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## Three Cheers for Change! A breakthrough announced.

*September 11, 2017*



Why I will not be raining on the parade.

After the big [announcement](#) of a 'breakthrough' in the maritime boundary conciliation I have been trying to get a sense of what it means. Has Timor-Leste got what it wanted? Should we be happy?

Commentators have been positive, skeptical and even disgusted.

I am very conscious of the fact that there is still much that is unknown and remember only too well the disappointment many of us felt following announcements back in 2005.

However, I am happy to give this press release a hearty three cheers.

Here are my three cheers for change!

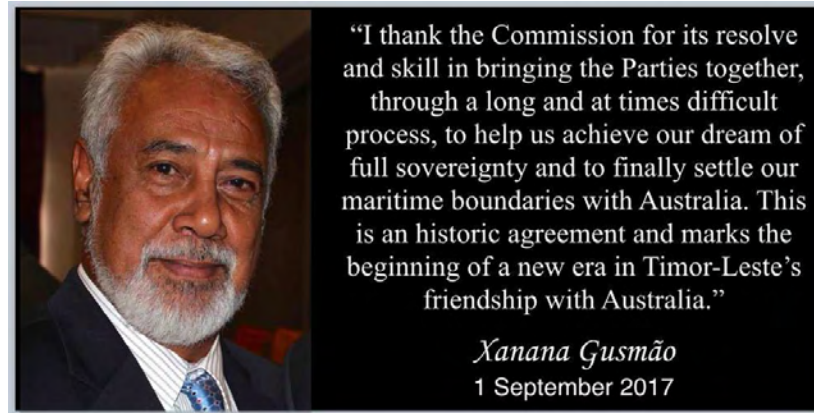
### Cheer 1: BOUNDARY

My first cheer is because Australia and Timor-Leste have agreed on a permanent maritime boundary.

The release says there is alignment on “the central elements of a maritime boundary delimitation” in the Timor Sea.

The line will, at last, be drawn.

Chief Negotiator Xanana Gusmão said the process had resulted in achievement of Timor-Leste’s “dream of full sovereignty and to finally settle our maritime boundaries with Australia”.



This is massive.

At the beginning of this conciliation process Australia was still totally committed to the idea that maritime boundaries between the two countries were not to be discussed.

Not now and not for decades.

No. Way.

One year ago Minister for Foreign Affairs the Hon. Julie Bishop MP said plainly that she was disappointed with Timor-Leste’s actions and emphasized the non-binding nature of the conciliation.

We should not underestimate the magnitude of this monumental change in position. Australia has finally relinquished its long-standing mantra of ‘no negotiation in the Timor Sea’. DFAT has been clinging to this dogma for decades with a ‘white knuckle’ grip.

Also, although it is not said in the release, my view is that this boundary delimitation is based on the median line. For the Timorese to not get this would surely have been a ‘deal breaker’.

Professor Donald Rothwell from the Australian National University, interviewed on ABCs Radio National after the Press Release has made the same assumption:

“... presumably Timor has gained on its long held view that the boundary should be based on what’s called the median line between the East Timorese coast and the Australian continent, and that would shift the arrangements that had previously existed much further south and that would give Timor sovereignty over the seabed and water column to a much greater extent than what it has at the moment.”

Again, if this is the case, it is a massive change.

In March this year Australia’s Department of Foreign Affairs confirmed that it still favored ‘natural prolongation’. So less than six months ago and as the conciliation was in process, they were still resisting the notion of the median line and sticking to an unsustainable position of ‘continental shelf’ contrary to international law.

So this is my first big cheer! – at last, and for the very first time a BOUNDARY between our two countries in the Timor Sea.

Next ...

## Cheer 2: CERTAINTY

The release says the agreement “addresses the legal status of the Greater Sunrise gas field, the establishment of a Special Regime for Greater Sunrise, a pathway to the development of the resource, and the sharing of the resulting revenue.”

At the word “sharing” many of our hearts sunk. Surely this means a return to the dark old days?

Well there is a lot we don’t know.

Did the eastern lateral take in all of Greater Sunrise? And if so, why share anything? What are the percentages? Did Timor get a better deal than they had before?

An agreement on the eastern lateral and an approach to Greater Sunrise was always going to be one of the most difficult parts to the conciliation. A simple unadjusted median line bisects the field at the current edge of the JDPa.

Timor argued the line short move east after reviewing ‘relevant circumstances’ and applying a ‘disproportionality test’. This included applying weightings given to some of the small Indonesian islands off the eastern tip of Timor. Without Indonesia as a party to the negotiation this was going to be difficult.

And then there are existing contracts with companies operating in the Timor Sea that the Timorese would have been seeking to deal with properly.

My guess is that Timor has got a much better deal than the 50/50 it previously had on about 80% of the field and that it now has much more control than before.

But that is speculation.

What I am cheering for is certainty, economic certainty.

With its “pathway to the development” of the Greater Sunrise gas field comes a measure of economic certainty for East Timor. It seems from the release that the development of Greater Sunrise is doable, and [commentary](#) from Woodside and Conoco has welcomed the news.

The income from Greater Sunrise gas field can provide for a much less bumpy path in the next few decades as East Timor continues work to diversify its economy. A successful partnership to its development will send a confidence-boosting message to other potential partners and investors.

So that is my second cheer – for CERTAINTY

## Cheer 3: UNCLOS

This was the first time ever a United Nations Conciliation Commission instituted under the Convention on the Law of the Sea was run.

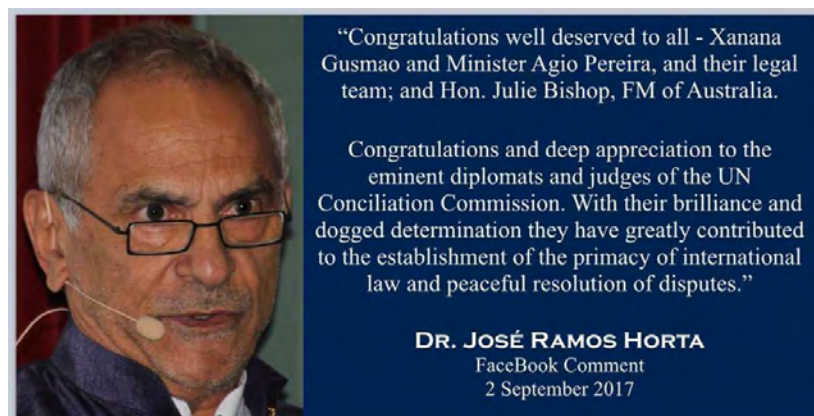
The provision for this process was placed in the Convention to help countries like Timor and Australia who were stuck, get unstuck.

I’m sure it weighed on the commissioners that this first process would set a huge precedent. Would this particular dispute resolution mechanism work or would it fail?

Well, it seems to have worked.

Timor's Chief Negotiator Xanana Gusmão expressed appreciation for the efforts of the Commission: "I thank the Commission for its resolve and skill in bringing the Parties together, through a long and at times difficult process..."

Dr. José Ramos-Horta also recognised the Commissioners.



This was the mechanism that compelled a very reluctant Australia to engage in order to resolve the dispute between the two countries. The lengths that East Timor had to go to are beyond the pale – but the process has worked.

So that is my third cheer – UNCLOS!

As for next steps, I think we need to let our Government know that we are watching all of this very closely and continue to call for a respectful and fair outcome as the details are finalised in the weeks ahead.

But for now, three cheers from me.