

## Australia and Timor-Leste's Landmark Maritime Boundary Conciliation Process

What the rest of the world can learn from the first compulsory conciliation case under a multilateral treaty.

By **Hao Duy Phan**  
May 26, 2018



Image Credit: [La'o Hamutuk](#)

On May 9, 2018, the Conciliation Commission in the maritime boundary dispute between Timor-Leste and Australia issued its report, marking the conclusion of the first-ever conciliation proceedings under the United Nations Convention on the Law of the Sea (UNCLOS).

This ground-breaking conciliation case culminated in the report by the Commission and settled a long and acrimonious maritime boundary dispute — a serious obstacle in the otherwise very good relationship between the two neighbors.

### What Is the Dispute About?

Australia and Timor-Leste are separated geographically by the Timor Sea. Under UNCLOS, each coastal state is entitled to a 200 nautical mile exclusive economic zone, but as the nearest distance between the two neighbors is approximately 243 nautical miles, there are overlapping areas that need to be delimited.

After Timor-Leste gained independence in 2002, it entered into negotiations with Australia, but the two states were not able to agree on the guiding principle for delimitation. Australia favored the natural prolongation principle that a coastal state's maritime boundary should, as far as possible, be drawn where the natural extension of its land mass ends. Timor-Leste instead relied on the median line principle that the boundary should conform to a median line, every point of which is equidistant from nearest points on the baselines of the two states.

### What Is Compulsory Conciliation?

Australia and Timor-Leste are both parties to UNCLOS. Two months before Timor-Leste's

independence, Australia made a declaration closing the door to arbitration or adjudication on maritime boundary disputes. Under the Convention, however, such disputes may still be subject to compulsory conciliation, which can be initiated unilaterally “at the request of any party.”

On April 11, 2016, Timor-Leste initiated the conciliation proceedings. On June 25 of that year, a five-member conciliation commission was constituted. On September 29, 2016, in response to Australia’s objection to its competence, the Commission issued a unanimous decision, finding that it had the competence to conciliate the dispute. It then convened 13 rounds of meetings with the parties to examine their claims, propose confidence-building measures, and assist the parties in resolving their differences and reaching an amicable settlement on maritime boundary. It also met with representatives of relevant oil and gas companies to facilitate arrangements on joint development of the resource, and the sharing of the resulting revenue.

While UNCLOS conciliation is not binding, its outcome is significant. The Convention requires the Commission to produce a report recording any agreements reached and, absent an agreement, its conclusions and recommendations on questions of fact or law relevant to the dispute. The two states then have the obligation to negotiate an agreement based on the conclusion and recommendations of the Commission. If the negotiation fails, they have the obligation to submit the dispute “by mutual consent” to binding adjudication or arbitration.

With the facilitation of the Commission, the parties agreed on a settlement treaty, which was signed on March 6, 2018. The Commission issued its report on May 9.

### **What Is in the Settlement Treaty and the Conciliation Report?**

The settlement treaty establishes a permanent and binding continental shelf and exclusive economic zone boundary between the opposite coasts, which is largely an adjusted median line. Some parts of the compromised lateral lines are provisional and subject to possible adjustments depending on the outcome of the ongoing maritime boundary negotiation between Timor-Leste and Indonesia.

The treaty also establishes a special regime for the Greater Sunrise oil and gas fields. It provides that the ratio of revenue sharing will depend on the location of the pipeline. Specifically, if Dili is chosen to be the destination of the pipeline (option 1), Australia will receive 30 percent of the revenue and Timor-Leste will receive 70 percent. However, if Darwin is chosen to be the destination of the pipeline (option 2), Australia will only receive 20 percent while Timor-Leste will receive 80 percent of the revenue. The parties have not reached an agreement on either option. Timor-Leste prefers option 1 while Australia prefers option 2.

The report recalls the background to the dispute, provides a procedural account of the conciliation process and offers the Commission’s reflections on the proceedings. It records the agreements reached by the parties and recommends that the parties implement the agreements. It also recommends that the parties continue their discussions and reach an agreement regarding the development of Greater Sunrise.

### **Why Was the Conciliation a Success?**

Although there remains unfinished business, the outcome has been very positive. There are several factors that have contributed to this encouraging outcome. First, the compulsory nature of the proceedings is largely responsible for compelling Australia to engage in the conciliation process. After its objection to the commission’s competence failed to prevail, Australia has participated in the proceedings in good faith.

Second, the nonadversarial nature of the conciliation process allows the Commission to consider not only the legal arguments but also the political and economic concerns of the parties in finding a solution that was acceptable to both sides. As the Commission observes in its report, this is a “hallmark advantage of conciliation as compared to adjudication” and “effective conciliation requires that a careful mix of diplomatic and legal skills, backgrounds, and approaches be deployed in varying combinations at different stages of the process.”

Third, the one-year time limit and the requirements on the content of the report were helpful as well in creating pressures on both parties and the Commission to come up quickly with a workable proposal.

Fourth, the parties were fortunate to have an active, united, and strong Commission. The critical importance of an effective Commission should not be discounted, especially in providing a favorable environment for settlement with its trust-building measures, shifting the parties’ focus away from their “deeply entrenched” legal positions and towards the settlement by taking a problem-solving approach and advancing its own proposal of a package deal that was eventually accepted by the parties.

Finally, leaders of both parties have showed the political will to work with the Commission to settle the dispute.

### **What Can Other Actors Learn From This Case?**

As the first compulsory conciliation case under a multilateral treaty, the Timor-Leste-Australia conciliation has set a very positive precedent of using conciliation to settle interstate maritime disputes. The case shows the functionality of UNCLOS conciliation, as it was able to resolve a decades-long and highly complex dispute in such an efficient manner. States with boundary disputes, and a distaste for arbitration and adjudication, should take a good look at this case.

Conciliation is nonadversarial and could effectively facilitate an efficient bargaining outcome. Given the goodwill on both sides, conciliation in either compulsory or voluntary form can be used to peacefully settle international disputes that may otherwise prove intractable in an adversarial process.

*Hao Duy Phan is a senior research fellow at the Centre for International Law, National University of Singapore.*