binding treaty was consistent with the rules-based order'. This is a strange assertion, particularly in light of allegations about Australian spying during the negotiations, and the criticism of Australia's refusal to accept the maritime jurisdiction of the international courts.

I believe Australia's reliance on CMATS - which purported to give Australia rights to resources 150km from Timor-Leste and more than 400km from Australia - undermined Australia's integrity in regard to support for international law and a rules-based order. With CMATS out of the way, and Australia's active participation in the UN Law of the Sea Convention Compulsory Conciliation process, Australia is at last powerfully demonstrating a commitment to the international rules-based order.

Australia's decision to negotiate is also good news for resource companies with interests in the Timor Sea. A permanent maritime boundary will finally provide the certainty that resource companies operating in the Timor Sea have sought for decades.

However, it is understandable that many Timorese, and indeed anyone familiar with this long-running dispute, may believe it is premature to celebrate this week's announcement too enthusiastically. There is still a long way to go. As Strating points out, Australia has repeatedly emphasised the non-binding nature of the UN Law of the Sea Convention Compulsory Conciliation process. And Australia has given no indication that it has changed its position on where maritime boundaries should be drawn.

However, there is further reason for optimism, given the Australian Labor Party has committed, in 2015, not just to negotiate a maritime boundary with Timor-Leste, but if necessary, to resubmit to the maritime jurisdiction of the international courts. This was a game changer. It forced the Department of Foreign Affairs and Trade to contemplate a negotiation process and it means the ALP, with the support, I suspect of the minor parties, will hold the Turnbull Government to account.

This dispute has overshadowed an otherwise close and strong relationship. Bonds were formed during the Second World War and have grown as our nations became development partners in the years following Timor-Leste's independence.

I am hopeful that this change in policy by the Australian Government will lead to a mutually beneficial agreement.